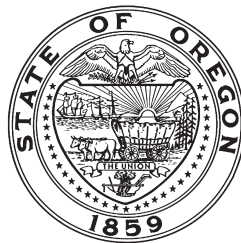


OREGON BULLETIN

Supplements the 2006 *Oregon Administrative Rules Compilation*

Volume 45, No. 1
January 1, 2006

For November 16, 2005–December 15, 2005



Published by
BILL BRADBURY
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2005–2006 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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PUBLIC COMMENT PERIOD PROPOSED FINAL CLEANUP ACTIONS AMITY GASOLINE SPILL SITE NEAR AMITY, OREGON

COMMENTS DUE: February 3, 2006

PROJECT LOCATION: Amity Gasoline Spill Site, Intersection of Highway 99W and Bethel Road (milepost 49.8) near Amity, Oregon
PROPOSAL: Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-0465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for petroleum contamination at the Amity Gasoline Spill Site near Amity, Oregon.

BACKGROUND: On July 3, 2004 a tanker and tanker trailer owned and operated by Harris Transportation Company crashed by the intersection of Highway 99W and Bethel Road (milepost 49.8) south of Amity in Polk County. The tanker trailer overturned and caught fire spilling approximately 6,200 gallons of gasoline to the roadway and adjoining soils. The spill area was approximately 20 feet deep and at least 80 feet down slope to the north. Surface water in Ash Creek was impacted by runoff from the fire suppression efforts including spilled gasoline. Gasoline was initially detected in the creek.

Approximately 2,149 tons of contaminated soil was removed from the spill area on the east side of the highway. The contaminated soil was disposed at the Riverbend Landfill in McMinnville. Soil samples were collected from the excavation area to determine the nature and extent of residual contamination. Soil sample results were below risk-based screening values.

Groundwater and surface water were monitored for gasoline contamination. Six wells were installed at the spill site and sampled from July 2004 through April 2004. Gasoline and gasoline constituents were not detected in five wells in the last three sampling rounds. In one well gasoline and gasoline constituents were detected in every sampling round; however, concentrations were below screening values for all sampling rounds.

Surface water samples were collected from the Ash Creek in July 2004, in August 2005, and in April 2005. Surface water sample results were below risk-based screening values for all sampling rounds.

The site was screened for human health and ecological risk from exposure to gasoline-contaminated soil, groundwater, and surface water. Under current and reasonably likely future land and water uses at the site, DEQ has concluded that there are no significant human health or ecological risks associated with the residual gasoline-contamination in soil, groundwater, and surface water at the site. Therefore, DEQ has recommended that no further investigation or remediation is needed for environmental impacts from the Amity Gasoline Spill.

HOW TO COMMENT: The project files in addition to the site summary report, may be reviewed by appointment at DEQ's Eugene office (1102 Lincoln Street) and at the Salem office (750 Front Street NE, Suite 120). Written comments must be received by February 3, 2006. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail to camarata.mary@deq.state.or.us. Questions may also be directed to Mary Camarata at the Eugene address or by calling her at 1-800-844-8467 ext 259. The TTY number for the hearing impaired is 541-687-5603.

THE NEXT STEP: DEQ will consider all public comments before taking final actions on this matter. A public meeting will be held to receive verbal comments on the proposed cleanup action upon written request by ten or more persons, or by a group with ten or more members.

PUBLIC COMMENT PERIOD PROPOSED NO FURTHER ACTION AT FORMER HEWLETT-PACKARD PROPERTY IN MCMINNVILLE, OREGON

COMMENTS DUE: February 3, 2006

PROJECT LOCATION: Former Hewlett-Packard Company Site, currently part of Linfield College, 1700 South Baker Street, McMinnville, Oregon, Lots 100 and 7000

PROPOSAL: Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-0465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for volatile organic-contaminated soil and ground water at the Hewlett-Packard Company (HP) Site in McMinnville.

BACKGROUND: In 1997, the Hewlett-Packard Company conducted several environmental assessments at their former property located at 1700 South Baker Street in McMinnville, Oregon. Based on preliminary assessments, the focus of investigation for the Voluntary Cleanup Program site was narrowed down to an area in the vicinity of Building 1 and the Support building.

In 1998, ground water monitoring wells were installed between Building 1 and the Support building. The volatile organic levels seen in earlier temporary well point samples were greatly reduced in the monitoring wells. In 2001, a beneficial use survey was conducted to determine the use of the ground water in the site vicinity. The beneficial use survey concluded that the shallow aquifer is not used for drinking water.

The site was screened for human health risk from exposure to volatile organic-contaminated soil and ground water. Under current and reasonably likely future land and water uses at the site, DEQ has concluded that there are no significant human health risks associated with the volatile organic-contaminated soil and ground water at the Site. Therefore, DEQ has recommended that no further investigation or remediation is needed for environmental impacts from the Former Hewlett-Packard Company Site in McMinnville.

HOW TO COMMENT: The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street. Written comments must be received by February 3, 2006. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at danovich.teresa.m@deq.state.or.us. Questions may also be directed to Teresa Danovich at the Eugene address or by calling her at 1-800-844-8467 ext 273. The TTY number for the hearing impaired is 541-687-5603.

THE NEXT STEP: DEQ will consider all public comments before taking final action on this matter. A public meeting will be held to receive verbal comments on the proposed "no further action" upon written request by ten or more persons, or by a group with ten or more members.

DEQ APPROVES CLEANUP AT MILL CITY SITE IN LINN COUNTY

DECISION: The Oregon Department of Environmental Quality (DEQ) has approved an environmental cleanup of petroleum-contaminated soil conducted at the site known as Whitten-Addition, at the corner of First and Cedar streets in Mill City. The current property owner is Scott Baughman Construction.

BACKGROUND: Between the mid-1950s and late 1990s, a commercial log-truck parking and washing business operated at the site. The operations included oiling gravel roads for dust suppression, above ground fueling tanks, untreated log storage, and truck washing and cleaning.

The site encompasses approximately 2.75 acres. The main upper portion of the site, which constitutes 1.1 acres, is where the log truck

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operations were formerly located. The log trucking operations were confined to the upper portion of the site. The lower portion of the site is broken into two terraces. Installation of roadways and building demolitions are currently underway to prepare the upper portion of the site for commercial use and the lower terrace for residential use.

Environmental studies completed between December 2003 and March 2004 found contamination from previous petroleum product use and spillage on the upper portion of the site. Although log trucking operations never occurred on the terraces, soil and groundwater on the terrace below the upper portion of the site were assessed to confirm that the petroleum contamination was confined to the soil on the upper portion of the site.

Between August and November 2004, 160 tons of petroleum-contaminated soil was excavated. Most of this was sent to Riverbend Landfill in McMinnville for disposal. The remaining 15 tons was determined to be clean large rock and resides on a vacant lot near Mill City.

Fieldwork and cleanup was performed by Capital Environment for Scott Baughman. Post excavation confirmation sampling results indicate that residual petroleum contamination is at levels that do not pose a risk to human health or the environment.

DEQ reviewed the environmental work done at this site, and concludes that the cleanup work and recent development of the site were successful in eliminating threats to human health and the environment, and that no additional investigation is required for the petroleum-contaminated areas cleaned up at the site.

INFORMATION: For additional information regarding the site cleanup, contact DEQ Project Manager Nancy Gramlich at 503-378-8240 ext. 259, or 1-800-349-7677, or by email at gramlich.nancy@deq.state.or.us.

NOTICE OF SELECTED CLEANUP APPROACH ROSS ISLAND SAND AND GRAVEL

PROJECT LOCATION: Ross and Hardtack Islands/Ross Island Lagoon, Willamette River Mile 15

REMEDIAL ACTION: The Department of Environmental Quality (DEQ) has selected the cleanup approach for contaminated soils and sediments at the Ross Island site. The selected approach includes capping and stabilization of contaminated soils and sediments, institutional controls to prevent disturbance of the caps, and long-term monitoring and evaluation. To the extent feasible the selected cleanup will be integrated with the existing reclamation plan for this site.

HIGHLIGHTS: Ross Island Sand and Gravel Co. (RISG) mined and processed sand and gravel from the Willamette River at Ross Island from the early 1920s to 2001. From 1979 to 1999, RISG utilized material generated from various activities to backfill mined areas in compliance with reclamation required at the site. This material included waste from on-site processing, imported fill originating from maintenance dredging projects, and waste rock from a U.S. Army Corp of Engineers navigation project at Bonneville Locks. Some of this fill, originating from Port of Portland (Port) shipyards, was contaminated and required confinement in aquatic disposal cells created within the lagoon. In 1998 RISG mined into one of these cells and was subsequently required to recap the area.

Beginning in 1999, the Port and RISG completed several environmental investigations at the site. These investigations evaluated the effectiveness of the confined aquatic disposal cells in isolating contaminants from the aquatic environment, characterized contaminants present in other fill material and in surface sediments in the vicinity of the breach, and characterized contamination resulting from industrial activities at the site.

Based on the Port study that was completed November 2000, DEQ determined that the confined disposal cells were effective in isolating contaminants from the surrounding environment, but that some additional stabilizing of side slopes adjacent to the cells would be needed to ensure long-term stability of the cells. DEQ also indicat-

ed that a long-term monitoring and maintenance plan would be required to ensure the cells continued to be effective over time. A cleanup investigation of the site completed by RISG in 2002 identified several other areas where contaminant levels warranted cleanup evaluation. The site cleanup areas and the selected remedial actions are summarized below:

a) Arsenic- and zinc-contaminated surface soil in the vicinity of the RISG processing plant: additional characterization and capping with three feet of clean soil, long-term maintenance.

b) Soil contaminated with polycyclic aromatic hydrocarbons (PAHs) adjacent to the lagoon: stabilization and capping, long-term maintenance and monitoring.

c) Breach material containing elevated concentrations of tributyl tin (TBT) confined in former settling pond: long-term maintenance and monitoring.

d) PAH-contaminated groundwater adjacent to the lagoon: long-term monitoring to evaluate potential threat to lagoon.

e) PAH-, metal-, and PCB-contaminated sediment in the vicinity of the breach: capping with three feet of clean soil, long term maintenance and monitoring.

f) Lagoon shoreline areas with elevated pH: completion of capping pilot studies, capping and long-term maintenance and monitoring.

g) Confined aquatic disposal cells in the lagoon: stabilization of side slopes, long-term maintenance and monitoring.

The DEQ's Record of Decision (ROD) and other important documents related to this project are available to the public at the downtown and Sellwood-Moreland branches of the Portland Public Library, and DEQ's Northwest Region Office in Portland. The ROD will also be placed on DEQ's web page for the project http://www.deq.state.or.us/nwr/Ross_Island/index.htm. To schedule an appointment to review files in DEQ's Northwest Region office, call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148 or sutter.jennifer@deq.state.or.us.

THE NEXT STEP: Ross Island Sand and Gravel Co. and their consultants are preparing Remedial Action work plan documents for DEQ review.

SELECTED INTERIM REMOVAL MEASURE NICHOLS BOAT WORKS, HOOD RIVER, OREGON

COMMENT PERIOD: January 1–30, 2006

PROJECT LOCATION: Near Interstate 84 Exit 63, Hood River, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-0100, the Department of Environmental Quality (DEQ) has selected an interim removal measure (IRM) regarding soil and sediment contamination at the former Nichols Boat Works Site. Metals primarily from sand blasting grit used in former boat building operations have been identified as the principal contaminants of concern.

HIGHLIGHTS: The Nichols Boat Works site (Nichols) is located just northeast of the Interstate 84 Exit 63 in Hood River, Hood River County, Oregon. The shipbuilding and repair facility has been owned and operated at four locations in the same general vicinity along the Columbia River waterfront since 1941. The current site, used from the early 1970s through 1998, includes a workshop with launching ways and an office building at the southern end of a horseshoe-shaped marina that is adjacent to the confluence of Hood River and the Columbia River. The site is approximately 5.5 acres and includes submerged acreage that is part of a marina that is operated by the Port of Hood River. The existing Hood River waterfront was created for industrial use by extensive dredge filling during the 1960s.

A Remedial Investigation (RI) has been conducted at the Nichols site. The RI included sampling and laboratory analysis of surface soil and sediments at approximately 20 locations at the site and in the Columbia River adjacent to the Nichols facility. The sediments were found to be impacted by contaminants, primarily near ship building

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ways from sand blast grit activities. The primary contaminants of concern (COCs) identified include metals and polycyclic aromatic hydrocarbons (PAHs). While a human health and ecological risk screening completed identified unacceptable risks, sediment samples submitted for bioassay testing indicate little or no toxicity is present in offshore samples, although soil and nearshore sediment continue to contain COCs in excess of DEQ's Screening Level Values (SLVs).

An IRM to address impacted soil and sediments was proposed by Nichols to expedite the cleanup and potential sale of their property. The primary objectives of the IRM are to:

- Reduce the probable risk to human health risks associated with upland soil and sediment exposure,
- Reduce the potential ecological health risks associated with sediment exposure; and
- Prevent further upland soil transport from impacting the sediments and the Columbia River.

Nichols will complete the removal under a 404 Permit obtained during DEQ's public notice and comment on the IRM.

Questions or concerns regarding DEQ's decision should be sent to the project manager at the Department of Environmental Quality, Eastern Region, 2146 NE 4th Ave., Bend, OR 97701, or via e-mail to anderson.david@deq.state.or.us.

PUBLIC NOTICE PROPOSED NO FURTHER ACTION PRAIRIE CITY BULK PLANT (FORMER) PRAIRIE CITY, OREGON

COMMENTS DUE: January 31, 2006

PROJECT LOCATION: SE corner of Railroad Ave & Bridge St in Prairie City, OR

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on the completion of cleanup actions performed at the former Prairie City Bulk Plant site located in the southeast corner of the intersection of Railroad Ave with Bridge St in Prairie City, Oregon. The site is also recommended for de-listing from the Confirmed Release List.

HIGHLIGHTS: The site was former Standard Oil Bulk Plant from the early 1910's to approximately 1984. The site currently consists of a warehouse building, office, garage, and a 1,000-gallon above ground storage tank (AST). Four petroleum ASTs, loading racks and a pump house have been removed from the facility. Site assessment and remedial activities have been performed at the site, including the removal of about 166 tons of petroleum contaminated soil and groundwater monitoring. Confirmation samples collected from the final extent of the excavation are within ten percent of the site specific risk based calculations.

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

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the "No Further Action" determination and the de-listing of the site from the Confirmed Release List and Inventory of Hazardous Substances.

PUBLIC NOTICE PROPOSED NO FURTHER ACTION GENERAL/GILMORE OIL BULK PLANT (FORMER) KLAMATH FALLS, OREGON

COMMENTS DUE: January 31, 2006

PROJECT LOCATION: 709 and 725 South Riverside Drive, Klamath Falls

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on the completion of a generic risk-based evaluation performed at the former General/Gilmore Oil Bulk Plant site located at 709 and 725 South Riverside Drive, Klamath Falls, Oregon. The site is also recommended for de-listing from the Confirmed Release List.

HIGHLIGHTS: The site is a former petroleum bulk plant and operated from at least 1931 to around 1986. All facilities have been removed from the approximately 4 acre site. A review of the Sanborn maps indicate the site was originally two separate, adjacent bulk plants but were later combined and operated as one facility. Site assessment activities and a Corrective Action Plan have been completed at the site including the installation and monitoring of groundwater wells. Soil and groundwater have been impacted at the site but were not detected at levels above generic risk based levels for applicable pathways.

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

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the "No Further Action" determination and the de-listing of the site from the Confirmed Release List.

PROPOSED NO FURTHER ACTION FOR FORMER HUDSPETH SAWMILL SITE PRINEVILLE, OR

COMMENTS DUE: January 31, 2006

PROJECT LOCATION: Lamonta 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 subject property had been formerly used as a sawmill for more than 30 years from the 1950s to the early 1980s. The sawmill facility was partially demolished in the mid-1980's. It is currently used by Clear Pine Mouldings to support their operations at the adjacent Main facility. The former truck shop and an above ground fuel storage tank showed preliminary impacts to the shallow soils. The compounds detected in soil included petroleum products used at the site including diesel, and heavy oils, and cleaning solvents such as tetrachloroethylene (PCE) and trichloroethylene (TCE). Subsequent sampling in these areas was not able to confirm the initial sampling results, suggesting that the initial samples were not representative of shallow soil conditions at these locations. Furthermore, the levels detected are considered protective given the current and future use as industrial property. The most recent sample results indicate that the shallow soil meets applicable risk-based screening levels.

Based on the findings to date DEQ is proposing a No Further Action determination at the site and believes that this determination is protective as defined in OAR-340-122-0040.

COMMENT: The staff report recommending the proposed action may be reviewed by appointment at DEQ's Office in Bend, 2146 NE Fourth Street, Suite 104, Bend, OR 97701. To schedule an appointment, contact Toby Scott at (541) 388-6146, ext. 246. Written comments should be sent by January 31, 2006 to Mr. Scott at the address listed above. Questions may also be directed to Mr. Scott by calling him directly.

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

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DEQ SEEKS COMMENTS ON PROPOSED NO FURTHER ACTION DETERMINATION AT PACIFIC PAINT PROPERTY IN TIGARD, OREGON

Comments due by Monday, Jan. 16, 2006

Prior to making a final determination pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) invites comment on a proposed no further action determination on the Pacific Paint Property located at 12562 SW Main Street in Tigard, Oregon.

The site operated as an auto parts retail store and machine shop from the mid-1960s until 1991. The site was purchased by Pacific Paint and converted into a retail paint store and paint warehouse. A 1992 Environmental Site Assessment, identified metals and petroleum hydrocarbon related contamination in the area of a drywell and in a limited area near the wall of a building. In 1994, contaminated soil was excavated and from the former drywell area and three groundwater wells were installed on the property. Groundwater samples indicated a minor impact to shallow groundwater in the immediate vicinity of the drywell but no impact in other areas of the property.

A subsequent soil and ground water study conducted in 1997, indicated a reduction in the impact to groundwater and helped to further delineate the extent of minor amounts of residual petroleum related

contamination in the vicinity of the former drywell. At DEQ's request, an area of shallow soil contaminated with metals and petroleum hydrocarbons was excavated and removed from a narrow strip near the warehouse building in December 2005.

All soil and groundwater data was screened against DEQ's risk-based cleanup values and pathways for exposure were evaluated. Beneficial land and water uses were also evaluated in accordance with DEQ policy and it was determined that the few residual contaminants do not pose a risk to human health or the environment because they are below risk-based concentrations or a complete pathway for exposure does not exist.

Based on this information provided to DEQ during this investigation, DEQ has concluded that the Pacific Paint Property site does not pose an unacceptable risk to public health or the environment and that no further action is required at the site under Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

INFORMATION: The Staff Report, ICP Agreement, and the administrative record for the site are available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information, contact DEQ Project Manager, Michael Romero at (503) 229-5563 or by email at Romero.Mike@deq.state.or.us.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Chiropractic Examiners
Chapter 811

Date:	Time:	Location:
1-19-06	10:30 a.m.	ODOT Region 1 Headquarters 123 NW Flanders St. Portland, OR

Hearing Officer: Dave McTeague
Stat. Auth.: ORS 684
Other Auth.: ORS 684
Stats. Implemented: ORS 684.010, 684.155, 684.050 & 684.052
Proposed Adoptions: 811-010-0084, 811-010-0130
Proposed Amendments: 811-010-0085, 811-010-0093, 811-015-0005, 811-021-0005
Last Date for Comment: 1-19-06

Summary: OAR 811-010-0085 Application and Examination of Applicants. This amendment provides that a Doctor of Chiropractic initial license will be valid for a minimum of 180 days. Currently, an initial license may be valid for as little as 120 days.

OAR 811-010-0093 Guide to Policy and Practice Questions. This amendment updates the rule reference to January 19, 2006, recognizing all the policy updates that have been adopted by the Board since July 31, 2003.

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

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

OAR 811-010-0084 Fitness Determinations for Licensure. State and Nationwide Criminal Background Checks. This is a proposed new rule that implements the HB 2157 requirements for state and national criminal background checks for all Doctor of Chiropractic applicants.

OAR 811-010-0130 Other Licensed Health Care Providers. The proposed new rule recognizes the accepted practice that a chiropractic physician may employ or appropriately contract for the services of other licensed health professionals as part of the provision of chiropractic health care.

Rules Coordinator: Dave McTeague
Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE - Suite 150, Salem, OR 97302-6311
Telephone: (503) 378-5816, ext. 23

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Board of Geologist Examiners
Chapter 809

Stat. Auth.: ORS 183, 192 & 672
Other Auth.: SB 80, 2005 Legislative Assembly
Stats. Implemented: ORS 672.555
Proposed Amendments: 809-030-0025
Last Date for Comment: 2-3-06, 5 p.m.

Summary: SB 80 of the 73rd Legislative Assembly directs the Board to list in rule the geology coursework required on a university transcript that accompanies an application packet. Some applicants have a geology degree, but the geology coursework falls short of the 45 hour threshold required of any applicant that has not completed a degree. SB 80 allows the Board to establish in rule what coursework should be found in the transcript with a degree to fulfill the 45 hour course requirement.

Rules Coordinator: Susanna R. Knight
Address: Sunset Center South, 1193 Royvonne AVE SE, #24, Salem, Oregon 97302
Telephone: (503) 566-2837

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Board of Nursing
Chapter 851

Date:	Time:	Location:
2-9-06	9 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 120-C Portland, OR 97232

Hearing Officer: Saundra Theis, Board President
Stat. Auth.: ORS 678.440 & 678.442
Stats. Implemented: ORS 678.440 & 678.442
Proposed Amendments: 851-063-0040
Last Date for Comment: 2-8-06, 5 p.m.

Summary: These rules cover standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides. This rule amendment extends the date of the provision for teaching and assigning additional tasks of nursing care to CNAs in settings where an RN is always available for client assessment and supervision of CNAs. The date is to be extended to December 30, 2009.

Rules Coordinator: KC Cotton
Address: Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162
Telephone: (971) 673-0638

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Date:	Time:	Location:
2-9-06	9 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 120-C Portland, OR 97232

Hearing Officer: Saundra Theis, Board President
Stat. Auth.: ORS 678.021 & 678.040
Stats. Implemented: ORS 678.021 & 678.040
Proposed Adoptions: 851-031-0088
Last Date for Comment: 2-8-06, 5 p.m.

Summary: These rules establish the standards for licensure of Registered Nurses and Licensed Practical Nurses. This rule amendment establishes procedures for the recognition of registered nurses who become registered nurse first assistants by receiving additional certification through nationally recognized professional organizations.

Rules Coordinator: KC Cotton

NOTICES OF PROPOSED RULEMAKING

Address: Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162
Telephone: (971) 673-0638

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Date: 2-9-06 **Time:** 9 a.m. **Location:** Portland State Office Bldg., 800 NE Oregon St., Rm. 120-C, Portland, OR 97232

Hearing Officer: Saundra Theis, Board President

Stat. Auth.: ORS 678.385

Stats. Implemented: ORS 678.375 & 678.385

Proposed Amendments: 851-050-0131

Last Date for Comment: 2-8-06, 5 p.m.

Summary: The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the December 2005, January and February 2006 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

Rules Coordinator: KC Cotton

Address: Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162

Telephone: (971) 673-0638

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Board of Optometry
Chapter 852

Stat. Auth.: ORS 683

Stats. Implemented: ORS 683.155 & 182.466

Proposed Amendments: 852-060-0075

Last Date for Comment: 1-23-06

Summary: Rule is revised to correspond with changes made in discovery from the 2005 Legislative session.

Rules Coordinator: David W. Plunkett

Address: Board of Optometry, P.O. Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

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Board of Radiologic Technology
Chapter 337

Stat. Auth.: ORS 688.555(1)

Stats. Implemented:

Proposed Amendments: 337-010-0030

Last Date for Comment: 2-2-06

Summary: The rule is being modified to allow the Limited Permit Examination to be proctored by ARRT and conducted at test sites throughout the State.

Rules Coordinator: Linda Russell

Address: Board of Radiologic Technology, 800 NE Oregon St. Suite 1160A, Portland, OR 97232

Telephone: (971) 673-0216

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Bureau of Labor and Industries
Chapter 839

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332, 653.065, 658.115, 658.407, 658.820, 659A.845 & 659A.850

Proposed Amendments: Rules in 839-050

Last Date for Comment: 1-23-06

Summary: The proposed rule amendments would conform the contested case rules with the Oregon Administrative Procedures Act and the Attorney General Model Rules for contested cases regarding interpreters and representation of corporate respondents in hearings, and clarify rules.

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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Stat. Auth.: ORS 651.040(4)
Stats. Implemented: ORS 192.410 - 192.505
Proposed Amendments: 839-030-0010
Last Date for Comment: 1-27-06

Summary: The proposed amendments would update the actual costs to the agency of producing public records and clarify the agency's procedures regarding public records requests in conformance with statutory requirements.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

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Stat. Auth.: ORS 651.060 & 659A.162
Stats. Implemented: ORS 659A.150 - 659A.186
Proposed Amendments: Rules in 839-009
Last Date for Comment: 1-27-06

Summary: The proposed amendments would provide clarity and conform rules with statutes as follows:

839-009-0210(14) would be amended to clarify that illnesses of fewer than three days such as colds and flu, absent complications, do not meet the definition of serious health condition.

839-009-0230(1) would be amended to clarify that childbirth is covered by parental leave.

839-009-0240(8) would be amended to add an example demonstrating that an employee who normally works more than 40 hours per week is entitled to intermittent leave hours in the amount of 12 times the number of hours normally worked. This clarifies that the rule is consistent with federal law.

839-009-0250(4) would be amended to clarify that the notice requirements referred to in (4)(b) are those in sections (1), (2) and (3) of the same rule and the employer's notice policies. This conforms the rule with a Commissioner's final order.

839-009-0240(9)(a) would be amended to clarify that the provision allowing an employee to take serious health condition leave again for the same purpose without requalifying applies to leave within the same leave year.

839-009-0210(8) would be amended to conform with changes made by the 2005 Oregon Legislature to the definition of "health care provider."

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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Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186
Proposed Amendments: Rules in 839-009
Last Date for Comment: 2-2-06

Summary: 839-009-0260(7) would be amended to conform the rule with ORS 659A.168(1), clarifying that when OFLA leave is designated for a serious health condition of an employee's family member, employers are entitled to require medical verification of the family member's serious health condition.

839-009-0320 would be amended pursuant to ORS 659A.186(2), which requires consistency with the federal Family and Medical Leave Act, by adding language clarifying that employee leave time protected by the Oregon Family Leave Act may not be counted for disciplinary purposes or when employers are calculating rates of absenteeism for purposes of awarding certain non-performance-based bonuses.

Rules Coordinator: Marcia Ohlemiller

NOTICES OF PROPOSED RULEMAKING

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

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Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 183.335, 183.341, 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850

Proposed Amendments: Rules in 839-002, 839-050

Last Date for Comment: 2-2-06

Summary: The amendment to OAR 839-002-0002 clarifies that the bureau's established procedures for providing notice of intended amendments, adoptions or repeal of administrative rules include notice to the legislature as required by the Oregon Administrative Procedures Act.

The amendment to OAR 839-002-0005(2) clarifies and conforms to the Oregon Administrative Procedures Act the extent to which the Attorney General Model Rules of Procedure are applied to the operations of the Bureau of Labor and Industries.

The amendment to OAR 839-050-0010 corrects an erroneous implication that the Attorney General's Uniform Rules of Procedure may not always apply to the operations of the Bureau of Labor and Industries.

Rules Coordinator: Marcia Ohlemiller

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

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Stat. Auth.: ORS 658.407
Stats. Implemented: ORS 658.405 - 658.503
Proposed Amendments: 839-015-0130, 839-015-0145, 839-015-0300

Last Date for Comment: 1-25-06

Summary: The proposed rule amendments clarify when certified payroll records/wage certifications are required to be submitted to the Bureau of Labor and Industries by contractors employing contract forest fire suppression crews. The proposed rules define the term "contract" for purposes of the certified payroll filing requirements to mean the acceptance of each dispatch order to a fire incident by a contractor supplying a contract crew, and provide that the acceptance of a dispatch order for each separate crew will be deemed to constitute a separate and distinct contract. The proposed rules also provide that the failure of a contractor to submit certified payrolls for each contract firefighting crew as required constitutes a separate violation. Additional proposed "housekeeping" amendments correct an erroneous rule reference in OAR 839-015-0130(16) and provide missing language in OAR 839-015-0145.

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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Stat. Auth.: ORS 183
Stats. Implemented: ORS 183.335
Proposed Repeals: 839-014-0025, 839-015-0002, 839-017-0001, 839-019-0002, 839-025-0002

Last Date for Comment: 1-25-06

Summary: The rules proposed to be repealed include rulemaking notice provisions for the agency's division -014; -015; -017; -019; and -025 rules (pertaining to farm-worker camp operators; farm and forest labor contractors; private employment agencies; civil penalties for child labor violations; and prevailing wage rates on public works).

The Bureau of Labor and Industries has adopted rulemaking notice provisions for *all* agency rules in OAR 839-002-0002. The rules to be repealed are, therefore, redundant and unnecessary.

Rules Coordinator: Marcia Ohlemiller

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

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Construction Contractors Board Chapter 812

Date:	Time:	Location:
1-24-06	11 a.m.	West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Cliff Harkins

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

Other Auth.: Sec. 3, Ch. 432, OL 2005

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.085, 701.100, 701.135, 701.175, 701.227, 701.350, 701.355, 701.992 & Sec. 3, Ch. 432, OL 2005

Proposed Adoptions: 812-005-0250

Proposed Amendments: 812-005-0800, 812-008-0070, 812-008-0072

Proposed Repeals: 812-008-0078

Last Date for Comment: 1-24-06, 11 a.m.

Summary: 812-005-0250 is adopted to clarify when an applicant/licensee may petition the Board for a reduced bond amount and establish how the agency will grant or deny a petition for a lower bond amount and gives appeal rights. 812-005-0800 is amended to add penalties for failure to maintain a list of subcontractors and for knowingly providing false information to the Board. 812-008-0070 is amended to remove the requirement to submit completed continuing education on agency form and will now require copies of completion certificates to be submitted with the renewal form. 812-008-0072 is amended to remove the requirement that at least 20 continuing education units (CEUs) are instructor led and adds one continuing education credit for each meeting attended by CCB and HIAC members. 812-008-0078 is repealed; it is no longer necessary due to amendments to 812-008-0072.

Rules Coordinator: Catherine Dixon

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 Administrative Services Chapter 125

Date:	Time:	Location:
1-17-06	2-2:30 p.m.	Front Conference Rm. Dept. of Administrative Services Facilities Division 1225 Ferry St. SE U100 Salem, OR 97301-4281

Hearing Officer: Bill Foster or designee

Stat. Auth.: ORS 270.015(2) & 270.100(1)(d)

Stats. Implemented: ORS 270.015(2) & 270.100(1)(d)

Proposed Adoptions: 125-045-0200, 125-045-0205, 125-045-0210, 125-045-0215, 125-045-0220, 125-045-0225, 125-045-0230, 125-045-0235, 125-045-0240, 125-045-0245, 125-045-0250, 125-045-0255, 125-045-0260, 125-045-0265, 125-045-0270, 125-045-0275

Proposed Repeals: 125-045-0100, 125-045-0105, 125-045-0110, 125-045-0120, 125-045-0125, 125-045-0130, 125-045-0140, 125-045-0150, 125-045-0160, 125-045-0170, 125-045-0180, 125-045-0190, 125-045-0195

Last Date for Comment: 1-17-06, 5 p.m.

Summary: The current rules have been rewritten and reorganized to improve clarification and readability of Acquisition or Terminal Disposition of Real Property.

Rules Coordinator: Kristin Keith

NOTICES OF PROPOSED RULEMAKING

Address: Department of Administrative Services, 155 Cottage St. NE, Salem, OR 97301

Telephone: (503) 378-2349, ext. 325

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Date:	Time:	Location:
1-20-06	11 a.m.–12 p.m.	Dept. of Administrative Services Looking Glass Conf. Rm. 1225 Ferry St. SE, U140 Salem, OR 97301

Hearing Officer: Karen Hartley

Stat. Auth.: ORS 279A.065, 279A.070 & OL 2003, Ch. 794, Sec. 335 (HB 2341)

Stats. Implemented: ORS 200.035, 200.065, 200.075, 279A.020, 279A.025, 279A.030, 279A.050, 279A.055, 279A.065, 279A.100, 279A.105, 279A.110, 279A.120, 279A.125, 279A.140, 279A.155, 279A.180, 200A.200, 279A.205, 279A.210, 279A.215, 279A.220, 279A.225, 279B.005, 279B.010, 279B.115, 279B.025, 279B.050, 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, 279B.090, 279B.205, 279B.210, 279B.215, 279B.270, 279B.280, 279B.400, 279B.405, 279B.410, 270B.415, 279C.105, 279C.110, 279C.320, 279C.335, 279C.340, 279C.345, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.390, 279C.395, 279C.400, 279C.405, 279C.410, 279C.440, 279C.445, 279C.450, 279C.460, 279C.505, 279C.510, 279C.515, 279C.520, 279C.530, 297C.535, 279C.540, 279C.545, 279C.560, 279C.570, 279C.580, 279C.585, 279C.590, 279C.605, 279C.650, 279C.655, 279C.660, 279C.665, 279C.670, 279C.800, 279C.805, 279C.810, 279C.815, 279C.820, 279C.825, 279C.830, 279C.835, 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870, 305.385, 351.086, 468A.720, 701.005, 701.055, OL 2003, Ch. 794, Sec. 132, 133 & OL 2005, Ch. 103, Sec. 39

Proposed Adoptions: 125-246-0576, 125-246-0577, 125-247-0290, 125-247-0291, 125-247-0292, 125-247-0690, 125-247-0691, 125-247-0731, 125-249-0395, 125-249-0645, 125-249-0815

Proposed Amendments: 125-246-0100, 125-246-0110, 125-246-0130, 125-246-0140, 125-246-0150, 125-246-0170, 125-246-0210, 125-246-0220, 125-246-0300, 125-246-0310, 125-246-0322, 125-246-0323, 125-246-0330, 125-246-0335, 125-246-0345, 125-246-0350, 125-246-0353, 125-246-0355, 125-246-0360, 125-246-0400, 125-246-0410, 125-246-0420, 125-246-0430, 125-246-0440, 125-246-0450, 125-246-0460, 125-246-0500, 125-246-0555, 125-246-0560, 125-246-0570, 125-246-0575, 125-247-0010, 125-247-0165, 125-247-0170, 125-247-0200, 125-247-0255, 125-247-0256, 125-247-0260, 125-247-0261, 125-247-0270, 125-247-0275, 125-247-0280, 125-247-0285, 125-247-0287, 125-247-0288, 125-247-0296, 125-247-0430, 125-247-0450, 125-247-0600, 125-247-0610, 125-247-0630, 125-247-0700, 125-247-0710, 125-247-0730, 125-247-0740, 125-248-0100, 125-248-0110, 125-248-0120, 125-248-0130, 125-248-0200, 125-248-0210, 125-248-0220, 125-248-0230, 125-248-0240, 125-248-0250, 125-248-0260, 125-248-0300, 125-248-0310, 125-248-0340, 125-249-0100, 125-249-0120, 125-249-0130, 125-249-0140, 125-249-0150, 125-249-0160, 125-249-0200, 125-249-0210, 125-249-0280, 125-249-0290, 125-249-0300, 125-249-0310, 125-249-0320, 125-249-0360, 125-249-0370, 125-249-0380, 125-249-0390, 125-249-0400, 125-249-0420, 125-249-0440, 125-249-0450, 125-249-0460, 125-249-0610, 125-249-0620, 125-249-0630, 125-249-0640, 125-249-0650, 125-249-0660, 125-249-0670, 125-249-0680, 125-249-0690, 125-249-0820, 125-249-0860, 125-249-0870, 125-249-0900, 125-249-0910

Last Date for Comment: 1-20-06, 5 p.m.

Summary: The Department of Administrative Services (DAS) is mandated and permitted by the new Public Contracting Code, ORS 279ABC, to develop rules (Rules) for state agencies subject to DAS purchasing authority (Agencies). DAS developed and filed these Rules on November 23, 2004, to be effective on March 1, 2005, when the Public Contracting Code became operative. In 2005, the Legislature made specific changes in the Public Contracting Code, and the Department of Administrative Services and Agencies gained

experience with the Rules. Now, the Department of Administrative Services needs to adopt additional Rules and amend some existing Rules to implement the Public Contracting Code and fulfill its responsibilities.

Rules Coordinator: Kristin Keith

Address: Department of Administrative Services, 155 Cottage St. NE, Salem, OR 97301

Telephone: (503) 378-2349, ext. 325

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Department of Agriculture Chapter 603

Date:	Time:	Location:
2-8-06	10 a.m.	ODA, Hearings Rm. 635 Capitol St. Salem, OR
2-9-06	9 a.m.	Best Western 1143 Checto Ave. Brookings, OR

Hearing Officer: Russ Wyckoff

Stat. Auth.: ORS 561.190 & 561.510

Other Auth.: ORS 570.305

Stats. Implemented:

Proposed Amendments: 603-052-1230, 603-052-1250

Last Date for Comment: 2-10-06

Summary: Proposed amendments would update the *Phytophthora ramorum* quarantine and regulated area for nursery stock, including the *Phytophthora ramorum* host list, references to current federal protocols, and the boundaries of the area quarantined in Curry Co. Eight additional square miles are proposed for addition, expanding the Curry County quarantined area on its eastern and northern boundaries.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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Stat. Auth.: ORS 561.190

Other Auth.: ORS 616.706

Stats. Implemented:

Proposed Amendments: 603-025-0010, 603-025-0030, 603-025-0190

Proposed Repeals: 603-025-0040, 603-025-0210

Last Date for Comment: 2-15-06

Summary: OAR 603-025-0210 establishes license fees for various categories of retail food stores, food warehouses and food processors. This change will remove the fees from regulation because they have been established in statute. It adopts the 2005 version of the CFR's and it removes the organic regulations that were repealed by the 2001 Legislature. Several changes were made to the Food Code such as replacing the word "permit" with "license," storage of food dispensing utensils in 130°F vs. 140°F water, and correcting references to the CFR's for poultry inspection by USDA.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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Stat. Auth.: ORS 561.190

Other Auth.: ORS 603.025, 603.085, 619.031 & 619.046

Stats. Implemented:

Proposed Amendments: 603-028-0500

Proposed Repeals: 603-028-0010

Last Date for Comment: 2-15-06

Summary: OAR 603-028-0010 establishes license fees for meat sellers, non-slaughtering processors, slaughterhouses, custom slaughterers, custom processors, animal food slaughterer or processor and poultry & rabbit slaughterer/processors. This removes the

NOTICES OF PROPOSED RULEMAKING

fees from regulation because they have been established in statute. It also corrects language in OAR 603-028-0500 where one line of text was repeated.

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

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Stat. Auth.: ORS 561.190
Other Auth.: ORS 621.072
Stats. Implemented:
Proposed Amendments: 603-024-0017, 603-024-0019, 603-024-0211, 603-024-0234, 603-024-0547, 603-024-0589, 603-024-0592
Last Date for Comment: 2-15-06

Summary: OAR 603-024-0234, 603-024-0547(2) & 603-024-0547 (3) establish license fees for dairy plants, producer-distributors, distributors, non-processing distributors and producers. This is to remove the fees from regulation because they have been established in statute. It also adopts the newest version of the CFR's and the PMO. It removes margarine and oleomargarine from the dairy regulations because they are covered in the food regulations and it deletes the Wisconsin Mastitis Test as an approved test for somatic cells.

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

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Stat. Auth.: ORS 561.190
Other Auth.: ORS 625.180 & 635.030
Stats. Implemented:
Proposed Repeals: 603-021-0008, 603-021-0709
Last Date for Comment: 2-15-06

Summary: OAR 603-021-0008 and OAR 603-021-0709 establish license fees for bakeries, domestic kitchen bakeries, bakery distributors and non-alcoholic beverage plants. The purpose is to remove the fees from regulation because the license fees are now established in statute.

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

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Stat. Auth.: ORS 561.190 & 570.405
Stats. Implemented: ORS 570.405
Proposed Amendments: 603-052-1240
Last Date for Comment: 1-27-06

Summary: The proposed amendments would postpone the review date of the bentgrass control area in Jefferson County from 2005 to 2007. This amendment would keep the control area in place until USDA has completed their environmental impact study (EIS) and their review of the petition for deregulation of genetically engineered glyphosate-tolerant creeping bentgrass. Errors in the authorizing statute citation would also be corrected: ORS 561.196 should be ORS 561.190, and 570.405-535 should be 570.405.

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

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Department of Agriculture, Oregon Wheat Commission Chapter 678

Date: 1-24-06
Time: 3:30 p.m.
Location: Columbia Gorge
Discovery Center
5000 Discovery Drive
The Dalles, OR

Hearing Officer: Tana Simpson
Stat. Auth.: ORS 578 & 576
Stats. Implemented: ORS 578 & 576
Proposed Amendments: 678-010-0010, 678-010-0020, 678-010-0030, 678-010-0040, 678-010-0050
Last Date for Comment: 1-24-06, 3:30 p.m.
Summary: The proposed amendment to 678-010-0010 will update rule to the correct statute as 578.021 was repealed in 2003 legislation.

The proposed amendments to 678-010-0020 repeals the definitions of "producer" and "casual sales." The revisions also add the definition of "independent third party" and "irregular" as they are added to the rule in the revised text.

The proposed amendment to 678-010-0030 further defines the process the commissioners may use in determining whether to change the assessment rate by allowing for a survey of growers and/or a county by county educational effort in conjunction with the Oregon Wheat Growers League.

The proposed amendment to 678-010-0040 allows low volume handlers to report annually should they so choose.

The proposed amendments to 678-010-0050 increases the late reporting penalty to 10 percent in the first month and 1 1/2 percent every month thereafter and allows the commission to waive a penalty for good cause.

Rules Coordinator: Tana Simpson
Address: Department of Agriculture, Wheat Commission, 1200 NW Naito Parkway, Suite 370, Portland, OR 97209
Telephone: (503) 229-6665

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

Date: 4-18-06
Time: 9:30 a.m.
Location: 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: Chris S. Huntingdon
Stat. Auth.: 2005 OL, Ch. 758 (HB 2181)
Stats. Implemented: 2005 OL, Ch. 758, ORS 479.630, 480.630 & 693.103

Proposed Adoptions: 918-030-0300, 918-695-0039
Proposed Amendments: Rules in 918-001, 918-030, 918-225, 918-282, 918-400, 918-515, 918-695

Proposed Repeals: 918-225-0680, 918-225-0685, 918-515-0370
Last Date for Comment: 4-21-06, 5 p.m.

Summary: This rulemaking maintains and makes consistent current licensing program operations in light of statutory changes resulting from HB 2181 (2005) that becomes effective July 1, 2006.

Rules Coordinator: Nicole M. Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-0226

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Date: 1-17-06
Time: 10 a.m.
Location: 1535 Edgewater NW
Salem, OR 97304

Hearing Officer: Casey Hoyer
Stat. Auth.: ORS 447.072
Stats. Implemented: ORS 447.072

Proposed Amendments: 918-780-0035
Last Date for Comment: 1-20-06
Summary: This rulemaking expands current permit exemptions for ordinary minor plumbing repairs in residential dwellings and commercial structures.

Rules Coordinator: Nicole M. Jantz
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-0226

NOTICES OF PROPOSED RULEMAKING

Date: 1-17-06
Time: 9:30 a.m.
Location: 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: Richard Rogers
Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112
Stats. Implemented: ORS 447.247, 455.110 & 455.112

Proposed Amendments: 918-460-0015

Last Date for Comment: 1-20-06, 5 p.m.

Summary: 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, and modifies various occupancy separation requirements.

Rules Coordinator: Nicole M. Jantz

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

Telephone: (503) 373-0226

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Date: 2-21-06
Time: 10 a.m.
Location: 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: Casey T. Hoyer
Stat. Auth.: ORS 455.030 & 455.720
Stats. Implemented: ORS 455.622, 455.720, 455.735 & 455.740
Proposed Amendments: Rules in 918-098, 918-281, 918-695

Last Date for Comment: 2-24-06, 5 p.m.

Summary: These proposed rules eliminate the re-testing and application waiting period for Oregon Inspector Certification (OIC) exams. Additionally, the rules clarify and standardize requirements such as continuing education for inspector certifications.

Rules Coordinator: Nicole M. Jantz

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

Telephone: (503) 373-0226

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Date: 2-21-06
Time: 9:30 a.m.
Location: 1535 Edgewater NW
Salem, OR 97304

Hearing Officer: Richard Blackwell

Stat. Auth.: ORS 455.030

Stats. Implemented: ORS 455.030, 455.110, 455.610, 455.445 & 455.525

Proposed Adoptions: Rules in 918-008

Proposed Amendments: Rules in 918-008, 918-440, 918-460, 918-480, 918-500

Proposed Repeals: 918-400-0250

Last Date for Comment: 2-24-06

Summary: These proposed rules clarifies the division's process for adopting and amending the Oregon state building code.

Rules Coordinator: Nicole M. Jantz

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

Telephone: (503) 373-0226

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

Date: 2-7-06
Time: 9 a.m.
Location: 350 Winter St. NE
CR E
Salem, OR

Hearing Officer: Pat Locnikar

Stat. Auth.: ORS 97.933, 97.935 & 97.945

Stats. Implemented: ORS 97.929, 97.933, 97.935, 97.945, 97.947 & 97.948

Proposed Adoptions: 441-930-0080

Proposed Amendments: 441-930-0010, 441-930-0030, 441-930-0070, 441-930-0210, 441-930-0220, 441-930-0230, 441-930-0240, 441-930-0250, 441-930-0260, 441-930-0270, 441-930-0280, 441-930-0290, 441-930-0300, 441-930-0310, 441-930-0320, 441-930-0330, 441-930-0340, 441-930-0350, 441-930-0360

Proposed Repeals: 441-930-0020, 441-930-0040, 441-930-0050, 441-930-0060, 441-930-0200

Last Date for Comment: 2-7-06

Summary: These amendments clarify and update rules concerning certified providers and master trustees involved with prearrangement funeral plans and the associated funds held in trust. The new rule being proposed clarifies the authority and responsibilities of master trustees. The five rules proposed for repeal are either incorporated into other rules, or deemed no longer necessary.

Rules Coordinator: Berri Leslie

Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE - Rm. 410, Salem, OR 97301-3881

Telephone: (503) 947-7478

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Department of Energy Chapter 330

Date: 1-17-06
Time: 10 a.m.–12 p.m.
Location: 625 Marion St. NE
Rm. C/D
Salem, OR

Hearing Officer: Kathy Estes, Assistant Loan Officer

Stat. Auth.: ORS 470

Other Auth.: SB 735 (2005)

Stats. Implemented: ORS 470.170

Proposed Amendments: 330-110-0010, 330-110-0042, 330-110-0050, 330-110-0055

Last Date for Comment: 1-20-06, 12 p.m.

Summary: The proposed changes to the rules reflect changes to statute enacted by SB 735 and include the following: clarify definitions of recycling project, and small scale local energy project; clarify borrower response to refunding of bonds; adding an applicant's proprietary technical data to the list of confidential records; and clarify fee structure language.

Rules Coordinator: Kathy Stuttaford

Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301

Telephone: (503) 378-4128

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Department of Fish and Wildlife Chapter 635

Date: 2-10-06
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: ODFW Commission

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Other Auth.: SB 594

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Proposed Adoptions: Rules in 635-004, 635-023, 635-041, 635-042
Proposed Amendments: Rules in 635-004, 635-017, 635-023, 635-041, 635-042

Proposed Repeals: Rules in 635-004, 635-023, 635-041, 635-042

Last Date for Comment: 2-10-06

Summary: The Columbia River Compact Agencies of Oregon and Washington will meet jointly to consider amendment of rules related to 1) commercial fishing in the Columbia River below Bonneville Dam and select areas; 2) treaty Indian commercial, subsistence and ceremonial fishing in the Columbia River above Bonneville Dam; and 3) sport fishing in the mainstem and tributaries of the Columbia River.

Additional regulations concerning the maximum size limit for green sturgeon in statewide commercial fisheries will also be considered.

NOTICES OF PROPOSED RULEMAKING

Housekeeping and technical corrections 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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Date: 2-9-06 **Time:** 1 p.m. **Location:** ODFW Commission Rm.
3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Proposed Amendments: Rules in 635-180
Last Date for Comment: 2-9-06
Summary: Rules will amended in regards to the Cougar Management Plan. Revisions will be made to both the Plan and associated administrative rules.
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 Human Services,
Child Welfare Programs
Chapter 413**

Date: 1-24-06 **Time:** 8:30 a.m. **Location:** Rm. 255
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 161.390 & 418.005
Other Auth.: SB 1059 (2005 Oregon Legislative Session)
Stats. Implemented: ORS 109.640, 161.327, 161.336, 161.341, 161, 346, 161.365, 161.370, 418.005, 418.312, 419A.090-122, 419B.440-476 & 419C.623-656
Proposed Amendments: 413-020-0140, 413-040-0110, 413-040-0135, 413-040-0140, 413-090-0300, 413-090-0310, 413-090-0380
Last Date for Comment: 1-24-06
Summary: These rules covering Guardian and Legal Custodian Consents, Substitute Care Placement Review, and Payments for Special and/or Extraordinary Needs are being amended to update references from the state hospital to SAIP (Secure Adolescent Inpatient Program) or SCIP (Secure Children's Inpatient Program).

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

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

Date: 1-17-06 **Time:** 10:30 a.m.-12 p.m. **Location:** Rm. 137B
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Adoptions: 410-141-0010
Last Date for Comment: 1-17-06, 12 p.m.
Summary: The Oregon Health Plan (OHP-Division 141) Administrative rules govern the Office of Medical Assistance Programs' (OMAP) payments for services provided to clients. Having tem-

porarily adopted OAR 410-141-0010 in October 2005, OMAP will permanently adopt 410-141-0010, effective March 1, 2006, to provide screening and selection procedures for the procurement and solicitation of managed care services.

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

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**Department of Human Services,
Director's Office
Chapter 407**

Date: 1-24-06 **Time:** 1:30-2:30 p.m. **Location:** DHS Bldg., Rm. 160
500 Summer St. NE
Salem, OR 97301

Hearing Officer: Clyde Saiki
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Proposed Adoptions: 407-010-0001
Last Date for Comment: 1-24-06, 5 p.m.
Summary: This rules establishes the development of policies and procedures to guide the use of information between Oregon Youth Authority (OYA) and DHS employees who are subjects of a Child Protective Services (CPS) assessment. This information is provided by CPS supervisors in relation to the requirements of OAR 413-015-0405, (9).

Proposed rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>. For hardcopy requests, call: (503) 947-5250.

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

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

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

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 448.011
Stats. Implemented: ORS 448.005 - 448.090 & 448.990
Proposed Adoptions: 333-060-0500, 333-060-0505, 333-060-0510, 333-060-0515
Proposed Amendments: 333-060-0015, 333-060-0020, 333-060-0035, 333-060-0045, 333-060-0050, 333-060-0060, 333-060-0065, 333-060-0075, 333-060-0110, 333-060-0120, 333-060-0150, 333-060-0160, 333-060-0190, 333-060-0200, 333-060-0205, 333-060-0210, 333-060-0220

Last Date for Comment: 2-27-06, 5 p.m.
Summary: The Department of Human Services is establishing rules specific to the design, construction, maintenance and operation of public wading pools. Public wading pools are defined to also include spray pools, water playgrounds and interactive fountains to address some of the newer types of wading pools that have become popular.

The new rules are made up of three main sections: Construction of new wading pools; existing wading pool compliance for recirculation systems and entrapment protection; and operational requirements for all wading pools.

The rules for new wading pools establish general construction requirements for traditional wading pools, spray feature and play equipment, and spray pools or water playgrounds. The requirements address basin design, recirculation system design, entrapment/hair

NOTICES OF PROPOSED RULEMAKING

entanglement/evisceration protection, decking, spray feature and play equipment design and installation, and special considerations for spray pool and water playground design and construction.

The rules for existing wading pools establish a compliance schedule for existing wading pools, with no water recirculation and treatment, to install water recirculation and treatment equipment or to phase the pool out of use. The rules also establish a compliance schedule to upgrade existing wading pools to install entrapment/hair entanglement/evisceration protection.

The last section of the new rules, deal with wading pool operation. It includes requirements for operation specific to wading pools, which are in addition to the existing operational requirements in the rest of the public swimming pool rules. These include the requirements for the installation of electronic chemical monitoring and control devices to be phased in by January 1, 2012, and new requirements for the posting of pool use rules specific for wading pools.

Changes to the existing rules in Oregon Administrative Rules, Chapter 333, Division 060, Public Swimming Pools, include reference additions to refer to the new rule language, and the updating of references to the standards of other agencies that have changed since the last revision.

The complete text of the rule revisions may be viewed at: <http://oregon.gov/DHS/ph/pl/index.shtml> or by calling the Department of Human Services, Public Swimming Pool Program at (971) 673-0448 or (971) 673-0185.

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,
 Seniors and People with Disabilities
 Chapter 411**

Date:	Time:	Location:
1-17-06	1 p.m.	500 Summer St. NE Rm. 137A Saslem, OR

Hearing Officer: Lisa Richards
Stat. Auth.: ORS 410.070 & 409.050
Other Auth.: SB 1064
Stats. Implemented: ORS 430.210
Proposed Amendments: 411-320-0020, 411-320-0060, 411-320-0090
Last Date for Comment: 1-20-06, 12 p.m.

Summary: The passage of SB 1064 during the 2005 Legislative Session directed Seniors and People with Disabilities to establish by rule a process that implements the reconnection of family members with an individual with a developmental disability.

Rules Coordinator: Lisa Richards
Address: Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Date:	Time:	Location:
1-17-06	3 p.m.	500 Summer St. NE Rm. 137A Salem, OR

Hearing Officer: Lisa Richards
Stat. Auth.: ORS 410.070 & 409.050
Stats. Implemented: ORS 427.005 - 427.007 & 430.610 - 430.670
Proposed Amendments: 411-320-0020, 411-320-0030, 411-320-0040, 411-320-0050, 411-320-0070, 411-320-0080, 411-320-0090, 411-320-0100, 411-320-0110, 411-320-0120, 411-320-0130, 411-320-0140, 411-320-0160, 411-320-0170
Proposed Repeals: 411-320-0020(T), 411-320-0030(T), 411-320-0040(T), 411-320-0050(T), 411-320-0070(T), 411-320-0080(T), 411-320-0090(T), 411-320-0100(T), 411-320-0110(T), 411-320-

0120(T), 411-320-0130(T), 411-320-0140(T), 411-320-0160(T), 411-320-0170(T)

Last Date for Comment: 1-20-06, 12 p.m.
Summary: Permanently adopts the changes that were submitted as temporary rulemaking related to: a) adding a definition for adaptive behavior and clarifying language for consistency and understanding; b) restoring Grievance Committee process for consumer grievances left out of the last rulemaking process; and c) restores specific rules of mental retardation and developmentally disabled eligibility left out of the August 2004 amendment.

Rules Coordinator: Lisa Richards
Address: Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Date:	Time:	Location:
1-20-06	8:30 a.m.	DHS 500 Summer St. NE Rm. 137D

Hearing Officer: Lisa Richards
Stat. Auth.: ORS 410.070 & 443.450
Other Auth.: SB 510
Stats. Implemented: ORS 443.400 - 443.455
Proposed Amendments: 411-056-0007
Last Date for Comment: 1-20-06, 12 p.m.

Summary: The passage of SB 510 during the 2005 Oregon Legislative Assembly extended the current licensing moratorium on new assisted living facilities until June 30, 2009. This rule also amends current language to require a fee on proposed facilities that have filed schematic plans prior to August 16, 2001 and have not begun construction by December 31, 2005.

Rules Coordinator: Lisa Richards
Address: Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Date:	Time:	Location:
1-20-06	8:30 a.m.	DHS 500 Summer St. NE Rm. 137D

Hearing Officer: Lisa Richards
Stat. Auth.: ORS 410.070 & 443.450
Other Auth.: SB 510
Stats. Implemented: ORS 443.400 - 443.455
Proposed Amendments: 411-055-0003
Last Date for Comment: 1-20-06, 12 p.m.

Summary: The passage of SB 510 during the 2005 Oregon Legislative Assembly extended the current licensing moratorium on new residential care facilities until June 30, 2009. This rule also amends current language to require a fee on proposed facilities that have filed schematic plans prior to August 16, 2001 and have not begun construction by December 31, 2005.

Rules Coordinator: Lisa Richards
Address: Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070, 414.065, 410.535 & 441.357 - 441.367
Proposed Amendments: 411-070-0005, 411-070-0010, 411-070-0015, 411-070-0020, 411-070-0025, 411-070-0027, 411-070-0029, 411-070-0035, 411-070-0040, 411-070-0043, 411-070-0045, 411-070-0050, 411-070-0080, 411-070-0085, 411-070-0091, 411-070-0095, 411-070-0100, 411-070-0105, 411-070-0110, 411-070-0115, 411-070-0120, 411-070-0125, 411-070-0130, 411-070-0140, 411-070-0300, 411-070-0302, 411-070-0330, 411-070-0305, 411-070-0310, 411-070-0315, 411-070-0335, 411-070-0340, 411-070-0345,

NOTICES OF PROPOSED RULEMAKING

411-070-0350, 411-070-0359, 411-070-0365, 411-070-0370, 411-070-0375, 411-070-0385, 411-070-0400, 411-070-0415, 411-070-0420, 411-070-0425, 411-070-0428, 411-070-0430, 411-070-0435, 411-070-0452, 411-070-0462, 411-070-0464, 411-070-0465, 411-070-0470

Proposed Repeals: 411-070-0458

Last Date for Comment: 1-20-06, 12 p.m.

Summary: These rules are being amended for to the following: a) to correct statutes and rule references in rules; update language currently used by the Department; and general housekeeping. OAR 411-070-0458 is no longer applicable and is being repealed.

Rules Coordinator: Lisa Richards

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

Telephone: (503) 945-6398

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Department of Transportation Chapter 731

Date:	Time:	Location:
1-17-06	9 a.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: Dan Anderson

Stat. Auth.: ORS 184.616, 184.619 & Sec. 2, 6, Ch. 557, OL 2005 (HB 2077)

Stats. Implemented: Sec. 2, 6, Ch. 557, OL 2005 (HB 2077)

Proposed Adoptions: 731-007-0335

Proposed Amendments: 731-005-0470

Last Date for Comment: 1-23-06

Summary: HB 2077 requires the Department of Transportation to adjust the amount paid to a contractor under the contract if the contractor requests an adjustment and the steel material delivered to the contractor was more than 10 percent above the market price of the steel material on the contractor's original bid quote. OAR 731-007-0335 establishes the process for making payments to Highway Construction Contractors for the unanticipated escalation in the cost of steel materials. This rule covers: which contracts are eligible, the process for requesting an adjustment, documentation required, the department response to the request, and schedule for payment. HB 2077 also requires the Department of Transportation to include a price escalation and de-escalation clause in public improvement contracts involving the construction, reconstruction or major renovation of a road or highway. The proposed amendment to OAR 731-005-0470 establishes the need for the escalation and de-escalation clause for steel materials to be permanently incorporated.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.160 & 807.400

Stats. Implemented: ORS 807.160 & 807.400

Proposed Amendments: 735-062-0130

Last Date for Comment: 1-23-06

Summary: Chapter 241, Oregon Laws 2005 (SB 74) amends ORS 807.150 and ORS 807.400 to require DMV to establish by rule the reasons DMV will issue a driver license, driver permit or identification card with a different distinguishing number from the one being replaced. The proposed amendments to OAR 735-062-0130 set forth the reasons DMV will issue a different distinguishing number which are: (1) fraudulent use of the person's current number and name; and

(2) when a victim of abuse, stalking, or physical violence is taking steps to protect his or her identity. The proposed amendments also set forth the evidence necessary to establish the person qualifies for a different distinguishing number. This permanent rule will replace a temporary rule that will become effective January 1, 2006.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

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Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.270 & 813.510

Stats. Implemented: ORS 807.240, 807.250, 807.270, 807.370, 813.100, 813.500, 813.510, 813.602, 813.608, 813.610, 813.612 & 813.614

Proposed Amendments: 735-064-0005, 735-064-0040, 735-064-0090, 735-064-0100, 735-064-0110

Last Date for Comment: 1-23-06, 5 p.m.

Summary: ORS 807.270(6)(b) requires that an applicant for a probationary permit submit a report of a diagnostic examination conducted by a private physician showing to the satisfaction of the State Health Officer that the applicant is physically and mentally competent to operate a motor vehicle. The proposed amendment to OAR 735-064-0040(5) authorizes a licensed physician to submit the information on a medical report form or on the Hardship/Probationary Permit Application. This is intended to simplify the application process and reduce the amount of paperwork received by the State Health Officer for review. Oregon Laws 2005, Chapter 471, section 11 (SB 880) amends ORS 807.240 to authorize a certified nurse practitioner to submit a signed statement regarding medical treatment if needed by an applicant for a hardship permit. The proposed amendment to OAR 735-064-0040(7)(c) implements this statutory change. The proposed amendment to OAR 735-064-0040(4) specifies that an SR22 submitted because of a DUII suspension must show at least the coverage amounts required by ORS 806.075.

Other changes to these rules are to update the references, including the Office of Mental Health and Addiction Services and the DMV internet address, and to clarify language.

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

Stat. Auth.: ORS 823.011 & 825.555

Stats. Implemented: ORS 825.494 & 825.555

Proposed Adoptions: 740-200-0045

Last Date for Comment: 1-23-06

Summary: ODOT adopted the International Fuel Tax Agreement (IFTA) Audit Procedures Manual effective January 1, 2005. Section A550.100 of the manual describes methodology a jurisdiction may use to estimate fuel tax liability when an IFTA licensee fails to maintain or provide records to support the taxes the licensee reports. One factor of the estimation is an examination of industry average miles per gallon (mpg) for equipment operated by the licensee. The manual does not provide further guidance regarding establishment of an industry average. The proposed rule is needed to describe the method Oregon will use to determine industry average for the purpose of an IFTA audit. The proposed rule further describes when Oregon may use industry averages, or use the IFTA standard of 4 mpg for reported taxes that are not supported by the licensee's records.

NOTICES OF PROPOSED RULEMAKING

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

Stat. Auth.: ORS 408.010 - 408.090

Other Auth.: HB 3504 of the 73rd Oregon Legislative Assembly - 2005 Regular Session

Stats. Implemented: ORS 408.010, 408.020 & 408.060

Proposed Amendments: 274-010-0100, 274-010-0115, 274-010-0120, 274-010-0135, 274-010-0145, 274-010-0155, 274-010-0160, 274-010-0170, 274-010-0175

Proposed Repeals: 274-010-0140, 274-010-0150

Last Date for Comment: 1-26-06

Summary: The passage of House Bill (HB) 3504 of the 73rd Oregon Legislative Assembly - 2005 Regular Session amended the amount of monthly benefits a veteran may apply for if he/she is a full-time student at an institution accredited by the United States Department of Veterans Affairs. Part-time students and World War II veterans are no longer eligible to apply for educational aid through this program.

The passage of HB 2932 of the 73rd Oregon Legislative Assembly - 2005 Regular Session established the Department of Veterans' Affairs. The rights and obligations of the Director of Veterans' Affairs are transferred to the Department of Veterans' Affairs.

The text of the repealed rules has either been incorporated into the amended rules listed above or removed in its entirety due to the passage of HB 3504.

Rules Coordinator: Herbert D. Riley

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

Telephone: (503) 373-2055

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Economic and Community Development Department
Chapter 123

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Proposed Amendments: 123-027-0040, 123-027-0050, 123-027-0056, 123-027-0060, 123-027-0070, 123-027-0106, 123-027-0156, 123-027-0161, 123-027-0166, 123-027-0211

Proposed Repeals: 123-027-0171, 123-027-0201

Last Date for Comment: 1-22-06

Summary: In 2003, the Oregon Ports, with Oregon Economic and Community Development Department support, were successful in securing about \$3.5 million in lottery bond funding for marine navigation (primarily dredging) projects in the state. The funding is provided through the Marine Navigation Improvement Fund (MNIF) as a new classification of projects; the 'non-federal' projects. These are the projects that do not qualify for federal funding, which is the first priority of projects in the MNIF. The revised rules further clarify, allow both loans and grants for the same project, and align the grant and loan provisions in the rule with the authorizing statutes. The revised rules do not make significant changes to the federally funded projects.

Rules Coordinator: Paulina Bernard

Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301-1280

Telephone: (503) 986-0036

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Stat. Auth.: ORS 285A.075(5) & 285A.110(1)

Stats. Implemented: ORS 285B.380 - 385B.392

Proposed Amendments: 123-021-0090

Last Date for Comment: 1-27-06

Summary: Allows the Oregon Economic and Community Development Department to extend loan guarantees under the Credit Enhancement Fund for longer than five years (with year by year approval) for working capital loans.

Rules Coordinator: Paulina Bernard

Address: Economic and Community Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301-1280

Telephone: (503) 986-0036

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Employment Department
Chapter 471

Date:	Time:	Location:
1-27-06	10:30 a.m.	Employment Dept. Auditorium 875 Union Street NE, Salem OR 97311

Hearing Officer: Lynn Nelson

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.176

Proposed Amendments: 471-030-0125

Last Date for Comment: 1-23-06, 5 p.m.

Summary: The rule changes are being made to simplify and make more consistent the administration of this area of unemployment insurance eligibility determinations.

Rules Coordinator: Lynn M. Nelson

Address: 875 Union Street NE, Salem OR 97311

Telephone: (503) 947-1724

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Date:	Time:	Location:
1-24-06	2 p.m.	Employment Dept. Auditorium 875 Union St. NE Salem, OR 97311

Hearing Officer: Lynn Nelson

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.610 & 657.405 - 657.575

Proposed Adoptions: 471-031-0139

Proposed Amendments: 471-031-0140, 471-031-0141, 471-031-0142

Last Date for Comment: 1-24-06, 5 p.m.

Summary: These rule changes are a result of the SUTA Dumping HB 2124 changing language in the Transfer of Interest rule, the Transfer of Experience rule, Partial Transfer of Experience and Acquiring an Employing Entity.

Rules Coordinator: Lynn M. Nelson

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

Telephone: (503) 947-1724

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Land Conservation and Development Department
Chapter 660

Date:	Time:	Location:
2-2-06	8:30 a.m.	Agriculture Bldg. Basement Hearing Rm. 635 Capitol St. Salem, OR
2-3-06 (if needed)	9 a.m.	Agriculture Bldg. Basement Hearing Rm. 635 Capitol St. Salem, OR

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040 & OL 2005, Ch. 147, § 1

Stats. Implemented: ORS 197.015, 197.060, 197.255, 197.435 - 197.467, 197.628, 197.629, 197.631, 197.633, 197.636, 197.639, 197.646, 197.732, 197.820, 197.825, 215.213, 215.283, 215.750, OL 2003, Ch. 812, §§ 1-3, OL 2003, Ch. 812 (SB 911) & OL 2005, Ch. 67 (HB 2438), 205 (SB 1044), 289 (HB 3313), 354 (SB 346), 609 (HB 2069), 625 (HB 2932), 693 (SB 863), 737 (HB 3117) & 812 (HB 3310)

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 660-015-0000, Rules in 660-004, 660-006, 660-022, 660-025, 660-033

Last Date for Comment: 2-2-06

Summary: Several agency rules (OAR chapter 660, divisions 004, 006, 022, 025 and 033) and Statewide Planning Goal 8 need to be amended to reflect recent statutory changes and to clarify existing provisions.

The amendments to Statewide Planning Goal 8 will conform the goal to amended statutes at ORS 197.435 to 197.467. These statutes were amended in 2003 and in 2005 (Or Laws 2003, chapter 812, sections 1 to 3, and Or Laws 2005, chapter 205, section 1). The department is authorized to amend a statewide planning goal after only one public hearing, provided the amendment is necessitated by new or amended state laws (see Or Laws 2005, chapter 147, section 1). The proposed Goal 8 amendments concern destination resorts, overnight lodging within those resorts, and mapping of lands eligible for destination resorts, as provided for in ORS 197.435 to 197.467.

The amendments to administrative rules implementing Statewide Planning Goals 2, 3 and 4 regarding Exceptions, Agricultural Lands and Forest Lands (OAR chapter 660, divisions 004, 006 and 033) are necessary to conform these rules to 2005 statutory amendments to ORS chapters 197 and 215: 2005 Or Laws, chapters 67 (HB 2438), 289 (HB 3313), 354 (SB 346), 609 (HB 2069), 625 (HB 2932), 693 (SB 863), and 737 (HB 3117). Additional proposed amendments to OAR chapter 660, division 033, would clarify that processed crops and livestock from a farm operation, or from other farm operations in the local agricultural area, may be sold at farm stands as a farm product, rather than as a retail incidental item, along with farm products from throughout Oregon. Other amendments to clarify these rules or to correct errors will also be considered.

The proposed amendments to administrative rules regarding periodic review (OAR chapter 660, division 025), are necessary to conform the rules to 2005 statutory amendments: Or Laws 2005, chapter 829 (HB 3310), and would also update and streamline LCDC periodic review hearing procedures. These 2005 statutory amendments also require amendments to administrative rules regarding unincorporated communities (OAR chapter 660, division 022).

The Commission may consider other amendments to the divisions specified above based on testimony and comments received during the public comment period, and may adopt other minor clarifications or technical corrections and amendments to these divisions that may be proposed during the public comment period.

Rules Coordinator: Shelia Preston

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

Telephone: (503) 373-0050, ext. 229

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Landscape Architect Board
Chapter 804

Date:	Time:	Location:
2-10-06	9 a.m.	Conference Rm. Sunset Center South Salem, OR

Hearing Officer: Andy Leisinger

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 671.365

Proposed Amendments: 804-040-0000

Last Date for Comment: 2-3-06, 12 p.m.

Summary: In May 2005, the annual fee for Landscape Architects was increased from \$225.00 to \$250.00 annually. The initial payment by a new Landscape Architect remained at \$225.00 due to an oversight. The initial fee for Landscape Architect Registration will now be increased to the annual fee amount of \$250.00.

Two application fees of \$100.00 each are also added, one for initial Landscape Architect registration and one for business registrations.

A fee for providing a registrant list is also being added.

Rules Coordinator: Susanna R. Knight

Address: Sunset Center South, 1193 Royvonne AVE SE, #19, Salem, Oregon 97302

Telephone: (503) 589-0093

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Stat. Auth.: 671

Stats. Implemented: ORS 671.318 & 671.408

Proposed Amendments: 804-030-0020

Proposed Ren. & Amends: 804-030-0011 to 804-035

Last Date for Comment: 2-3-06, 5 p.m.

Summary: 804-030-0011 is titled ADVERTISING. But the majority of the information in this rule discusses the registration of Landscape Architect Businesses. By moving the business information into its own division (35), information about registration of businesses can be located more easily.

804-030-0020 revises the statement regarding civil penalties and allows the Board to issue a penalty of less than \$5000.00.

Rules Coordinator: Susanna R. Knight

Address: Sunset Center South, 1193 Royvonne AVE SE, #19, Salem, Oregon 97302

Telephone: (503) 589-0093

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Oregon Department of Aviation
Chapter 738

Date:	Time:	Location:
1-16-06	2-2:30 p.m.	ODA Bldg. Conference Rm. 3040 25th St. SE Salem, OR 97302

Hearing Officer: John Wilson or designee

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Proposed Amendments: 738-015-0005, 738-015-0075

Last Date for Comment: 1-16-06

Summary: The new rule language is to clarify those prospective tenants for both non-commercial and commercial leases will be responsible for any infrastructure expenses that are required to support their development.

Rules Coordinator: John Wilson

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

Telephone: (503) 378-2521

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Oregon Department of Education
Chapter 581

Date:	Time:	Location:
1-18-06	3 p.m.	Public Service Bldg. 255 Capitol St. NE Bsm. B Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 327.006

Stats. Implemented: ORS 327.006

Proposed Amendments: 581-023-0040

Last Date for Comment: 1-18-06

Summary: The current rule does not identify what the nonreimbursable Transportation Costs will be beyond the 2004-05 school year. The rule must be updated to include the new amount.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, Ext. 2664 or e-mail Deborah.Lincoln@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

Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203

Telephone: (503) 378-3600, ext. 2348

NOTICES OF PROPOSED RULEMAKING

Date: 1-18-06
Time: 3 p.m.
Location: Public Service Bldg.
255 Capitol St. NE
Bsmt. B
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 702.005 - 702.991
Stats. Implemented: ORS 702.005 - 702.991
Proposed Amendments: 581-022-1735
Last Date for Comment: 1-18-06

Summary: HB 3179 changed the process for Athlete Agents beginning on January 1, 2006.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, Ext. 2664 or e-mail Deborah Lincoln at Deborah.lincoln@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
Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203
Telephone: (503) 378-3600, ext. 2348

Date: 1-18-06
Time: 3 p.m.
Location: Public Service Bldg.
255 Capitol St. NE
Bsmt. B
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.603
Stats. Implemented: ORS 326.603
Proposed Amendments: 581-022-1730
Last Date for Comment: 1-18-06

Summary: HB 2157 merged the current statute and increased the fee. There is a current temporary rule in effect that will expire.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, Ext. 2664 or e-mail Deborah.lincoln@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
Address: Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203
Telephone: (503) 378-3600, ext. 2348

Date: 1-18-06
Time: 3 p.m.
Location: Public Service Bldg.
255 Capitol St. NE
Bsmt. B
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 326.603
Stats. Implemented: ORS 326.603
Proposed Amendments: 581-022-1732
Last Date for Comment: 1-18-06

Summary: HB 2157 merged the current statute and increased the fee. There is a current temporary rule in effect that will expire.

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

Date: 1-18-06
Time: 3 p.m.
Location: Public Service Bldg.
255 Capitol St. NE
Bsmt. B
Salem, OR

Hearing Officer: Randy Harnisch
Stat. Auth.: ORS 334.217
Stats. Implemented: ORS 334.217

Proposed Amendments: 581-024-0215
Last Date for Comment: 1-18-06

Summary: The proposed amendments to the rule will define a process to allow the Superintendent to respond to constituent complaints and other alleged violations of standards by an ESD, other than through the regular, cyclical standardization review. The amendments would allow the Superintendent to respond promptly and appropriately in all cases alleged noncompliance.

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

Oregon Liquor Control Commission Chapter 845

Date: 1-27-06
Time: 10 a.m.–12 p.m.
Location: 9079 SE McLoughlin Blvd.
Portland, OR 97222

Hearing Officer: Katie Hilton
Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1)&(5)
Stats. Implemented: ORS 471.175
Proposed Repeals: 845-006-0427

Last Date for Comment: 2-10-06
Summary: This rule describes requirements for operating a Full On-Premises Sales licensed establishment, most specifically that Full licensees be open to the public at least five days per week. The requirements of this rule are outdated, and are a holdover from a type of license the agency no longer issues. We propose to repeal the rule, as its requirements are no longer necessary. Other agency rules address food service and other operational requirements.

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

Date: 2-3-06
Time: 10 a.m.–12 p.m.
Location: 9079 SE McLoughlin Blvd.
Portland, OR 97222

Hearing Officer: Katie Hilton
Stat. Auth.: ORS 183.341(2) & 471.730(5)&(6)
Stats. Implemented: ORS 183.341(2) & 183.418
Proposed Amendments: 845-003-0340
Last Date for Comment: 2-17-06

Summary: This rule describes agency procedures when a party or witness in a contested case proceeding needs assistance in order to be able to participate. We intend to amend the rule to bring it into agreement with the Attorney General's rule on this topic, and to make clear that the agency will provide assistance when parties or witnesses need interpreters or assistive communication devices in order to participate in contested case proceedings.

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

Oregon Public Employees Retirement System Chapter 459

Date: 1-24-06
Time: 2 p.m.
Location: Boardroom
PERS Headquarters
11410 SW 68th Pkwy.
Tigard, OR

Hearing Officer: David K. Martin
Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.005, 238A.025, 238A.140, 238A.330, 238A.335, OL 2005, Ch. 152, 332 & 808
Proposed Amendments: 459-070-0001
Last Date for Comment: 3-1-06

NOTICES OF PROPOSED RULEMAKING

Summary: PERS proposes to amend the OPSRP definitions rule (OAR 459-070-0001) to incorporate new definitions, modify existing definitions and correct citations in response to the passage of 2005 SB 108, HB 2189 and HB 3262 (OL 2005 chapters 152, 332 and 808, respectively).

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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Date:	Time:	Location:
1-24-06	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: David K. Martin

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

Stats. Implemented: OL 2003, Ch. 733 & OL 2005, Ch. 332

Proposed Amendments: 459-075-0010

Last Date for Comment: 3-1-06

Summary: PERS proposes to amend OAR 459-075-0010 to implement "Break in Service" provisions of 2005 HB 2189 (Oregon Laws 2005, chapter 332) and to articulate PERS policy.

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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Date:	Time:	Location:
1-24-06	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: David K. Martin

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

Stats. Implemented: ORS 238.435, 238A.130 & OL 2005, Ch. 808

Proposed Adoptions: 459-013-0250, 459-075-0025

Last Date for Comment: 3-1-06

Summary: 2005 HB 3262 (Oregon Laws 2005 chapter 808) sections 33 and 34 redefine "Final Average Salary" (FAS) for Tier 2 and OPSRP Pension Program members. The new rules are necessary for PERS to comply with state law and to articulate PERS policies for calculating FAS.

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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Date:	Time:	Location:
1-24-06	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 238.157 & OL 2005, Ch. 808

Proposed Adoptions: 459-011-0115

Last Date for Comment: 3-1-06

Summary: A new rule is needed to comply with 2005 HB 3262 (Oregon Laws 2005, chapter 808), which provides in section 26 that a person making a full-cost purchase for military service under ORS 238.157 may elect any benefit methodology (full-formula, money match, formula + annuity) they are eligible for to be used for their service retirement allowance even if that methodology does not produce the highest benefit.

The change in statute applies only to members who have an effective retirement date on or after November 4, 2005.

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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Date:	Time:	Location:
1-24-06	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: David K. Martin

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507 & OL 2005, Ch. 285

Proposed Amendments: 459-050-0060

Last Date for Comment: 3-1-06

Summary: OAR 459-050-0060 currently provides that a participant's designation of beneficiary shall not be revoked or nullified by a decree of divorce, decree of annulment, or other similar circumstance. 2005 HB 2978 (Oregon Laws 2005 chapter 285) allows the revocation of a beneficiary designation upon divorce or dissolution of marriage, effective upon the entry of the judgment. PERS proposes to revise OAR 459-050-0060 to allow an OSGP participant to revoke their beneficiary designation by divorce or annulment decree.

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

Rules Coordinator: David K. Martin

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

Telephone: (503) 603-7713

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Oregon State Lottery Chapter 177

Date:	Time:	Location:
1-23-06	9:30-10:30 a.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461

Other Auth.: ORS 461.310

Stats. Implemented: ORS 461.300 & 461.310

Proposed Amendments: 177-040-0026

Last Date for Comment: 1-23-06, 10:30 a.m.

Summary: The amendment clarifies the terms of the current retailer contract between the Lottery Commission and its video lottery retailers by setting forth the calculation method for paying compensation to video lottery retailers for the sale of video lottery game shares when net receipts exceed a tier threshold during a business week. The amendment specifies that when net receipts exceed the threshold of a tier applicable to a retailer, the video lottery compensation rate remains unchanged for the remainder of the business week and is lowered at the start of the next business week. The Lottery

NOTICES OF PROPOSED RULEMAKING

intends that this rule amendment be applied to retailer compensation for video lottery games beginning June 27, 2004.

Rules Coordinator: Mark W. Hohlt

Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

Telephone: (503) 540-1417

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Date:	Time:	Location:
2-3-06	9:30-10:30 a.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461

Other Auth.: ORS 461.300

Stats. Implemented: OL 2005, Ch. 267 (HB 2237)

Proposed Adoptions: 177-040-0300, 177-040-0310, 177-040-0320

Proposed Amendments: 177-040-0000

Last Date for Comment: 2-3-06, 10:30 a.m.

Summary: The Oregon Lottery has initiated permanent rulemaking to amend and adopt administrative rules in accordance with Oregon Laws 2005, Chapter 267 (HB 2237) which amends ORS 461.300 and provides that the Lottery shall adopt alternative dispute resolution rules for the resolution of contract disputes with lottery game retailers.

Rules Coordinator: Mark W. Hohlt

Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

Telephone: (503) 540-1417

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Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461

Other Auth.: ORS 192.440

Stats. Implemented: OL 2005, Ch. 272 (HB 2545)

Proposed Amendments: 177-010-0100

Last Date for Comment: 2-3-06

Summary: The proposed amendments amend the above referenced administrative rule to comply with the provisions of Oregon Laws 2005, Chapter 272 (HB 2545) relating to notice of fees charged for the production of public records to a requestor; to limit the fees of the Attorney General that may be charged to a requestor; and to update, clarify, and expand the remaining provisions of this rule.

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 Student Assistance Commission Chapter 575

Date:	Time:	Location:
2-17-06	9:30 a.m.	Pioneer Pacific College 27375 SW Parkway Ave. Wilsonville

Hearing Officer: Commission Chair

Stat. Auth.: ORS 348

Other Auth.: SB 404

Stats. Implemented: ORS 348.180, 348.205, 348.250 & 348.260

Proposed Adoptions: Rules in 575-071

Last Date for Comment: 2-17-06

Summary: SB 404 adds criteria for participation to include:

- Pharmacists
- Practitioners who agree to practice in a rural hospital as defined in ORS 442.470 or a rural health clinic
- Pharmacies that are located in a medically underserved rural community in Oregon or a federally designated health professional shortage area and that is not part of a group of six or more pharmacies under common ownership

Rules Coordinator: Peggy Cooksey

Address: Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

Telephone: (541) 687-7443

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Date:	Time:	Location:
2-17-06	9:30 a.m.	Pioneer Pacific College 27375 SW Parkway Ave. Wilsonville, OR

Hearing Officer: Commission Chair

Stat. Auth.: ORS 348

Other Auth.: HB 3504 & HB 5163-A

Stats. Implemented: ORS 348.180, 348.205, 348.250 & 348.260

Proposed Adoptions: Rules in 575-074

Last Date for Comment: 2-17-06

Summary: HB 3504, enacted by the 2005 Legislative Assembly, established the Oregon Troops to Teachers program within the Oregon Student Assistance Commission. The program shall pay resident tuition costs of veterans, provided they agree to teach in a high poverty area for three years or teach the subject of mathematics, science or special education for four years. The Commission proposes a set of rules for purpose of implementation and administration of the program.

Rules Coordinator: Peggy Cooksey

Address: Oregon Student Assistance Commission, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

Telephone: (541) 687-7443

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Public Utility Commission Chapter 860

Date:	Time:	Location:
1-17-06	9:30 a.m.	Public Utility Commission Main Hearing Rm. 550 Capitol St. NE Salem, OR

Hearing Officer: Kathryn Logan

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: Ch. 290, OL 1987 & 2005

Proposed Adoptions: 860-021-0575, 860-034-0276

Proposed Amendments: 860-021-0510, 860-034-0270

Last Date for Comment: 2-21-06

Summary: These two rules establish the terms and time lines for time-payment agreements. One rule is for large telecommunications utilities while the other identical rule is for small telecommunications utilities. These new rules are currently part of OAR 860-021-0510 and 860-034-0270 regarding emergency medical certificates, and temporary OAR 860-021-0550 and 860-034-0275 regarding customers at significant risk for domestic violence or abuse (Senate Bill 983).

Rules Coordinator: Diane Davis

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

Telephone: (503) 378-4372

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Real Estate Agency Chapter 863

Date:	Time:	Location:
5-4-06	10 a.m.	1177 Center St. NE Salem, OR 97301

Hearing Officer: Laurie Skillman

Stat. Auth.: ORS 696.385, 2005 OL, Ch. 116, 543, 730, 17 & 272

Stats. Implemented: ORS 696, 94, 100, 2005 OL, Ch. 116, 543, 730, 17 & 272

Proposed Adoptions: Rules in 863-001, 863-010, 863-015, 863-025, 863-030, 863-040, 863-050, 863-060

Proposed Amendments: Rules in 863-001, 863-010, 863-015, 863-025, 863-030, 863-040, 863-050, 863-060

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

NOTICES OF PROPOSED RULEMAKING

Summary: The purpose of this rulemaking is to make needed house-keeping and technical corrections to current rules, to conform rules to statutory language, and to incorporate legislative changes that impact the agency including legislative changes to public records laws, rulemaking notice procedures, administrative procedures, fingerprinting of licensees, a new class of real estate licensee, and condominium reserve studies.

Rules Coordinator: Laurie Skillman

Address: Real Estate Agency, 1177 Center St. NE, Salem, OR 97301-2505

Telephone: (503) 378-4170, ext. 237

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**Secretary of State,
Corporation Division
Chapter 160**

Stat. Auth.: ORS 80.106 & 80.115

Stats. Implemented: ORS 80.115

Proposed Amendments: 160-050-0200, 160-050-0210

Last Date for Comment: 1-28-06, 5 p.m.

Summary: House Bill 2979 amends ORS Chapter 80 to allow electronic filing of effective financing statements in the Central Filing System for Farm Products. Secured parties may now file these statements without signatures, so long as the filings have been authenticated or otherwise authorized. House Bill 2979 also removes the

requirement for real property description when specifying the farm products that are secured. House Bill 2979 conforms state law to the federal act authorizing this program. This administrative rule amendment conforms the rules to the new state law.

Rules Coordinator: Kristine Hume Bustos

Address: 255 Capitol St. NE Ste. 151, Salem, OR 97310

Telephone: (503) 986-2356

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**Travel Information Council
Chapter 733**

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Proposed Amendments: Rules in 733-030

Last Date for Comment: 1-31-06

Summary: The Travel Information Council held a quarterly meeting on November 18, 2005. The Council proposed rule changes to allow businesses that indicated a location preference to move their logo plaque to a vacant position on a primary sign panel. The relocation fee will be \$150 per plaque per location.

Rules Coordinator: Angela Willhite

Address: Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302

Telephone: (503) 378-4508

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Adm. Order No.: BOA 5-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Adopted: 801-001-0055

Rules Amended: 801-001-0035

Subject: Division 001 is revised to add a new rule that requires respondents in administrative actions to state claims and defenses prior to the hearing. The rule is also amended to update the effective date of professional standards to January 15, 2006.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-001-0035

Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 15, 2006.

Stat. Auth.: ORS 183.332 & 673.410

Stats. Implemented: ORS 183.337 & 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06

801-001-0055

Requesting a Hearing; Stating Claims and Defenses

(1) When requesting a hearing, or within fourteen (14) days following a request for hearing, the person responding to the notice must admit or deny, in writing, all factual matters stated in the notice. Any factual matters not denied shall be presumed admitted.

(2) When requesting a hearing, or within fourteen (14) days following a request for hearing, the person responding to the notice shall affirmatively state, in writing, any and all claims or defenses the person may have and the reason that supports the claim of defense. Failure to raise a claim or defense shall be presumed to be a waiver of such claim.

(3) Evidence shall not be taken on any issue not raised in the notice and either the request for hearing or a subsequent statement within fourteen (14) days following the request for hearing as required in sections (1) and (2) of this rule.

Stat. Auth.: ORS 673.410

Stats. Implemented: ORS 673.170

Hist.: BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06

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Adm. Order No.: BOA 6-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Amended: 801-005-0010

Subject: Division 005 is being amended to clarify the definitions for attest, commissions, contingent fees, referral fee and peer review, and to add a new definition of fees.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-005-0010

Definitions

As used in OAR chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) **AICPA:** American Institute of Certified Public Accountants.

(2) **Applicant:** a person applying for a certificate, license or permit to practice public accountancy.

(3) **Attest, Attesting or Attestation:** includes the following financial statement services:

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(c) Any engagement to be performed in accordance with the statements on Standards for Attest Engagements (SSAE);

(d) An engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board in the United States (PCAOB).

(e) The statements on standards specified in subsections (a) through (c) of this definition are those developed by the AICPA.

(4) **Business organization:** any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(5) **CPA or Certified Public Accountant:** a person who has a certificate of certified public accountant issued under ORS 673.040.

(6) **CPA Exam:** the Uniform Certified Public Accountant Examination.

(7) **CPE:** continuing professional education.

(8) **Candidate:** a person applying for the CPA Exam.

(9) **Certificate:** a certificate of certified public accountant issued under ORS 673.040.

(10) **Client:** a person who agrees with a licensee to receive any professional service from the licensee.

(11) **Commission:** as used in ORS Chapter 673 and OAR chapter 801, commission means a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(12) **Compilation:** a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(13) **Contingent fee:** as used in ORS Chapter 673 and OAR chapter 801, contingent fee means a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(14) **Direct supervision:** a clear connection between the supervisor and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling and evaluating activities, and in discharging the employee being supervised.

(15) **Enterprise:** any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(16) **Fees:** includes commissions, contingent fees and referral fees.

(17) **Financial statements:** the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(18) **Firm:** a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(19) **First time candidate:** a candidate for the CPA exam who is sitting for the exam for the first time in any state.

(20) **Generally Accepted Accounting Principles:** accounting principles or standards generally accepted in the United States, including but not limited to *Statements of Financial Accounting Standards* and interpretations thereof, as published by the Financial Accounting Standards Board, and *Statements of Governmental Accounting Standards* and interpretations thereof, as published by the Government Accounting Standards Board.

(21) **Generally Accepted Auditing Standards:** the *Generally Accepted Auditing Standards* adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in *Statements on Auditing Standards* issued by the AICPA, and for federal audits, the *Single Audit Act* and related U.S. Office of Management and Budget Circulars published by the Government Accountability Office.

(22) **Holding out as a CPA or PA:** to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA," or any number or other title, sign, card, device or use of any internet domain or e-mail name, tending to indicate that the person holds a certificate or license and permit in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(23) **Inactive status:** permit status that may be granted to a licensee who is not holding out as a CPA or PA and otherwise not engaged in the

ADMINISTRATIVE RULES

practice of public accountancy, if the license is not suspended, on probation or revoked.

(24) **In good standing:** the status of a holder of a permit, license or registration issued by any jurisdiction, that is not inactive, suspended, revoked, on probation or lapsed.

(25) **Jurisdiction:** the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(26) **License:**

(a) A certificate, permit or registration, or a license issued under ORS 673.100, or other authority enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(27) **Licensee:** the holder of a license as defined in these rules.

(28) **Material participation:** participation that is regular, continuous and substantial.

(29) **Manager:** a manager of a limited liability company.

(30) **Member:** a member of a limited liability company.

(31) **NASBA:** National Association of State Boards of Accountancy.

(32) **Non-licensee owner:** a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(33) **PA or Public Accountant:** a person who is the holder of a license issued under ORS 673.100.

(34) **Peer Review:** a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a permit under ORS 673.150 or of a registered business organization that performs attestation or compilation services. The peer review shall be conducted by a CPA who holds an active license issued by any state or a public accountant licensed under ORS 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing. The peer reviewer must also be independent of the permit holder or registered business organization being reviewed.

(35) **Permit:** a permit to practice public accountancy issued under ORS 673.150.

(36) **Practice of public accountancy:** performance of or any offer to perform one or more services for a client or potential client, by a licensee while holding out as a CPA or PA, of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated, such as Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, and Statements on Standards for Attestation Engagements, including the performance of such services while in the employ of another person.

(37) **Principal Place of Business:** the physical location, as identified by a licensee, where the licensee conducts substantial administrative or management activities. For purposes of "substantial equivalency" the physical location cannot be in the State of Oregon.

(38) **Professional:** arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(39) **Professional services:** any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(40) **Referral fee:** as used in ORS Chapter 673 and OAR chapter 801, referral fee includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(41) **Registration:** the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(42) **Returning candidate:** a person who has received grades for any section of the Uniform CPA exam in any state and who applies to sit for any part of the CPA exam in Oregon.

(43) **Single Audit Act:** the Single Audit Act with the Single Audit Act Amendments of 1996, as published by the United States Government Accountability Office, Office of Management and Budget.

(44) **Standards for Accounting and Review Services:** the *Statements on Standards for Accounting and Review Services* published by the AICPA.

(45) **Standards for board approved peer review programs:** the *Standards for Performing and Reporting on Peer Reviews* published by the AICPA.

(46) **Statements on Standards for Attestation Engagements:** the statements by that name issued by the AICPA.

(47) **State:** any state, territory or insular possession of the United States, and the District of Columbia.

(48) **Substantial equivalency:** a determination by the National Qualification Appraisal Service of the National Association of State Boards of Accountancy that:

(a) The education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act; or

(b) An individual's education, examination and experience qualifications are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act.

(49) **Supervisor licensee:** A certified public accountant or public accountant whose license is not revoked, suspended, on probation, lapsed or inactive, who qualifies under OAR 801-010-0065 as a supervisor for the purpose of verifying the experience requirement of an applicant for certification under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under OAR 801-010-0100.

(50) **Uniform Accountancy Act (UAA):** A model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession.

(51) **Valid:** Describes a certified public accountant certificate or permit, a public accountant license or permit, municipal roster authority or firm registration that is active and in good standing with the appropriate licensing authority.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 670.310

Hist.: 1AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert. ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05, cert. ef. 3-1-05; BOA 6-2005, f. 11-22-05, cert. ef. 1-1-06

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Adm. Order No.: BOA 7-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Amended: 801-010-0050, 801-010-0080

Subject: OAR 801-010-0050 is being revised to clarify that CPA Exam candidates are required to graduate from a regionally accredited college. OAR 801-010-0080 modifies rules for substantial equivalency to clarify timeline requirements for applying for and renewing the authorization.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-010-0050

Application for Uniform CPA Examination

(1) **Definitions.**

(a) **Authorization to Test (ATT):** Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit a re-examination application and re-examination fee to the Board of Accountancy for any exam section that is expired under the ATT or to retake any section of the CPA Exam not passed.

(b) **Notice to Schedule (NTS):** Issued by NASBA and enables the candidate to schedule testing at an examination test center. The NTS shall remain open until the candidate schedules testing or until six months have elapsed since the NTS was issued, whichever occurs first.

(c) **Testing Center:** Computer testing facilities, approved by the Board and listed on the Board website, at which candidates may take the CPA examination. Testing centers are located throughout the United States, Guam, Puerto Rico and the Virgin Islands.

(d) **Testing Opportunity:** Each testing window is considered a testing opportunity. There are four testing opportunities per year. A candidate may test for a particular section only once per testing window. A candidate may not retake a failed test section(s) in the same testing window.

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(e) **Testing Windows:** The testing window is comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered so that exam sections can be graded and maintenance may be performed.

(2) **Applications.**

(a) Applications for the CPA exam shall be submitted on a form provided by the Board and shall be accompanied by the appropriate fee. The act of filing an application for the CPA exam constitutes an agreement by the candidate to observe and comply with the CPA Exam rules adopted by the Board.

(b) An application will not be reviewed until the application fee and all required supporting documents have been received, including proof of identity (as determined by the Board and specified on the application form), official transcripts and evidence that the candidate has met eligibility requirements.

(c) All foreign academic credentials submitted as evidence of eligibility for the CPA exam are required to be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(d) Candidates shall file an initial application when applying to take the CPA exam for the first time in Oregon. Thereafter candidates shall file a re-examination application. Each application filed shall specify the exam sections to be taken under that application.

(e) Candidates shall pay the CPA exam application fee designated in OAR 801-010-0010 to the Board. All other fees associated with the CPA exam are required to be paid to NASBA. All CPA exam fees are non-refundable. If a candidate fails to appear for a scheduled testing at an approved test center, all fees paid will be forfeited for the examinations scheduled on that day.

(f) At the time of application and during the time any ATT issued by the Oregon Board of Accountancy is open, the candidate shall not have an open ATT for the same section in any other state or jurisdiction.

(g) The candidate shall certify at the time of application that he or she is in compliance with subsection (f) of this rule. Falsifying this certification or including any false, fraudulent, or materially misleading statements on the application for the examination, or including any material omission on the application for the examination shall be cause for disciplinary action under ORS 673.170.

(h) When an application is approved, the Board or its designee will forward authorization to test (ATT) for the computer-based CPA exam to the candidate and to the NASBA National Candidate Database.

(i) The Board will offer a candidate the opportunity to voluntarily disclose the candidate's social security number to the Board so that the Board may provide the social security number to NASBA for identification purposes.

(3) **Eligibility under education requirements.** Candidates for admission to the CPA exam after January 1, 2000 who are applying under the educational requirements of ORS 673.050(1)(a) shall demonstrate eligibility as follows:

(a) **150 Hour rule:** Candidates shall present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(A) A baccalaureate or higher degree from a regionally accredited college or university as described in ORS 673.050(1)(a);

(B) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting; and

(C) A minimum of 24 semester hours or 36 quarter hours in accounting or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(D) The required number of hours in accounting or related subjects may be obtained by satisfactory completion of such hours taken from divisions of continuing education extended by a regionally accredited four-year college or university, or from a community college, providing the community college courses are transferable as equivalent courses to an accredited four-year college or university.

(E) Credit for community college courses. Applicants who have earned a baccalaureate or higher degree from a regionally accredited college or university may obtain additional hours from a community college, if such hours would be transferable to an accredited college or university. However, completion of 150 hours consisting entirely of courses taken from a community college or divisions of continuing education shall not be considered equivalent to a baccalaureate or higher degree from a four-year accredited college or university under the requirements of ORS 673.050.

(b) **Candidates who applied before January 1, 2000:** Returning candidates after January 1, 2000 who do not meet the educational requirement under ORS 673.050(1)(a) are required to sit for at least two sections of the CPA exam per calendar year in order to maintain eligibility under the

requirements of ORS 673.050 that were in effect prior to January 1, 2000. Returning candidates shall provide satisfactory evidence that:

(A) The candidate met CPA exam eligibility requirements that were in effect in Oregon at the time the candidate sat for the CPA exam for the first time in any jurisdiction; and

(B) The candidate sat for and received grades for at least one of the Uniform CPA Examinations in any jurisdiction in 1998 or 1999.

(c) **Evidence of eligibility.** Candidates must meet all requirements under this rule at the time of application. Satisfactory evidence of the educational requirement may be provided in the following manner:

(A) Candidates who have completed all course requirements and been awarded a baccalaureate or higher degree shall provide an official transcript(s) demonstrating successful completion of all courses required under these rules, and that a degree was awarded.

(B) Candidates who have completed all course requirements at the time of application, but for whom a baccalaureate degree has not yet been awarded shall provide an official transcript(s) showing successful completion of all courses required under these rules, together with a letter from the Registrar's Office of the college or university stating that the candidate has met the degree requirements and the date that the degree will be awarded.

(C) Only official transcripts that are forwarded directly to the Board office by the issuing college or university will be accepted.

(D) Only colleges or universities accredited by one of the six regional accrediting associations and listed as accredited in the *Directory of Post secondary Institutions* published by the National Center for Education Statistics shall be recognized by the Board.

(4) **Eligibility under experience standards.** Candidates for the CPA exam who are applying under the experience requirements of ORS 673.050(2) to be licensed as a Public Accountant shall submit satisfactory evidence that:

(a) The candidate graduated from a high school with a four-year program, or the equivalent; and

(b) The candidate completed two years of experience in public accountancy or the equivalent satisfactory to the Board.

(c) Returning candidates after January 1, 2002 who were eligible to take two sections of the CPA Exam under provisions of ORS 673.100 in effect prior to January 1, 2002, are required to sit for at least one exam section in any two testing windows each year in order to maintain eligibility under those requirements.

(5) **Authorization to Test and Notice to Schedule.**

(a) An ATT authorizes the candidate to test one time for those sections of the CPA exam that are specified in the ATT. An ATT is effective for six months from the date on which the corresponding NTS is issued or until the NTS expires, whichever occurs first; however, the ATT will expire ninety (90) days after it is issued if the candidate has not paid the appropriate fees to NASBA.

(b) Expiration of the ATT. Authorization to take a specified exam section will expire on any of the following events:

(A) When the candidate schedules and takes a designated exam section;

(B) If the candidate schedules a testing date for a designated exam section but fails to appear and take the section at the scheduled time;

(C) If the candidate fails to schedule a designated exam section within the six-month period defined by the NTS; or

(D) If the candidate fails to request an NTS and pay the appropriate fees to NASBA within 90 days of the date the ATT is issued.

(c) **Suspension of the ATT.** An ATT may be suspended by the Board of Accountancy based on a report from NASBA that a problem related to the candidate is identified on the National Candidate Database, or for other good cause as determined by the Board.

(d) **Payment of CPA Exam testing fees.** To obtain a Notice to Schedule (NTS), the candidate must remit the CPA exam testing fees required for the CPA exam sections specified in the ATT to NASBA within ninety (90) days from the date the ATT is issued. Failure to remit the required fees and obtain the NTS will cause the ATT to expire, and the candidate must submit a re-examination application to the Board, with the appropriate CPA exam fee, to receive another ATT.

(e) **NTS.** When the candidate receives an ATT from the Board, the candidate is required to:

(A) Submit to NASBA payment of all fees related to testing of the CPA exam sections authorized by the ATT;

(B) Upon receipt of the NTS, contact an approved test center to schedule the time and place for testing of the exam sections authorized by the NTS. CPA exam sections do not have to be scheduled on the same date.

(C) The NTS remains valid for each exam section until the candidate schedules testing for that specific section, or for six months from the date the NTS was issued, whichever occurs first.

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(D) The NTS expires as to each individual exam section when the candidate schedules testing for that section, whether or not the candidate appears at the scheduled testing appointment.

(f) **Testing.**

(A) A candidate may schedule testing at an approved testing center in Oregon or in another jurisdiction. A list of approved testing centers is on the Board of Accountancy website.

(B) Candidates must comply with the procedures and rules of the test center.

(g) **Re-examination.** A completed re-examination application and payment of the appropriate fee to the Board of Accountancy is required:

(A) To retake any exam section that the candidate does not pass;

(B) To obtain an NTS for any exam section that the candidate failed to schedule during the six month period for which a previous NTS was issued;

(C) To obtain an NTS for any exam section for which the candidate failed to obtain an NTS during the ninety (90) day period after the date the ATT was issued.

Stat. Auth.: ORS 670.310, 673.050 & 673.100

Stats. Implemented: ORS 673.050, 673.100 & 673.410

Hist.: IAB 10, f. 2-7-63; IAB 14, f. 8-15-68; IAB 20, f. 10-22-71, ef. 11-15-71; IAB 34, f. 1-29-74, ef. 2-25-74; IAB 41, f. & ef. 12-2-76; IAB 44, f. & ef. 3-31-77; IAB 48, f. & ef. 7-21-77; IAB 6-1978, f. & ef. 6-22-78; IAB 7-1981, f. & ef. 7-27-81; IAB 2-1983, f. & ef. 9-20-83; IAB 3-1988, f. & ef. 6-9-88; AB 2-1989, f. & ef. 1-25-89; AB 4-1991, f. & ef. 7-1-91; AB 4-1994, f. & ef. 9-27-94; AB 1-1995, f. & ef. 1-25-95; AB 5-1995, f. & ef. 8-22-95; AB 1-1996, f. & ef. 1-29-96; AB 1-1997, f. & ef. 1-28-97; BOA 5-1998, f. & ef. 7-9-98; BOA 6-1998, f. & ef. 7-29-98; BOA 7-1998(Temp), f. & ef. 7-29-98 thru 1-25-99; BOA 8-1998, f. & ef. 10-22-98; BOA 4-1999, f. & ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2004(Temp), f. & ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & ef. 7-2-04 thru 12-29-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06

801-010-0080

Holders of Certificates in Other States, US Territories or Foreign Countries

(1) **Substantial equivalency applications by notification.** An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency, may receive authorization to practice public accountancy in this state, upon application. Eligibility under the standards of substantial equivalency shall be based on evaluations conducted by the National Qualification Appraisal Service. An applicant may meet one of the following two standards to establish eligibility under this rule:

(a) The jurisdiction that issued the license on which the application is based is verified to be of substantial equivalency; or

(b) The applicant as an individual meets qualifications that are verified to be of substantial equivalency.

(2) **Notification requirements.**

(a) Within 30 days of accepting an engagement or an assignment to render professional services in this State, or offering to render professional services through direct solicitation or marketing targeted to persons in this State, applicants shall submit notification on a form provided by the Board and pay the fees specified in OAR 801-010-0010;

(b) Upon request from the Board, applicants shall:

(A) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state; and

(B) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(i) Is in good standing in that jurisdiction;

(ii) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice, and is not the subject of any pending actions alleging violations of that jurisdiction's standards of conduct or practice; and

(iii) Is in compliance with continuing education and peer review requirements of the licensing jurisdiction.

(3) **Notification Not Required.** The notification requirements specified in OAR 801-010-0080(2) are not required if the individual is:

(a) Teaching either a college or continuing professional education course;

(b) Delivering a lecture;

(c) Moderating or participating in a panel discussion; or

(d) Rendering professional services to the individual's employer including affiliated, parent, or subsidiary entities, provided such services are not rendered for the employer's clients and so long as the provisions of ORS 673.320 are met.

(4) **Renewal of application by notification.** Every authorization to practice by notification shall expire on December 31 of each year and may

be renewed thereafter by submitting the renewal application with payment of the fee designated in OAR 801-010-0010.

(5) **Applications by reciprocity.** Individuals who wish to establish a principal place of business in this state are required to obtain a CPA certificate and permit under this section prior to practicing as a CPA in this state.

(a) Applications based on an active CPA license that is in good standing and was issued by another jurisdiction prior to January 1, 2000 are eligible under this subsection if the issuing jurisdiction required successful completion of the CPA exam, a Baccalaureate degree and two years public accountancy experience or the equivalent for certification at the time the applicant's license was issued;

(b) Applications based on an active CPA license issued by another jurisdiction that is in good standing are eligible under this subsection if the applicant meets the following qualifications:

(A) Successful completion of the CPA exam;

(B) 150 semester hours, including a Baccalaureate degree, or the equivalent thereof, and 24 semester (36 quarter) hours in accounting and 24 semester (36 quarter) hours in accounting and/or related subjects which are defined as business, economics, finance and written/oral communication; and

(C) At least one year public accounting experience or the equivalent.

(c) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (5)(a) or (b) of this rule, are eligible under this subsection if the applicant demonstrates to the satisfaction of the Board that during four of the ten years immediately preceding the application under ORS 673.040, the applicant:

(A) Held an active CPA license issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application; and

(C) Successfully completed the CPA exam.

(6) **Reciprocity application requirements.** Applicants under section (5) of this rule shall:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct of practice; and

(D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.

(7) **Verification of National Qualification Appraisal Service comparable licensing standards.** The Board shall review the licensing requirements of other jurisdictions on an annual basis to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, 673.410 & 673.153

Stats. Implemented: ORS 673.040 & 673.153

Hist.: IAB 14, f. 8-15-68; IAB 22, f. 3-2-72, ef. 3-15-72; IAB 34, f. 1-29-74, ef. 2-25-74; IAB 3-1982, f. & ef. 4-20-82; IAB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & ef. 8-16-90; AB 5-1993, f. & ef. 8-16-93; AB 1-1994, f. & ef. 1-21-94; AB 4-1994, f. & ef. 9-27-94; AB 1-1997, f. & ef. 1-28-97; AB 4-1997, f. & ef. 7-25-97; BOA 5-1998, f. & ef. 7-9-98; BOA 9-1998, f. & ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06

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Adm. Order No.: BOA 8-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Amended: 801-020-0720

Subject: OAR 801-020-0720 is revised to correct a typographical error that referenced the wrong rule number.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-020-0720

Removal, Suspension and Reinstatement to the Municipal Roster

(1) Removal. Licensees may be removed from the municipal roster for the following reasons:

(a) Failure to pay the biennial fee required by OAR 801-020-0700;

(b) Failure to complete the required CPE described in OAR 801-020-0700; or

(c) Failure to maintain an active CPA/PA permit in good standing as required by OAR 801-020-0690.

ADMINISTRATIVE RULES

(d) Licensees whose CPA/PA permits lapse as described in OAR 801-040-0090, or who fail to renew the authorization to conduct municipal audits as described in OAR 801-040-0700 shall be removed from the municipal roster and the Board of Accountancy shall notify the Office of the Secretary of State.

(2) **Suspension.** Licensees may be suspended from the municipal roster for:

(a) Failure to comply with the provisions of the Oregon Municipal Audit Law, ORS 297.405 through 297.555; or

(b) Any of the reasons stated as grounds for denial in OAR 801-020-0690(3).

(3) **Reinstatement.** Licensees who wish to be reinstated to the municipal roster are required to hold an active CPA/PA permit in good standing.

(a) **Two years or less.** A licensee seeking to be reinstated to the municipal roster within the two year period following the date such licensee was removed from the roster is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010; and

(B) Complete and report 24 hours of CPE as described in OAR 801-020-0700, plus a 16-hour CPE penalty.

(b) **More than two years.** A licensee seeking to be reinstated to the municipal roster more than two years after the date such licensee was removed from the roster is required to:

(A) Pay the appropriate fee stated in OAR 801-010-0010; and

(B) Meet the requirements for initial admission to the municipal roster described in OAR 801-020-0690.

(c) **Suspension.** Approval of reinstatement applications submitted by licensees who are suspended from the municipal roster, or whose CPA or PA permit has been suspended by the Board of Accountancy, is subject to the discretion of the Board. Licensees under this section are required to:

(A) Meet all conditions and terms of the suspension order;

(B) Pay the appropriate fee stated in OAR 801-010-0010;

(C) Meet the requirements for initial admission to the municipal roster described in OAR 801-020-0690; and

(D) Complete and report a 16-hour CPE penalty.

(d) **CPE requirements for reinstatement.** All CPE hours required for reinstatement to the municipal roster, including CPE penalty hours, must be in subjects directly related to the governmental environment and governmental auditing and must be completed within two years preceding the date of the reinstatement application.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS.297.680 & 297.710

Hist.: AB 8, f. 8-17-54; 1AB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; Renumbered from 801-020-0710; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 3-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 8-2005, f. 11-22-05, cert. ef. 1-1-06

Adm. Order No.: BOA 9-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Amended: 801-030-0005, 801-030-0015, 801-030-0020

Subject: Definitions in OAR 801-030-0005 were moved from OAR 801, Division 005 to maintain uniformity, and a reference to the Oregon Division of Audits was removed from Section (1). The form of rule citation was corrected in OAR 801-030-0015. OAR 801-030-0020 is revised to include internet and e-mail under public communications, to clarify false, misleading, or deceptive statements, and to clarify the rules relating to firm names. Provisions that required suspension for school loan defaults is removed and the provisions relating to continuing violations are modified to provide notice to the licensee.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-030-0005

Independence, Integrity, and Objectivity

(1) **Independence.** The Board adopts the Independence Rule established by the AICPA, ET Section Rule 101 Independence, together with the Ethical interpretations and independence rulings of such rule issued by the AICPA. Licensees who perform services that are subject to independence standards promulgated by other regulatory or professional standard setting bodies, agencies and organizations, including but not limited to the Securities and Exchange Commission, the General Accounting Office and the US Department of Labor, must also comply with those standards applicable to the services provided.

(2) Integrity and objectivity.

(a) In the performance of any professional service, a licensee shall maintain objectivity and integrity and shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate the licensee's judgment to the judgment of others.

(b) In tax practice, however, a licensee may resolve doubt in favor of the client as long as there is reasonable support for the client's position.

(c) A licensee shall not accept employment adverse to a client or former client, relating to a matter with respect to which the licensee has obtained confidential information by reason of, or in the course of, the licensee's employment by, or relationship with such client or former client.

(3) **Commissions and referral fees.** Certified public accountants, public accountants and firms in the practice of public accountancy are permitted to pay and receive commissions and referral fees subject to the requirements of ORS 673.345 and this rule.

(a) **Notice to the Board.** Licensees who receive or pay commissions or referral fees shall report this fact on the application for biennial renewal of the license.

(b) **Related licensure/registration.** Prior to accepting commissions, licensees shall acquire and maintain in good standing any license or registration required by another governmental or private standard-setting body for the purpose of receiving commissions. Examples of licensing requirements include, but are not limited to the following:

(A) Oregon Department of Consumer and Business Services;

(B) National Association of Securities Dealers;

(C) Oregon Real Estate Agency; and

(D) Oregon Appraiser Certification and Licensure Board.

(c) **Prohibited commissions and referral fees.** A certified public accountant, public accountant or firm engaged in the practice of public accountancy shall not recommend or refer to a client any product or service, or recommend or refer any product or service to be supplied by a client in exchange for the payment or acceptance of a commission or referral fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(A) An audit, review or agreed-upon-procedures of a financial statement;

(B) An examination of prospective financial information; and

(C) A compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the certified public accountant.

(d) **Application of prohibitions.** The prohibitions in this rule apply:

(A) When the holder of a permit or any partner, officer, shareholder, member, manager or owner of the firm performs the services listed in this rule; and

(B) During the period in which the certified public accountant, public accountant or firm is engaged to perform any of the services listed in this rule, including the period(s) subject of the report and the period covered by any historical financial statements involved in the listed services.

(e) **Disclosure requirements.** A certified public accountant, public accountant or firm engaged in the practice of public accountancy who is not prohibited by this rule from paying or receiving a commission or referral fee, and who is paid or expects to be paid a commission or referral fee, shall disclose that fact to any client to whom the commission or referral fee relates.

(A) A copy of each disclosure shall be provided to the client prior to the time the product or service that is the basis of the fee is recommended, referred or sold, or prior to the time the client retains the licensee to whom the client has been referred and for which the fee or other valuable consideration will be paid.

(B) A copy of the disclosure shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs any services for the client.

(C) In the event of continuing engagements or a series of related transactions involving similar products or services with the same client, one written disclosure may cover more than one recommendation, referral or sale so long as the disclosure is provided at least annually and is not misleading.

(D) Disclosures under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed) and provided on a separate form that is acknowledged in writing by the client with the client's signature and date of acknowledgement;

(ii) State the amount of the commission or referral fee or the basis on which the payment will be calculated;

(iii) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment; and

(iv) Specify the services to be performed by the Licensee for the compensation to be received by the Licensee.

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(f) **Transactions not prohibited.** This rule does not prohibit the following transactions:

(A) Payments for the purchase of all, or a material part of, an accounting practice;

(B) Retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons; or

(C) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

(g) **Audit of disclosure requirements.** Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of disclosure records required under this rule.

(4) **Contingent fees.** Certified public accountants, public accountants and firms in the practice of public accountancy may perform professional services for a client in exchange for a contingent fee subject to the requirements of ORS 673.345 and this rule.

(a) **Notice to the Board.** Licensees who receive contingent fees in exchange for professional services shall report this fact on the application for biennial renewal of the license.

(b) **Prohibited contingent fees.**

(A) A certified public accountant, public accountant or firm in the practice of public accountancy may not perform professional services for a client in exchange for a contingent fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(i) Audit, review or agreed-upon-procedures of a financial statement;

(ii) Compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the licensee; or

(iii) Examination of prospective financial information.

(B) A certified public accountant, public accountant or firm in the practice of public accountancy may not prepare an original or amended tax return or a claim for a tax refund for any client in exchange for a contingent fee.

(c) **Application of prohibitions.** The prohibitions stated in paragraph (4)(c)(A) of this rule apply during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed in this rule and during any period covered by any historical or prospective financial statements involved with or related to such services.

(d) **Requirement for written agreement.** Every agreement to perform services in exchange for a contingent fee shall be in writing and shall be signed by the client.

(A) A copy of the agreement shall be provided to the client prior to the time the client retains the licensee for the service, or prior to the time that the service that is subject to the agreement is performed.

(B) Agreements under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed);

(ii) Include the signatures of all parties and date of each signature; and

(iii) State the amount of the contingent fee or the basis on which the fee will be calculated.

(C) A copy of the agreement shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs the disclosed services for the client.

(e) **Contingent fee transactions not prohibited.** Fees are not contingent if fixed by courts or other public authorities, or in tax matters if such fees are determined based on the results of judicial proceedings or the findings of governmental agencies.

(f) **Audit of contingent fee agreements.** Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of contingent fee agreements required under this rule.

(5) **Improper use of CPA and PA designation.**

(a) **Non-public accounting business.** Licensees engaged in a business or occupation other than the practice of public accountancy or performance of attestation services may use the "CPA" or "PA" designation in oral or other communications such as business cards, stationery or comparable forms if the use of the designation does not indicate in any way that the licensee is authorized to perform public accountancy or attestation services as part of the licensee's other business or occupation.

(b) **Commissions or contingent fees.** Licensees shall not engage in any activity for which the licensee receives commissions or contingent fees while holding out to the public as a CPA or PA, except as provided under sections (3) and (4) of this rule.

(c) **Non-licensee owners.**

(A) A non-licensee owner of a business organization registered in Oregon under the provisions of ORS 673.160(4) shall not use any name or

title that indicates or suggests that such owner is a certified public accountant or public accountant. This does not preclude a non-licensee owner from using the title "principal," "partner," "officer," "member" or "shareholder" to describe the ownership interest in the business organization.

(B) A business organization that includes non-licensee owners shall not use a firm name that includes both the name of a non-licensee owner and the title or designation for "certified public accountant," "public accountant," or any other words or description that would imply that the non-licensee owner included in the firm name is authorized to provide public accounting services.

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

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

Hist.: AB 1-1978, f. & ef. 1-11-78; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2001(Temp), f. & cert. ef. 7-9-01 thru 1-1-02; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06

801-030-0015

Responsibilities to Clients

(1) **Confidential client information.**

(a) **Prohibited disclosures.** Except as provided in subsection (b) of this rule:

(A) No licensee or any partner, officer, shareholder, member, manager, owner or employee of a licensee, shall voluntarily disclose information communicated to the licensee by a client relating to and in connection with services rendered to the client by the licensee.

(B) Members of the Board, members of Board committees and professional practice reviewers shall not disclose confidential client information which comes to their attention in the course of investigations, disciplinary proceedings or otherwise in carrying out their responsibilities, except that the Board may furnish such information when disclosure is required as described in subsection (b) of this rule.

(b) **Permitted disclosures.** Nothing in subsection (a) of this rule shall prohibit the disclosure of confidential client information under the following circumstances:

(A) When disclosure is required by the standards of the public accountancy profession in reporting on the examination of financial statements;

(B) When disclosure is required by a court order;

(C) In response to subpoenas issued in state or federal agency proceedings;

(D) In investigations or proceedings under ORS 673.170 or 673.400;

(E) In ethical investigations conducted by private professional organizations in the course of peer reviews;

(F) To the insurance carrier of a licensee in connection with a claim or potential claim; or

(G) When disclosure is required by the Oregon Board of Accountancy for regulatory purposes of the Board.

(2) **Client records and working papers.**

(a) **Definitions.** As used in this rule:

(A) Client records include any accounting or other records belonging to or obtained from or on behalf of the client or former client that the licensee received for the client's account or removed from the client's premises.

(B) Working papers include but are not limited to all statements, records, schedules, general ledgers, journals, trial balances and depreciation schedules made by the licensee incident to or in the course of rendering services to a client or former client. Working papers are and shall remain the property of the licensee in the absence of an express agreement to the contrary between the licensee and client.

(C) In addition to the requirements specified in paragraph (B) of this rule, attest documentation shall include, but not be limited to, the following:

(i) The objectives, scope and methodology, including any sampling criteria used;

(ii) Documentation of the work performed to support significant conclusions and judgments, including descriptions of transactions and records examined that would enable a reviewer with relevant knowledge and experience, having no previous connection with the attest engagement, to examine the same transactions and records; and

(iii) Evidence of any supervisory review of the work performed.

(b) **Requested records.** Licensees are required to furnish the following records to a client or former client, upon request, within a reasonable time after such request:

(A) In response to a client's request for client records, made within a reasonable time, that occurs prior to issuance of a tax return, financial statement, report or other document prepared by a licensee, the licensee shall furnish to the client or former client any accounting or other records belonging to or obtained from or on behalf of the client that the licensee received for the client's account or removed from the client's premises.

ADMINISTRATIVE RULES

(B) In response to a client's request for client records, made within a reasonable time, that occurs after the issuance of a tax return, financial statement, report or other document prepared by the licensee, the licensee shall furnish to the client or former client:

(i) A copy of a tax return, financial statement, report or other document issued by the licensee to or for such client or former client;

(ii) Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account; and

(iii) A copy of the licensee's working papers, to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(c) **Non-payment by client.** Licensees shall not refuse to provide client records and working papers as described in subsection (b) of this rule based on the client's failure or refusal to pay the licensee's fees.

(d) **Custody and disposition of working papers.**

(A) A licensee may not sell, transfer or bequeath working papers described in this rule to anyone other than one or more surviving partners or stockholders, or new partners or stockholders of the licensee, or any combined or merged organization or successor in interest to the licensee, without the prior written consent of the client or the client's personal representative or assignee.

(B) A licensee is not prohibited from making a temporary transfer of working papers or other material necessary to the conduct of peer reviews or for the disclosure of information as provided by section (1)(b) of this rule.

(C) A licensee shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(D) A licensee shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

(e) **Retention of attest and audit working papers.**

(A) Licensees must maintain for a period of at least seven years the working papers for any attest service or audit report prepared by the licensee together with any other supporting information, in sufficient detail to support the conclusions reached in such report.

(B) The seven-year retention period described in subsection (e) of this rule shall apply to working papers prepared prior to January 1, 2004, but only to the extent that such working papers are required to be retained for a total of seven years, including the period of retention that was cumulated prior to January 1, 2004. No working papers shall be required to be maintained longer than seven years, unless a longer period is required for purposes of a Board investigation as provided in subsection (d)(D) of this rule and OAR 801-010-0115(3).

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 2-1984, f. & ef. 5-21-84; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2005, f. 1-26-05, cert. ef. 2-1-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06

801-030-0020

Other Responsibilities and Practices

(1) **Professional misconduct.**

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading; or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) **Verification of experience for CPA or PA applicants.** Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to

the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(a) Make any false or misleading statement as to material matters in any certificate of experience; or

(b) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) **Acting through others.** A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) **Public communications and advertising.** A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:

(a) Includes a misrepresentation of fact;

(b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;

(c) Is intended or likely to create false or unjustified expectations of favorable results;

(d) Falsely states or implies educational or professional attainments or licensing recognition;

(e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or

(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.

(5) **Professional designations.** A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee unless the representation is true at the time it is made or published.

(6) **Firm names.**

(a) **False and misleading firm names.**

(A) Licensees shall not practice public accountancy under a firm name which is misleading in any way as to the legal entity or organization of the firm, or as to the persons who are owners or managers of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, the number of licensees associated with or working for the firm or the identity of individual members of the firm, and shall not include information about, or indicate an association with, individuals who are not members of the firm;

(C) A firm name shall include words or abbreviations sufficient to identify the form of business organization or legal entity being used by the firm, as required by the laws under which the business organization is organized.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor, so long as the past partner, shareholder, owner or member is not actively engaged in the practice of public accountancy as a sole proprietor or through another business organization in Oregon. A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements stated in this section.

(b) **Singular firm names.** The use by a Certified Public Accountant or Public Accountant in individual practice of the individual's full legal name in the singular form, followed by the title "Certified Public Accountant," "Public Accountant," "CPA" or "PA" is not misleading.

(c) **Plural firm names.**

(A) The use by a firm of a plural title or designation, including words like "company," "and company," "associates" and "accountants," is not misleading if, in addition to the names of persons included in the firm name, the firm employs at least one staff person, who works a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

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(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

(d) Assumed business names.

(A) A firm name that does not include the designations "PC," "LLC," "LP," or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) **Notice to Board.** A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application; and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

(7) Board communications and investigations.

(a) Communications from the Board to licensees shall be sent by first class mail or certified mail and addressed to the licensee at the last official address or the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed;

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations; and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(8) Business transactions with clients.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented to the transaction after full disclosure of the differing interests in writing. Disclosure in writing shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) **Notification of change of address, employer or assumed business name.** Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) **Child support defaults.** In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's

records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(11) **State tax defaults.** In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(12) **Continuing violation.** A continuing violation is a violation of any provision of ORS 673.010-673.457 or OAR chapter 801 that remains in place ("continues") without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. The Board shall provide written notice of the alleged continuing violation to the individual or firm. The duration of the violation prior to the date of notice from the Board shall be deemed a single violation, and each day of continuance after the date of notice from the Board is a separate violation and may be subject to a civil penalty.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06

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Adm. Order No.: BOA 10-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Amended: 801-040-0010, 801-040-0070, 801-040-0090

Subject: OAR 801-040 is being revised to clarify when the ethics requirement is to be reported, to clarify the requirements for verification of reported CPE programs, and requirements for reinstatement applications.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-040-0010

Basic Requirements

(1) **Biennial CPE requirement.** Each biennial renewal period, certified public accountants and public accountants shall report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement shall be completed as follows:

(a) At least 24 of the required 80 CPE hours shall be completed in each year of the renewal period. Hours carried forward from the previous reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

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(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 CPE hours in technical subjects may be carried forward from one reporting period to the next and may be used in partial fulfillment of the 80 hour requirement.

(2) **Ethics requirement.** Active licensees are required to successfully complete and report at least four hours of CPE in professional conduct and ethics (ethics requirement) every four years. All licensees holding even numbered permits shall complete and report the ethics requirement beginning with the reporting period in 2004, and every fourth year thereafter. All licensees holding odd-numbered permits shall complete and report the ethics requirement beginning with the reporting period in 2005, and every fourth year thereafter. Licensees may report the four hour Ethics CPE requirement in either of the two renewal periods that fall within each four year period.

(a) Hours earned in professional conduct and ethics are included in the 80 hour requirement for each renewal period.

(b) If a licensee's principal place of business is located in another jurisdiction and the other jurisdiction has established a professional conduct and ethics CPE requirement, the licensee may meet the ethics requirement by demonstrating compliance with the other jurisdiction's professional conduct and ethics CPE requirement. The number of CPE hours and the ethics course that meet the CPE requirement of such other jurisdiction will be accepted in Oregon, except that the ethics requirement of the other jurisdiction must provide for an ethics program to be reported at least once every four years. The licensee shall report such classes as provided in these rules.

(c) If a licensee has a principal place of business in another jurisdiction that does not have a professional conduct and ethics CPE requirement, the licensee must complete the ethics requirement from a sponsor registered with the Board.

(3) **CPE ethics programs.** CPE programs in professional conduct and ethics shall qualify for CPE credit under this section if such programs are offered by a sponsor registered with the Board and include information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require a licensee to understand the statutes, rules and case law relevant to the practice of public accountancy;

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR chapter 801, division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

(4) **Substantial equivalency.** Licensees who are authorized to practice public accountancy in this state under the provisions of substantial equivalency under ORS 673.153 may satisfy the CPE requirements under this section by demonstrating to the satisfaction of the Board that the licensee is in compliance with CPE requirements of the jurisdiction in which the licensee's principal place of business is located.

(a) If such jurisdiction has no CPE requirement the licensee shall complete and report the CPE requirements under these rules. The requirement to complete four hours of CPE in ethics and professional conduct may also be satisfied by meeting the ethics requirement of the other jurisdiction, and if none, by completing ethics programs offered by a sponsor registered with the Board.

(b) Licensees described in this section are required to comply with the continuing education requirement from the date such permit is issued. The number of CPE hours required for a partial licensing period shall be calculated in the manner described in OAR 801-040-0090(7).

(c) Licensees described in this section are required to:

(A) Submit a signed statement that the licensee is in compliance with the CPE requirements of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements, the licensee shall complete and report CPE programs as described in OAR 801-040-0010; and

(B) Submit a signed statement that the licensee is in compliance with CPE requirements in professional conduct and ethics of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements in professional conduct and ethics, the licensee shall report Ethics CPE programs as described in OAR 801-040-0010(3).

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06

801-040-0070

Verification

(1) The Board may verify CPE reports submitted by licensees. When selected for verification licensees are required to provide the following information for each CPE program selected by the Board:

(a) Certificate of completion or similar documentation that confirms attendance at the program and the number of eligible CPE hours; and

(b) Upon request from the Board, a written statement describing how a CPE program directly contributes to the licensee's professional competency.

(2) Licensees who do not meet CPE requirements described in OAR 801-040-0010 and section (1) of this rule will be notified of the deficiency and a designated number of days will be allowed for the applicant to correct the deficiencies.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06

801-040-0090

Reinstatement Requirements: Lapsed, Suspended or Inactive to Active Status

(1) **Lapsed permits.** Permits that are not properly renewed shall lapse. To reinstate a "lapsed" permit the holder of such permit shall:

(a) Provide a detailed written description of the business and professional activities of the holder of such permit during the period of lapse, stating whether the licensee was holding out as a CPA or PA during the period of lapse;

(b) Submit an application for reinstatement on a form provided by the Board;

(c) Submit payment of the active renewal fee for each renewal period that the permit was lapsed; and

(d) Complete and report the appropriate CPE hours described in this rule, plus a penalty of an additional 16 CPE hours.

(e) CPE hours submitted for reinstatement must meet the requirements for CPE credit under these rules.

(2) **Permits lapsed within the first renewal period.** Holders of permits that lapse within the first renewal period shall complete and report the number of CPE hours that were required to renew the permit at its last expiration date, including any professional conduct and ethics requirement.

(3) **Permits lapsed more than two, but less than five years.** Holders of permits that lapse more than two, but less than five years shall:

(a) Complete and report 80 CPE hours, which shall be completed within the 12 month period immediately preceding the date of application for reinstatement; and

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, such hours to be completed at a rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(c) Complete and report four CPE hours in professional conduct and ethics.

(4) **Permits lapsed more than five years.** Holders of permits that lapse more than five years shall:

(a) Complete and report 160 CPE hours which shall be completed within the 24 month period immediately preceding the date of application for reinstatement;

(b) Comply with CPE requirements under these rules for the period following reinstatement until the next renewal date on a pro rata basis, to be calculated at the rate of 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement to the end of the renewal period in which reinstatement occurs; and

(c) Complete and report four CPE hours in professional conduct and ethics.

(d) In lieu of meeting the CPE requirements described in this section, the holder of a lapsed permit may elect to take and pass the CPA exam within the five years immediately preceding the date of application for reinstatement. A person who elects this option must meet the requirements of OAR 801-010-0060.

(5) **Inactive permits.** To reinstate a permit from inactive to active status, the holder of such permit shall meet the requirements for reinstatement of lapsed permits described in section (1) of this rule, with the following exceptions:

(a) Payment of the active renewal fee described in subsection (1)(c) of this rule for each renewal period that the permit was inactive is not required for reinstatement from inactive to active status; and

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(b) The 16 hour CPE penalty described in subsection (1)(d) of this rule, is not required for applicants reinstating from inactive to active status so long as the reinstatement application is submitted more than two years after the last active renewal.

(6) **Suspended permits.** To reinstate a permit that is suspended under ORS 673.170, the holder of such permit shall:

(a) Provide evidence of satisfaction or completion of all terms and conditions stated in the Order of Suspension; and

(b) Meet the requirements for reinstatement of an inactive permit as stated in this rule.

(7) **Permit holders in other jurisdictions.** Licensees who hold an active permit to practice public accountancy issued under the laws of another jurisdiction, whose principal place of business is in such other jurisdiction, and who wish to reinstate an Oregon permit that has been lapsed or inactive for more than two years shall:

(a) Submit evidence that the applicant holds an active permit to practice public accountancy, in good standing, issued by another jurisdiction; and

(b) Complete CPE requirements described in these rules on a pro rata basis, calculated at 3-1/3 hours per month, including the month of reinstatement, from the date of reinstatement until the end of the renewal period in which reinstatement occurs.

(8) **24 Hour annual CPE requirement.** Licensees whose permits are reinstated under this rule are required to meet the 24 hour annual CPE requirement at the pro-rated calculation of two (2) CPE hours for each month, including the month of reinstatement, until June 30 of the year in which the licensee is reinstated.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410
Stats. Implemented: ORS 673.165 & 673.210
Hist.: AB 1-1985, f. & cert. ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1996, f. & cert. ef. 9-25-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 7-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06

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Adm. Order No.: BOA 11-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 12-15-05

Notice Publication Date: 10-1-05

Rules Adopted: 801-050-0035, 801-050-0065

Rules Amended: 801-050-0005, 801-050-0010, 801-050-0020, 801-050-0030, 801-050-0040, 801-050-0060, 801-050-0070, 801-050-0080

Rules Repealed: 801-050-0050

Subject: OAR 801-050 is revised to establish new requirements for firms that are subject to peer review. Modifications include new definitions and additions to services that are subject to peer review. The revisions establish minimum standards for peer review programs, clarify peer review enrollment requirements, establish reporting requirements for firms that receive substandard peer review reports, and document retention periods for peer review sponsors and also for firms that are subject to peer review requirements. OAR 801-050-0035 is a new section that describes the approval and oversight responsibilities of the Peer Review Oversight Committee.

Rules Coordinator: Kimberly Bennett—(503) 378-4181, ext. 24

801-050-0005

Purpose

(1) The purpose of peer review is to monitor firm compliance with applicable accounting and auditing standards promulgated by generally recognized standard setting bodies.

(2) The Peer Review requirement established by the Board shall emphasize education and appropriate remedial procedures. In the event a firm does not comply with professional standards, or the firm's work is so inadequate as to warrant disciplinary action, the Board shall take appropriate action to protect the public interest.

(3) The Board shall appoint a Peer Review Oversight Committee, and such other committees as the Board, in its discretion deems necessary, to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the minimum standards for performing and reporting on peer reviews described in these rules.

(4) This chapter shall not require any firm or licensee to become a member of any organization sponsoring a peer review program.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0010

Definitions

As used in OAR 801-050 the following terms have the following meanings:

(1) **Acceptance of Engagement:** The date the engagement letter is signed by the client.

(2) **Board:** Oregon Board of Accountancy.

(3) **CPCAF Peer Review Standards:** Standards used by the Center for Public Company Audit Firms Peer Review Program for performing and reporting on peer review for firms that do not audit SEC registrants.

(4) **Client records:** Supporting documents relating to financial statements that are the subject of peer review and that may contain confidential financial or personal information about a client of the firm.

(5) **Firm:** A registered public accounting firm or a CPA or PA doing business as a sole proprietor, if such firm or sole proprietor performs attest or compilation services in Oregon or for Oregon clients and is subject to the peer review requirement.

(6) **Minimum standards for performing and reporting on peer reviews:** Standards described in OAR 801-050-0080 that are required for approved peer review programs.

(7) **PCAOB:** Public Company Accounting Oversight Board that conducts firm inspections of public accounting firms that perform audits for publicly-held companies.

(8) **Peer Review:** a study, appraisal or review of one or more aspects of the public accountancy work of a firm or a permit holder under ORS 673.150 who performs attest or compilation services.

(9) **Peer Reviewer:** A qualified public accountant as defined in this rule, or a certified public accountant licensed in any state, who is trained and qualified to perform peer review for an approved peer review program and who is independent of the firm under review.

(10) **Qualified Public Accountant:** A public accountant licensed under ORS 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing.

(11) **RAB:** An independent report acceptance body associated with an approved peer review program. The purpose of the RAB is to consider and accept the results of each peer review and to require corrective actions of firms with significant deficiencies identified in the review process.

(12) **Significant Comments:** Significant comments on a report review may include incomplete, missing, or incorrect elements of the report or financial statements where corrective action imposed by the RAB and taken by the firm would be appropriate. The AICPA Peer Review Standards, Interpretation No. 9, lists examples of significant comments that may be considered by the peer reviewer when issuing a report review.

(13) **Sponsor:** An organization that administers a Board-approved peer review program.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: AB 7-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0020

Peer Review Enrollment and Participation in Peer Review Program

(1) **Enrollment Requirement.** Every firm that performs attest or compilation services in Oregon or for Oregon clients, is required to participate in an approved peer review program as a condition of registration under ORS 673.160 and for each renewal thereof.

(2) **Public accounting services subject to peer review.** Attest and compilation services that require participation in a peer review program include, but are not limited to: any level of review, audit, agreed-upon procedures, report on a financial statement, examination of prospective financial statements, reports on internal control effectiveness, and compilations of a financial statement.

(a) Firms that prepare reports under Statements on Standards for Accounting and Review Services that do not require a report (SSARS 8) and that perform no other attest or compilation services, are not required to participate in a peer review program; however SSARS 8 reports prepared by a firm that is otherwise required to participate in a peer review program shall be included in the selection of reports for peer review.

(b) Individual licensees may participate in a peer review program through their firms. If the licensee has an individual practice apart from the firm in which the licensee performs attest or compilation services, the individual practice is also subject to the requirement to participate in a peer review program.

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(c) Each firm that is required to participate in a peer review program under this rule shall enroll in an approved program within 21 days of the date the engagement letter to perform attest or compilation services is signed by the clients, and notify the Board of such enrollment. The schedule for the firm's peer review shall be established according to the program standards.

(d) Firms that do not have a physical location in this state, but nevertheless perform attest or compilation services in this state, are required to participate in a peer review program approved by the Board, and may be required to demonstrate that the out-of-state office(s) through which the services are being provided follows the same quality control policies and procedures established by the firm that has been subjected to peer review in the other state.

(3) **Exemption from Enrollment Requirement.** Firms that do not perform attest or compilation services described in this rule are not required to participate in a peer review program, and shall notify the Board of such exemption on the initial firm registration application and on each firm renewal application.

(4) **Peer Review Participation.** Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is rejected or terminated by a sponsor for any reason shall have 21 days to provide written notice to the Board of such termination or rejection, and to receive authorization from the Board to enroll in the program of another sponsor.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the sponsor shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another sponsor may do so only if there is not an open active review.

(e) With respect to firms that perform attest or compilation services in more than one state, the Board may accept a peer review based solely on work conducted outside this state if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998 f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0030

Peer Review Oversight Program

(1) The Board shall:

(a) Establish standards for approved peer review programs;

(b) Review sponsor applications for peer review programs for approval;

(c) Consider reports from the Peer Review Oversight Committee;

(d) Take appropriate actions to carry out the functions of the peer review oversight program and achieve the purpose of the peer review requirement; and

(e) Authorize, conduct or contract for a peer review program for any firm or sole practitioner who is subject to peer review, as the Board, in its discretion, deems to be appropriate.

(2) **Peer Review Oversight Committee:**

(a) The committee shall be composed of at least three members;

(b) No committee member may be a current member of the Board;

(c) At least two members shall have an active license to practice public accountancy in this state and shall have recent experience in accounting and auditing;

(d) One member may be a non-licensee with extensive experience in preparing or using financial statements;

(e) A member of the Peer Review Oversight Committee shall resign from the committee if the member's firm receives anything other than an unmodified report on its most recent peer review.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: AB 2-1994, f. & cert. ef. 4-28-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0035

Peer Review Oversight Committee Responsibilities

(1) **Approval of sponsor applications.** The Peer Review Oversight Committee shall review applications received from sponsors of peer review programs and recommend approval or disapproval of such applications.

The Board shall review approved programs at least biennially to assure that approved programs continue to meet the requirements of these rules and provide systems to provide reasonable assurance that the program meets the following criteria:

(a) Provides reasonable assurance that the elements of quality control described in OAR 801-050-0080 are met by the firm under review;

(b) Peer Reviewers assigned are appropriately trained and qualified to perform the review for a specific firm;

(c) Peer Reviewers use appropriate materials in conducting the peer review;

(d) The sponsor consults with the reviewers on problems arising during the peer review and that specified occurrences requiring consultation are outlined;

(e) The sponsor reviews the results of the peer review; and

(f) The sponsor has provided for an independent report acceptance body (RAB) that meets the standards for peer review and that performs the following duties:

(A) Provides technical review of peer reviews performed under the program for acceptance by the RAB; and

(B) Requires corrective actions of firms with significant deficiencies identified in the peer review process.

(2) **Oversight and verification.** The Peer Review Oversight Committee shall conduct oversight of approved peer review programs to provide reasonable assurance that such programs are in compliance with the minimum standards for performing and reporting on peer reviews. The committee shall report to the Board any modifications to approved peer review programs and shall make recommendations regarding the continued approval of peer review programs.

(a) Oversight procedures to be performed by the Peer Review Oversight Committee may consist of the following activities:

(A) Visit the sponsor of the approved peer review program;

(B) Review the sponsor's procedures for administering the program;

(C) Meet with the sponsor's RAB during consideration of peer review documents.

(b) The Peer Review Oversight Committee shall verify that firms are in compliance with peer review requirements as follows:

(A) Audit a random selection of peer review reports requested from firms that are subject to the peer review requirement, whether or not such reports were required to be provided to the Board under OAR 801-050-0040.

(B) Verification may include review of the peer review report, the letter of comments, the firm's response to the matters discussed in the letter of comments, and the acceptance letter outlining any additional corrective or monitoring procedure, and the working papers on the selected review.

(C) The documents under review may be redacted to preserve client confidentiality. Review by the Peer Review Oversight Committee may be expanded if significant deficiencies, problems or inconsistencies are encountered during the random review.

(3) **Peer Review Reports.** The Peer Review Oversight Committee shall:

(a) Assess peer review reports and related documents submitted by firms pursuant to the requirements of OAR 801-050-0040, as directed by the Board;

(b) Consult with the Board regarding the appropriate action for firms that have unresolved matters relating to the peer review process or that have not complied with, or acted in disregard of the peer review requirements.

(c) In conducting an assessment pursuant to ORS 673.455 and 673.457, the Committee and the Board shall have complete access to reports submitted by firms pursuant to the requirement of this rule and OAR 801-050-0040.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12

Stats. Implemented: ORS 673.455

Hist.: BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0040

Reporting Requirements

(1) **Reporting Enrollment in Peer Review Program.** Every firm is required to provide the following information in writing with every application for registration and renewal of registration:

(a) Certify whether the firm is or is not required to participate in a peer review program;

(b) If the firm is subject to the peer review requirement, provide the name of the sponsor of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review; and

(c) Certify that the peer review report received during the two-year licensing period then ending did not trigger the reporting requirement described in section (2) of this rule.

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(d) A firm that has previously reported to the Board that it is not subject to the peer review requirement, and that subsequently engages in the performance of attest or compilation services, shall provide written notice of such change in status to the Board within 21 days of accepting the engagement that will cause the firm to participate in a peer review program.

(2) **Notice of Substandard Peer Review Reports.** Firms that receive any of the following peer review reports shall provide written notice to the Board describing such peer review reports within 45 days of the date of the acceptance letter issued by the peer review report acceptance body (RAB):

- (a) Two consecutive modified system review reports;
- (b) One adverse system review report;
- (c) Two consecutive adverse engagement review reports;
- (d) Two consecutive report reviews with "significant comments";
- (e) An adverse engagement review following a modified engagement review;
- (f) One report with a scope limitation; and
- (g) Any combination of the above.

(3) **Documents required.** Firms that received any peer review report described in section (2) of this rule during the most recent peer review reporting period that occurred prior to December 31, 2005 shall provide to the Board copies of the following documents related to each substandard peer review report with the firm registration renewal application that is due December 31, 2005. Thereafter Firms shall provide copies of the following documents to the Board within 45 days of the date of the RAB acceptance letter as described in section (2) of this rule.

- (a) Peer review report issued;
- (b) Letter of comments;
- (c) Letter, if any, from the RAB prescribing corrective actions;
- (d) Firm's response letter;
- (e) A letter from the firm to the Board describing corrective actions taken by the firm that relate to requirements of the RAB; and
- (f) Other information the firm deems important for the Board's understanding of the information submitted.

(4) **Certification.** Firms shall certify on the initial firm registration application and on each renewal application that:

- (a) The firm has not received any peer review report(s) described in section (2) of this rule; or
- (b) The firm received peer review report(s) described in section (2) of this rule and submitted a copy of such report(s) together with the documents described in section (3) of this rule to the Board within the 45 day time period.

(5) **Verification.** The Board may verify the certifications of peer review reports that firms provide on initial registration and renewal applications.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0060 Confidentiality

Client records that are received in the course of a peer review shall be treated as confidential in accordance with the provisions of Oregon Public Records Law (ORS Chapter 192).

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0065 Document Retention

(1) Documents created by the sponsor of an approved peer review program shall be retained by the sponsor for a period of time corresponding to the designated retention period of the sponsor. In no event shall the retention period be less than ninety (90) days from the date of acceptance of the review by the sponsor.

(2) Firms shall retain all documents relating to peer review reports described in OAR 801-050-0040, including working papers of the underlying report that was reviewed, for three years from the date of acceptance of the peer review by the sponsor, or as required by OAR 801-030-0020(2)(d), whichever is later.

Stat. Auth.: ORS 673.455 & 673.457
Stats. Implemented: ORS 673.457
Hist.: BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0070 Application for Administration of Peer Review Program

Application. Applications for administration of a peer review program shall be submitted to the Board in writing and shall be accompanied

by materials describing the operation of the proposed peer review program. Materials submitted by the sponsor must be sufficient to demonstrate that the proposed peer review program meets the minimum standards for performing and reporting on peer reviews.

Stat. Auth.: OL 2001, Ch. 638, Sec. 12 & ORS 673.455
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

801-050-0080 Minimum Standards for Peer Review Programs

(1) Peer review programs must include systems that assure that each of the following elements of quality control is met by the firm under review. The peer review program should provide the firm under review with reasonable assurance that:

- (a) The firm maintains independence when required;
- (b) The firm performs professional responsibilities with integrity;
- (c) The firm maintains objectivity in discharging professional responsibilities;
- (d) Firm personnel have the competencies necessary to perform assigned responsibilities;
- (e) The firm undertakes only those engagements that can be completed with professional competence;
- (f) The firm provides appropriate consideration of the risks associated with providing professional services;
- (g) The firm and the firm's clients understand the services to be performed;
- (h) The work performed for all engagements meets applicable professional standards, regulatory requirements and the firm's standards of quality.

(i) The firm's policies and procedures related to other elements of quality control are suitably designed and effectively applied, that appropriate criteria are in place to determine whether to accept or continue a client relationship, and whether to perform a specific engagement for a client.

(2) *The Standards for Performing and Reporting on Peer Reviews*, promulgated by the profession through the AICPA, provide a benchmark against which sponsors may measure a peer review program. Peer review programs that meet or are substantially equivalent to the AICPA standards are eligible for approval by the Board.

(3) Firm inspection standards required by the PCAOB shall be deemed to meet the minimum standards for public company audit firms; provided however, that such firms that also perform attest services for non-public companies shall be required to meet the peer review requirements of OAR 801-050.

(4) The Board may specify that a peer review program that is administered by another state board of accountancy satisfies the requirements of OAR 801-050 if the Board determines that the program substantially meets or exceeds the minimum standards described in this rule.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 8-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05

Board of Architect Examiners Chapter 806

Adm. Order No.: BAE 6-2005

Filed with Sec. of State: 12-13-2005

Certified to be Effective: 12-13-05

Notice Publication Date: 10-1-05

Rules Amended: 806-010-0015, 806-010-0037, 806-020-0020

Subject: These are housekeeping changes. One is the result of changes to the law from the 2003 Legislative Session that was overlooked - to change the wording from protecting life, health and property to protecting health safety, and welfare. Another one is adding the ability to use the Architect Emeritus title under the "title" rules. This was always an allowed use of the title, but was inadvertently left out of the title section of the rules. Another one is to clarify the language for whom may use the title, which changes nothing but makes the wording more clear. The last one is to amend the address of the National Council of Architectural Registration Boards after their move.

Rules Coordinator: Carol Halford—(503) 763-0662

ADMINISTRATIVE RULES

806-010-0015

Evaluation of Applications

(1) The Board adopts the **training requirements for the Intern Development Program (IDP)** published by the National Council of Architectural Registration Boards (NCARB) as its guide in evaluating applications for examination and registration. Requests for admittance to the IDP should be directed to: NCARB, 1801 K Street NW, Suite 1100, Washington, D.C. 20006, (202) 783-6500.

(2) Candidates for admission to the Architectural Registration Examination (A.R.E.) must present documentation from NCARB verifying they have completed the NCARB/IDP training requirements.

(3) The Board may evaluate other training, education, teaching or practical experience at their discretion.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050, 671.060, 671.065, 671.080 & 671.085

Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 11, f. 2-15-74, cf. 3-11-74; AE 13, f. & cf. 4-2-76; AE 1-1979, f. 5-31-79, cf. 6-1-79; AE 1-1981, f. & cf. 3-5-81; AE 2-1983, f. & cf. 1-12-83; AE 5-1983, f. & cf. 5-17-83; AE 1-1984, f. & cf. 8-22-84; AE 1-1987, f. & cf. 3-30-87; AE 2-1992, f. & cert. cf. 3-30-92; AE 2-1997, f. & cert. cf. 9-24-97; BAE 2-1998, f. & cert. cf. 6-22-98; BAE 6-2005, f. & cert. cf. 12-13-05

806-010-0037

Architect Title

The title of "Architect" is a protected title and may be used only by certain qualified individuals and businesses, as follows:

(1) Those individuals who have been notified by the Board that they have qualified as an Oregon architect and hold an active Oregon registration.

(2) Individuals may use the title of "Consulting Architect" only as prescribed by ORS 671.010 and 671.020(2).

(3) Individuals may use the title of "Foreign Architect" only as prescribed by ORS 671.010 and 671.020(3).

(4) Those individuals who have submitted an application to the Oregon Board for consideration as Oregon architects by reciprocity under OAR 806-010-0035 (applicants) are entitled to use the title "Architect" under certain conditions. Applicants may not practice architecture until such time as an active Oregon architect registration is granted. Applicants may use the title "Architect", along with the name of the state in which the individual holds an active architect license (for example; "John Smith, CA Architect"), but only after all of the following have been completed:

(a) The Board receives a completed reciprocity application;

(b) The Board receives all the required fees from the applicant;

(c) The Board receives a written notice from the applicant of the applicant's intent to offer architectural services in Oregon; and

(d) The prospective client(s) has been advised, in writing, by the applicant that the applicant may not commence the project until Oregon registration is granted.

(5) Firms registered with the Board under OAR 806-010-0080 and 806-010-0110 as providing architectural services in Oregon must use a derivative of the architect title within the firm name to identify the firm appropriately, according to OAR 806-010-0110.

(6) Except as provided in this rule, no title, sign, cards, or device may be used to indicate or tend to indicate that the person or firm or business using the title is practicing architecture or is an architect, or represents in any manner that the person or firm or business is an architect or architectural practice.

(7) For purposes of this rule and OAR 806-010-0035(5), the phrase "offering to render architectural services" includes to solicit for an architectural project in Oregon.

(8) Those notified by the Board that they have been granted Architect Emeritus status may use the title "Architect Emeritus" following their name on any plaques, signs, letterhead, and the like.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050, 671.060, 671.065, 671.080 & 671.085

Hist.: BAE 2-2004, f. & cert. cf. 3-2-04; BAE 6-2005, f. & cert. cf. 12-13-05

806-020-0020

Responsibility to the Public

The architect shall at all times recognize the primary obligation is to protect the health, safety, and welfare of the public in the practice of architecture. If, in the architect's professional judgment, health, safety, and welfare may be endangered, the employer or client shall be informed of the possible consequences. The architect shall also notify involved building officials and the Oregon Board of Architect Examiners.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.060

Hist.: AE 1-1983, f. & cf. 1-12-83; AE 1-1996, f. 1-23-96, cert. cf. 2-1-96; BAE 1-1999, f. & cert. cf. 3-25-99; BAE 7-2001, f. & cert. cf. 10-24-01; BAE 6-2005, f. & cert. cf. 12-13-05

Board of Examiners for Engineering and Land Surveying Chapter 820

Adm. Order No.: BEELS 6-2005

Filed with Sec. of State: 12-13-2005

Certified to be Effective: 12-13-05

Notice Publication Date: 11-1-05

Rules Adopted: 820-010-0207, 820-010-0427, 820-010-0619

Rules Amended: 820-010-0010, 820-010-0205, 820-010-0215, 820-010-0230, 820-010-0255, 820-010-0305, 820-010-0450, 820-010-0465, 820-010-0610, 820-010-0618, 820-010-0625, 820-010-0635
Subject: OAR 820-010-0207 – Implement standards to apply for licensure for photogrammetrist.

OAR 820-010-0427 – Implements standards of examination for Professional Photogrammetrist.

OAR 820-010-0619 – Clarifies the Board's authority to impose civil penalties for violations of ORS 209.250.

OAR 820-010-0010 – Clarifies language and provides necessary provisions with the passage of SB55.

OAR 820-010-0205 – Implement additional standards for qualification for licensure without registration.

OAR 820-010-0215 – House keeping due to the passage of SB55.

OAR 820-010-0230 – House keeping due to the passage of SB55.

OAR 820-010-0255 – House keeping due to the passage of SB55.

OAR 820-010-0305 – Amends fee structure to reflect the change in the exam administration process.

OAR 820-010-0450 – Adds Photogrammetry to branches examined by the Board.

OAR 820-010-0465 – Clarifies language for readmission to examinations administered by the Board.

OAR 820-010-0610 – House keeping due to the passage of SB55.

OAR 820-010-0618 – House keeping due to the passage of SB55.

OAR 820-010-0625 – House keeping due to the passage of SB55.

OAR 820-010-0635 – House keeping due to the passage of SB55.

Rules Coordinator: Mari Lopez—(503) 362-2666

820-010-0010

Definitions

The following definitions and guides have been adopted by the Board to assist registrants and the general public in their interpretation of specific portions of ORS 672.002 to 672.325.

(1) "Board" means the Oregon State Board of Examiners for Engineering and Land Surveying provided by ORS 672.240.

(2) "Practice of engineering" refers to ORS 672.005 and 672.007.

(3) "Technician work" means the time spent on work where the personal responsibility and technical knowledge required are small; that is, where the individual performance of a task, set and supervised by others, is all that is required. It shall also include all time spent in work before an applicant is 18 years old "Technician work" does not include engineering work as described in section (4), land surveying work as described in section (7) or photogrammetric work as described in section (10). Engineering "technician work" includes, but is not limited to, work as an inspector, a laboratory assistant, a design assistant, a survey technician, or a draftsman. Land Surveying "technician work" includes, but is not limited to, work as a survey technician, a draftsman, an instrument plotter, or computation work under close supervision and not requiring the exercise of judgment in survey or map design, or decisions on boundary location. Photogrammetric mapping "technician work" includes but is not limited to, work as a photogrammetric mapping technician to perform technical photogrammetric or remote sensing tasks to extract spatial data from photographic imagery, digital imagery or other remotely-sensed data under close supervision and not requiring the exercise of judgment in project design or decisions related to authoritative photogrammetric measurements.

(4) "Engineering work," means time after an applicant is 18 years old spent in work of a higher grade and responsibility than that defined as "technician work." Time spent in engineering teaching subsequent to graduation shall be listed as "engineering work." Time spent in training and performing engineering work to supplement engineering education for the purpose of qualifying for the FE examination shall be listed as "engineering work." Engineering work done during summer vacations will be considered as part of the year of "engineering education."

(5) As provided in ORS 672.002(9)(a), "responsible charge of engineering work" means that:

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(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution and suitability of materials, without relying upon instruction from their superior, and of supplying deficiencies in plans, or correcting errors in design without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans, written specifications, and directed computations made in connection with engineering works when guided solely by rough sketches, general information, and field measurements; or

(c) Experience as a full-time assistant professor or above, in a Board-approved engineering curriculum, may be considered at the discretion of the Board as "charge of engineering work of a character satisfactory to the Board."

(6) "Practice of land surveying" refers to ORS 672.005(2) and 672.007.

(7) "Land surveying work" means time after the applicant is 18 years old spent in work of a higher grade and responsibility than that defined as "technician work." Engineering work, not related to the practice of land surveying, is not land surveying work. Time spent in training and performing land surveying work to supplement surveying education, for the purpose of qualifying for the FLS examination shall be listed as "land surveying work." "Land surveying work" done during summer vacations shall be considered as part of the year of "land surveying education."

(8) As provided in ORS 672.002(9)(b), "responsible charge of land surveying work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution, design of a survey system, the research and evaluation of evidence, the preparation of maps, or plats for record without relying upon advice or instruction from their superior, and the supplying of deficiencies or correcting errors in surveys or maps without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans and directed computations in connection with land surveying work when guided solely by general guidelines and information;

(c) Experience as a full-time assistant professor or above, in a Board-approved land surveying curriculum may be considered at the discretion of the Board as "charge of land surveying work."

(9) "Practice of photogrammetric mapping" or "practice of photogrammetry" refers to ORS 672.002(7).

(10) "Photogrammetric work" means time after the applicant is 18 years old spent in work of a higher grade and responsibility than that defined as "technician work." Time spent teaching photogrammetric mapping after graduation shall be listed as "photogrammetric work." Time spent in training and performing photogrammetric mapping to supplement education for the purpose of qualifying for the FLS examination shall be listed as "photogrammetric work." "Photogrammetric work" done during summer vacations will be considered as part of the year of "photogrammetric education."

(11) "Responsible charge of photogrammetric work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to make decisions involving project design, imagery requirements, ground control requirements for points to be set by a professional land surveyor and the determination of topography, area, contours and location of planimetric features using photogrammetric methods or similar remote sensing technology; or

(b) The applicant must have undertaken projects that entail the evaluation and measurement of land that is limited to the determination of the topography, area, contours and location of planimetric features, by using photogrammetric methods or similar remote sensing technology; or

(c) Experience as a full-time assistant professor or above, in a Board-approved photogrammetry curriculum, may be considered at the discretion of the Board as "charge of photogrammetric work of a character satisfactory to the Board."

(12) As provided in ORS 672.002(10), "under direct supervision and control" shall be construed to mean that the engineer, land surveyor or photogrammetrist providing such supervision shall have made the decisions on technical matters of policy and design and shall have exercised their own professional judgment in all engineering, land surveying or photogrammetric matters that are embodied in the plans, design, specifications, or other documents involved in the work. By applying their seal to the final documents, they accept responsibility thereof.

(13) Professional Development Hour (PDH) — A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(14) Continuing Education Unit (CEU) — Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(15) College/Unit Semester/Quarter Hour — Credit for course work in an approved program or other related college course approved in accordance with article (e) of this section.

(16) Course/Activity — Any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice.

(17) Multiple Registrant — A person who is registered as both a land surveyor and an engineer or is registered as an engineer in two or more disciplines.

(18) Active Status means the registrant is authorized to engage in the professional practice of engineering, land surveying or photogrammetric mapping, and is in good standing with regard to payment of annual renewal fees and Continuing Professional Development requirements.

(19) Exempt Status means the registrant has notified the Board that they are not providing or offering to provide professional engineering, land surveying or photogrammetric mapping services to the public of the State of Oregon and requests exemption from Continuing Professional Development requirements.

(20) Inactive Status means the registrant is not holding out as a professional engineer, land surveyor or photogrammetrist and is not authorized to engage in the professional practice of engineering, land surveying or photogrammetric mapping until such time the Board determines otherwise.

(21) Retired status means an engineer or land surveyor meeting the requirements of ORS 672.180, who has notified the Board that they are not providing engineering or land surveying services to the public of the State of Oregon and who requests the retired status.

(22) Delinquent Status means the registrant has not renewed their license or has not completed the Continuing Professional Development requirements.

(23) Nonresident engineer means a nonresident engineer as used in ORS 672.050 shall mean an engineer who does not meet the residence requirements of OAR 820-010-0616(1).

(24) Acronyms:

(a) ACCE — American Council for Construction Education;

(b) ABET — Accreditation Board for Engineering and Technology, Inc.;

(c) EAC — Engineering Accreditation Commission of ABET;

(d) TAC — Technology Accreditation Commission of ABET;

(e) ASAC — Applied Science Accreditation Commission of ABET;

(f) EI — Engineering Intern;

(g) LSI — Land Surveying Intern.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 17, f. 4-22-74, ef. 5-11-74; EE 20, f. & ef. 12-15-77; EE 1-1987, f. & ef. 1-5-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 4-2000, f. & cert. ef. 8-4-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0205

Applications for Registration as Professional Land Surveyors (PLS)

(1) Applications may be made for admission to examination for registration as provided in ORS 672.255. Professional Land Surveyors registered in other states and making application for registration on the basis of comity with such other states in accordance with the provisions of ORS 672.125, must successfully pass an examination which includes a state-specific portion covering Oregon law.

(2) Applicants who are not registered in any state or jurisdiction but who meet all requirements for registration in Oregon may be considered for registration if the application is submitted within 2 years following completion of the practical examination. This section does not apply to applicants who are not currently registered due to expired, delinquent, or otherwise invalid certificates.

(3) Prior to issuing an initial certificate of registration to practice in Oregon, each applicant must pass a "take-home" examination on the laws and rules that regulate practice.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 5-2005(Temp), f. & cert. ef. 9-23-05 thru 3-21-06; BEELS 6-2005, f. & cert. ef. 12-13-05

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820-010-0207

Applications for Registration as Professional Photogrammetrists

(1) Applications may be made for admission to examination for registration as provided in ORS 672.255. Professional Photogrammetrists registered in other states may apply for registration on the basis of comity with such other states in accordance with the provisions of ORS 672.125.

(2) Prior to issuing an initial certificate of registration to practice in Oregon, each applicant must pass a "take-home" examination on the laws and rules that regulate practice.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0215

Form of Applications

Applications for registration as professional engineers, professional land surveyors, professional photogrammetrists and for enrollment as an EI, an LSI, or a water right examiner shall be made on printed forms issued by the Board. All applications must be accompanied by the licensing or examination fee required by law.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1983, f. 2-28-83, ef. 3-1-83; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; Renumbered from 820-010-0220; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0230

Information to Be Furnished by Professional Engineer, Professional Land Surveyor, and Professional Photogrammetrist Applicants

(1) Applicants for admission to examination for registration will be required to submit evidence to show qualification of eligibility consisting of current enrollment as an EI or LSI, meeting the requirements of the State of Oregon at the time of enrollment and the following practice experience:

(a) Applicants qualified under OAR 820-010-0225(3)(a), (3)(c), (3)(e), (4)(a), (4)(b), (4)(d), (4)(e) and (5) shall verify having four or more years of active practice in engineering, land surveying, or photogrammetric work of a character satisfactory to the Board in addition to the requirements for admission to examination for enrollment as an EI or LSI.

(b) Applicants qualified under OAR 820-010-0225(3)(b) shall verify having six or more years of active practice in engineering work of a character satisfactory to the Board in addition to the requirements for admission to examination for enrollment as an EI. The six years of active practice year requirement may be reduced to four years provided the applicant verifies completion of additional curriculum. The additional curriculum shall include a Board approved mixture of Differential Equations, Physics, Statistics, Dynamics, Thermodynamics, Fluid Mechanics, Electrical Fundamentals and Strength of Materials, totaling 21 semester/32 quarter hours.

(c) Applicants qualified under OAR 820-010-0225(3)(d) and (4)(c) shall verify having six or more years of active practice in engineering, land surveying, or photogrammetric work of a character satisfactory to the Board in addition to the requirements for admission to examination for enrollment as an EI or LSI.

(2) Active practice satisfactory to the Board shall be practice in the applicant's area of competence, in responsible charge performed under the direction and supervision of a licensed engineer, land surveyor, or photogrammetrist.

(3) Graduation from a Master's Degree Program in engineering or surveying at a college or university which as an EAC of ABET accredited undergraduate degree program in the same field as the Master's degree program may be substituted for one year of the four years of active practice required in OAR 820-010-0230 as long as this degree is not used as the basis for admission to the fundamental examination under OAR 820-010-0225(3)(c) or (4)(b).

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0255

References

Engineering, land surveyor, and photogrammetrist applicants and those engineering and land surveying intern applicants requesting admission to the examination on the basis of experience must supply to their references special forms provided by the Board for this purpose. Each reference must have knowledge of the applicant's work for a period of at least one year. A minimum of five references is required by the Board and at least three of the five references must be registrants in the field of practice in which the applicant seeks to be registered. The signature and stamp of the

reference if licensed must appear on the returned form. Qualifying experience accrued by the applicant must be included in the application and all qualifying experience shall be certified by the person supervising the work as meeting the definition of engineering work, land surveying work or photogrammetric work as defined in OAR 820-010-0010. The Board may, for good cause upon written application, reduce the number of references required.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0305

Fees

(1) The Board has determined an outside testing provider will administer examinations on behalf of the Board. In addition to state fees, all approved applicants are charged for the test administration fee in addition to any book or scoring fees or any other examination-related fees. The applicant must pay all these costs in advance to the Board and the outside testing provider. The amount for each specific application is compiled in section (2) of this rule. Where applicable, the initial activation and certificate fee must be included. The total amount for each specific application is compiled in a fee schedule published separately. The amount to be submitted will be equal to a total of items (a) through (c) in this section. Actual dollar amounts for application, initial activation, renewal and certificate are listed in sections (2) and (3) of these rules:

(a) Fee for application.

(b) Fee for initial activation equal to one year renewal (one time fee applies to PE, PLS, and CWRE only; not applicable to reexamination).

(c) Fee for issuance of first certificate (one time fee applies to PE, PLS, and CWRE only).

(2) Fees for examination application:

(a) Initial fundamentals of engineering examination application — \$35.

(b) Initial fundamentals of land surveying examination application — \$35.

(c) Initial professional engineering (PE) examination application — \$100.

(d) Initial professional structural engineering examination application — \$575.

(e) Initial professional land surveying examination application — \$140.

(f) Initial professional photogrammetric mapping examination application — \$120.

(g) Certified Water Right Examiner test application — \$50.

(h) Fundamentals of engineering examination re-application — \$25.

(i) Fundamentals of land surveying examination re-application — \$25.

(j) Professional engineering (PE) examination re-application — \$90.

(k) Professional structural engineering examination re-application — \$565.

(l) National portion of professional structural engineering examination re-application — \$85.

(m) Oregon requirement of professional structural engineering examination re-application — \$480.

(n) Professional land surveying (PLS) examination re-application — \$130.

(o) Oregon law portion of PLS examination re-application — \$55.

(p) National portion of PLS examination re-application — \$75.

(q) Professional photogrammetric examination re-application — \$110.

(r) Certified Water Rights Examiner test re-application — \$40.

(3) Fees for certification, registration, and renewal:

(a) First registered professional engineer certificate — \$10.

(b) First registered professional land surveyor certificate — \$10.

(c) First registered professional photogrammetrist certificate — \$10.

(d) First certified water right examiner certificate — \$10.

(e) Application for registration as a professional engineer — \$110.

(f) Application for registration as a professional land surveyor — \$140.

(g) Temporary permit issued under ORS 672.135 and Enrolled SB 55, section 5a — \$50.

(h) Re-issuance of lost or mutilated certificate — \$25.

(i) Re-issuance of lost or mutilated pocket card — \$10.

(j) Issuance of certificate without examination based on experience as provided under ORS 672.255 and Enrolled SB 55, section 4 — \$225.

(k) Re-score of an Oregon specific examination - \$50.

(l) Annual renewal of a professional engineering certificate — \$40.

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- (m) Annual renewal of a professional land surveyor certificate — \$40.
(n) Annual renewal of a professional photogrammetrist certificate — \$40.
(o) Annual renewal of exempt professional engineering or professional land surveying certificate as defined in OAR 820-010-0010(21) which meets the requirements for exemption under OAR 820-010-0635(6) — \$20.
(p) Annual renewal of water right examiner certificate — \$20.
(q) The penalty for late payment of a renewal fee under subsections (l), (m), (n), (o), or (p) of this section is equal to the accumulated total of the amount of the delinquent renewal. The late penalty becomes due and payable 30 days after the date of expiration.

(r) Verification of exam/licensure — \$15.

Stat. Auth.: ORS 670.310, 672.097, 672.099 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 4-1981, f. & ef. 12-14-81; EE 2-1984(Temp), f. & ef. 5-7-84; EE 2-1984(Temp), f. & ef. 5-7-84; EE 4-1984, f. & ef. 12-11-84; EE 2-1987, f. & ef. 7-2-87; EE 3-1987, f. & ef. 8-25-87; EE 2-1989, f. 1-3-89, cert. ef. 1-15-89; EE 1-1990(Temp), f. & cert. ef. 5-21-90; EE 1-1991(Temp), f. 8-14-91, cert. ef. 9-1-91; EE 2-1991, f. & cert. ef. 9-23-91; EE 1-1992, f. & cert. ef. 2-3-92; EE 2-1992, f. & cert. ef. 2-4-92; EE 4-1992, f. & cert. ef. 7-22-92; EE 2-1993(Temp), f. & cert. ef. 2-22-93; EE 3-1993, f. & cert. ef. 6-3-93; EE 2-1994, f. & cert. ef. 7-22-94; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1997, f. & cert. ef. 8-6-97; BEELS 3-1998, f. & cert. ef. 5-11-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2000, f. 3-17-00, cert. ef. 3-20-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 4-2002, f. & cert. ef. 12-3-02; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0427

Nature of Examination for Professional Photogrammetrists

- (1) The examinations to qualify for registration as a professional photogrammetrist are written examinations.
(2) An applicant to qualify for registration must obtain a passing grade as established by the Board for:
(a) A written examination in land surveying fundamentals as covered in OAR 820-010-0430. Such examination may be taken at any scheduled period but must be passed in order to be admitted to the examination as covered in subsection (2)(b) of this rule;
(b) A written examination in the practical photogrammetric mapping problems.
(3) The examinations shall conform as nearly as practicable to any nationally-established testing standards, such as those set forth by the National Council of Examiners for Engineering and Surveying. These tests may be conducted with or without reference to books as the Board may elect.

(4) At the discretion of the Board, any applicant may be requested to appear for an oral interview before the Board or any member thereof. Such interview is to be for the purpose of reviewing the applicant's educational background, experience record, or examination, or to review examples of the applicant's work, or to assist the Board in determining that the applicant fully meets the required qualifications.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0450

Branches Examined by Board

The Board will conduct examinations and issue licenses in accordance with the following:

(1) Examinations will be offered annually and successful examinees will be licensed as professional engineers especially qualified in one of the branches listed below. The applicant will be limited to the selection of examination questions pertaining to that branch:

- (a) Acoustical;
- (b) Agricultural;
- (c) Chemical;
- (d) Civil;
- (e) Control Systems;
- (f) Electrical;
- (g) Environmental;
- (h) Fire Protection;
- (i) Industrial;
- (j) Forest;
- (k) Mechanical;
- (l) Metallurgical;
- (m) Nuclear;
- (n) Structural.

(2) Persons desiring to be licensed as a professional engineer naming a branch other than one listed under section (1) of this rule as one in which the individual is especially qualified may petition the Board to amend the list. Procedures are designated in the Model Rules of Procedure under the

Administrative Procedure Act, OAR 137-001-0070. Information in the petition shall include:

- (a) The public need for recognition of the new discipline;
 - (b) The number of potential licensees that would be affected;
 - (c) Whether the new branch is a specialty under an already recognized discipline; and
 - (d) Recommendations for examination sources in that discipline.
- (3) The Board may, at its option, discontinue examining and licensing in any branch at any time that it receives fewer than six qualified applicants in that branch in a three-year period.

(4) For a license as a professional land surveyor the applicant will be examined in land surveying.

(5) For a license as a professional photogrammetrist the applicant will be examined in photogrammetry.

(6) For certification as a water right examiner, the applicant will be examined on water right applications and the preparation of claims of beneficial use.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1978, f. 12-21-78, ef. 1-17-79; EE 1-1981, f. 5-19-81, ef. 6-1-81; EE 1-1984, f. & ef. 3-6-84; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 3-1992, f. 3-19-92, cert. ef. 4-1-92; EE 5-1993, f. 8-3-93, cert. ef. 8-13-93; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0465

Application for Readmission to Examination

Applicants for registration and for EI and LSI enrollment who did not achieve a passing grade in their first and second written examinations will, before re-admittance to a subsequent examination, be required to submit valid evidence of further preparation on their part. Such evidence should indicate the courses of study undertaken, special training and additional experiences gained since their last examination and must be in all cases satisfactory to the Board.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0610

Certificates of Registration and Enrollment

Certificates shall be of a design approved by the Board. These shall bear on their face a notation stating that the registrant is qualified to practice land surveying, photogrammetry or a particular branch of engineering; this qualification having been determined by a written, or oral and written examination.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 670.310 & 672.255

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0618

Policy in Establishing Civil Penalty Amounts

In assessing civil penalties, the Board desires to be both consistent and equitable. Each case will be considered and evaluated on an individual basis. The maximum penalty shall not exceed \$1,000 for each violation of statute or rule pertaining to the practice of engineering, land surveying or photogrammetry.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 4-1981, f. & ef. 12-14-81; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0619

Civil Penalties for Violations of ORS 92.040 to 92.080, 209.250, and County Ordinances

Pursuant to ORS 209.250(11), the Board may impose civil penalties against a registrant for any violation of ORS 92.040 to 92.080, 209.250(1) to (9), or of any county ordinance that establishes standards or plats, in an amount not to exceed \$1,000 per offense.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0625

Registration and Certificate Number

Professional engineer, professional land surveyor, and professional photogrammetrist registration numbers; EI and LSI enrollment numbers; and water right examiner certificate numbers will be issued by the Board consecutively in the order in which applicants make application to and qualify before the Board. No discrimination or preference will be permitted

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in issuing numbers. Multiple certificates are permitted only when an applicant qualifies in additional branches.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 6-2005, f. & cert. ef. 12-13-05

820-010-0635

Continuing Professional Development

The purpose of professional development requirements is to demonstrate a continuing level of competency of professional land surveyors, engineers and photogrammetrists. Every registrant shall meet the professional development requirements as a condition of registration renewal.

(1) Requirements. Every registrant is required to obtain 30 PDH units during each biennial renewal period. Registrants who are licensed for a part of a renewal period shall obtain a prorated amount of PDH. If a registrant exceeds the annual requirement in any renewal period, a maximum of 15 PDH units in courses/activities may be carried forward into the next renewal period.

(2) PDH units may be earned as follows:

(a) Successful completion of college courses.

(b) Successful completion of short courses, tutorials, correspondence, web based courses, televised and videotaped courses.

(c) Active participation in seminars, in-house courses, workshops, and professional conventions.

(d) Teaching or instructing in (a) through (c) above.

(e) Authoring or co-authoring published papers, articles or books.

(f) Active participation in professional or technical societies.

(g) Self study.

(h) Mentoring of engineering topics.

(i) Non-technical educational activities related to the registrants employment.

(j) Passing a board prepared take home test.

(3) PDH units for each renewal period may be obtained as follows:

(a) 1 College Semester hour equals 45 PDH.

(b) 1 College Quarter hour equals 30 PDH.

(c) 1 Continuing Education unit equals 10 PDH.

(d) 1 hour of professional education in course work, seminars, professional conventions, workshops equals 1 PDH.

(e) For teaching, apply multiple of 2 (teaching credit is valid for teaching a given course or seminar one time only and does not apply to full time faculty teaching college courses).

(f) For authoring or co-authoring a paper, article or book, appearing in a recognized professional or technical publication, up to a maximum of 10 PDH.

(g) Active participation in a professional or technical society (each organization up to a maximum of 6). 2 PDH.

(h) Self study of relevant materials such that the registrant's knowledge of the subject significantly improves the registrant's ability to work in the subject area. Up to a maximum of 6 PDH.

(i) Mentoring of nonlicensed individuals not under your supervision in the field of engineering. Each 10 hours spent mentoring will provide 1 PDH with a maximum of 2 PDH per year.

(4) Determination of Credit. The Board has final authority with respect to approval of courses, credit, PDH values for courses and other methods of earning credit. The Board may maintain a list of courses and activities which it has approved. The Board will approve without listing courses which are sponsored by nationally recognized technical societies and those technical societies listed in 820-001-000(b)(A) through (F) and (c)(A) through (G). Criteria for determination of credit shall follow these guidelines:

(a) Credit for college or community college approved courses will be based upon course credit established by the college.

(b) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(c) Credit determination for activities (3)(f) and (3)(h) is the responsibility of the registrant and is subject to review by the Board.

(5) Record keeping. Each registrant is charged with the responsibility of maintaining records of his/her own professional education activities. Every registrant shall report their professional education activities on a form approved by the Board only when requested by the Board to do so. The duty of maintaining records to support credits claimed is the responsibility of the registrant. Records required include, but are not limited to:

(a) A record showing the activity claimed, sponsoring organization, date, location, duration, instructor's or speaker's name, and PDH units earned; and

(b) Attendance verification records in the form of completion certificates, paid receipts, or other documents supporting evidence of attendance. These records must be retained for three (3) years. Copies may be requested by the Board for audit verification purposes.

(6) Exemptions. A registrant may be exempted from the professional development requirements for one of the following reasons.

(a) A registrant serving on active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year shall be exempt from obtaining the PDH units required for that year.

(b) Registrants experiencing physical disability, illness or other extenuating circumstances as reviewed and approved by the Board may be exempt. Supporting documentation must be furnished to the Board.

(c) Registrants who are listed as "Retired" or those who have requested an Exempt Status and certify they are no longer providing professional engineering or land surveying services shall be exempt from the PDH units required. A registrant may bring an exempt license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30, then 30 shall be the maximum number required.

(7) Out of Jurisdiction Resident. Continued Professional Development requirements will be satisfied when a non-resident certifies to be licensed in and having met the mandatory Continued Professional Development requirements of any NCEES member jurisdiction.

(8) Multiple Registrants. The number of PDH units required shall remain a total of 30 PDH per renewal period for persons who hold registration as an engineer or a land surveyor or more than one discipline of engineering. At least one third (1/3) of the PDH units required in courses/activities shall be related to each registration.

Stat. Auth.: ORS 670.310, 672.097 & 672.255

Stats. Implemented: ORS 672.002 - 672.375

Hist.: BEELS 2-2000, f. & cert. ef. 2-17-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 1-2003, f. & cert. ef. 1-28-03; BEELS 6-2005, f. & cert. ef. 12-13-05

Board of Geologist Examiners Chapter 809

Adm. Order No.: BGE 3-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 12-7-05

Notice Publication Date: 9-1-05

Rules Amended: 809-010-0001

Subject: A File Maintenance Fee was submitted August 5, 2004. It was noticed in the July 2004 Oregon Bulletin. Two additional fee changes were submitted September 28, 2005, one removing the Oregon Geology Exam fee and the other increasing the Fundamental ASBOG examination fee from \$125 to \$150. The electronic copy of OAR 809-010-0001 submitted in September of 2005 accidentally left off the File Maintenance Fee which has been in effect since August 2004. This rule change is a correction to an error and reinstate the File Maintenance Fee.

Rules Coordinator: Susanna R. Knight—(503) 566-2837

809-010-0001

Fees

Fees, as established by the Board of Geologist Examiners, are:

(1) Fundamental Section of the national examination for Geologist registration — \$150.

(2) Practice Section of the national examination for Geologist certification — \$150.

(3) Examination for Engineering Geologist certification — \$200.00.

(4) Geologist-in-Training initial registration and annual renewal — \$25.00.

(5) Geologist initial registration and annual renewal — \$75.00.

(6) Engineering Geologist initial certification and annual renewal — \$50.00. Engineering Geologist must have a current Geologist Registration.

(7) Duplicate or replacement of lost, destroyed, or mutilated registration card — \$3; duplicate or replacement of lost, destroyed, or mutilated wall certificate — \$25.00.

(8) Restoration fee if postmarked:

(a) One to ninety days after due date: \$10;

(b) Ninety-one to one-hundred seventy-nine days after due date: \$50;

(c) Over one-hundred seventy-nine days after due date: \$100.

(9) Renewal of registration by Geologist, if applicant is 70 years of age or over by renewal date — \$10.

ADMINISTRATIVE RULES

(10) Renewal of certification by Engineering Geologist, if applicant is 70 years of age or over by renewal date — \$10.

(11) Application Fee — \$50.00. This fee is to accompany any application for registration or examination and any reapplication after one year since previous examination.

(12) Temporary Permit Fee — \$50.00. This fee is to accompany any notification per 672.545(3)(b).

(13) File Maintenance Fee — \$25.00 per request. This fee is to cover maintaining examination files for passing examinees who decline to register in Oregon. Required prior to releasing verification of passing ASBOG exams.

Stat. Auth.: ORS 182.466, 670.310 & 672.705

Stats. Implemented: ORS 672.705

Hist.: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 2-1979, f. 10-2-79, ef. 10-3-79; GE 1-1981, f. & ef. 8-3-81; GE 1-1982, f. & ef. 5-14-82; GE 2-1983(Temp), f. 10-14-83, ef. 11-1-83; GE 1-1984, f. & ef. 2-1-84; GE 1-1985, f. & ef. 7-1-85; GE 2-1986, f. & ef. 3-5-86; GE 1-1989, f. 12-18-89, cert. ef. 1-1-90; GE 1-1993(Temp), f. 3-1-93, cert. ef. 3-2-93; GE 2-1999; GE 2-1996, f. & cert. ef. 8-30-96; BGE 1-1999, f. & cert. ef. 6-17-99; BGE 2-2001, f. & cert. ef. 3-23-01; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 3-2002, f. & cert. ef. 7-9-02; BGE 6-2004, f. & cert. ef. 8-5-04; BGE 2-2005, f. & cert. ef. 9-28-05; BGE 3-2005, f. & cert. ef. 12-7-05

Adm. Order No.: BGE 4-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 10-1-05

Rules Amended: 809-015-0000, 809-015-0005

Subject: This rule clarifies when the annual renewal payment must be received. A restoration fee must be paid if the payment is not received before the expiration date of the certificate of registration. Previously, the rule stated payment must be received on or before the renewal date. But the statute is quite clear in stating that the payment must be received before the expiration date. This rule change aligns the rule with the language in the statute.

Rules Coordinator: Susanna R. Knight—(503) 566-2837

809-015-0000

Renewal

(1) Certificate of registration expires as follows:

(a) For a Geologist-in-Training, the last day of the anniversary month of the initial date of issuance;

(b) For a Registered Geologist, the last day of the anniversary month of the initial date of issuance;

(c) For a Certified Engineering Geologist, when the anniversary date is other than the renewal date for geologist registration, shall pay an initial prorated fee so the specialty renewal date will then become the same date as the geologist registration renewal date.

(2) A certificate of registration must be renewed and the renewal fee paid before the date specified in section one of this rule.

Stat. Auth.: ORS 183, 192 & 672

Stats. Implemented: ORS 672.585

Hist.: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 3-1978(Temp), f. & ef. 12-15-78; GE 1-1981, f. & ef. 8-3-81; GE 1-1984, f. & ef. 2-1-84; Renumbered from 809-010-0005; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 4-2005, f. & cert. ef. 12-14-05

809-015-0005

Restoration

(1) An expired registration may be reinstated within five years without reapplication or retaking of an examination.

(2) To reinstate an expired registration, a Registered Geologist, Certified Engineering Geologist, or Geologist-in-Training must pay:

(a) The applicable annual registration fees for all years in which the registration was expired;

(b) The annual renewal fee for the current year; and

(c) The applicable restoration fee.

(3) A restoration fee is required to reinstate an expired registration.

Stat. Auth.: ORS 183, 192 & 672

Stats. Implemented: ORS 672.585

Hist.: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 3-1978(Temp), f. & ef. 12-15-78; GE 1-1981, f. & ef. 8-3-81; GE 1-1984, f. & ef. 2-1-84; GS 1-1988, f. 11-18-88, cert. ef. 12-1-88; BGE 4-2005, f. & cert. ef. 12-14-05

Board of Naturopathic Examiners

Chapter 850

Adm. Order No.: BNE 9-2005

Filed with Sec. of State: 12-12-2005

Certified to be Effective: 12-12-05

Notice Publication Date: 11-1-05

Rules Amended: 850-060-0225, 850-060-0226

Subject: It adds substances to the list in 850-060-0225 and clarifies by classification substances is 850-060-0226.

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

850-060-0225

Naturopathic Formulary Compendium

The following substances have been recommended for addition to the Formulary Compendium after review by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed.

- (1) Abacavir;
- (2) Acarbose;
- (3) Acetic Acid;
- (4) Acetylcysteine;
- (5) Acitretin;
- (6) Acyclovir;
- (7) Adapalene;
- (8) Adenosine Monophosphate;
- (9) Albuterol Sulfate;
- (10) Alendronate;
- (11) Allopurinol;
- (12) Alprostadil;
- (13) Amino Acids;
- (14) Amino Aspirins;
- (15) Aminoglycosides;
- (16) Aminolevulinic Acid;
- (17) Aminophylline;
- (18) Aminosalicilic Acid;
- (19) Ammonium Chloride;
- (20) Ammonium lactate lotion 12%;
- (21) Amoxicillin;
- (22) Amoxicillin & Clavulanate;
- (23) Amphotericin B;
- (24) Ampicillin;
- (25) Ampicillin & Sulbactam;
- (26) Anastrozole;
- (27) Anthralin;
- (28) Atorvastatin;
- (29) Atropine;
- (30) Atropine Sulfate;
- (31) Auranofin;
- (32) Azelaic Acid;
- (33) Azithromycin;
- (34) Bacampicillin;
- (35) Bacitracin;
- (36) Baclofen;
- (37) Becaplermin;
- (38) Belladonna;
- (39) Benazepril;
- (40) Benzodiazepines;
- (41) Benzoic Acid;
- (42) Benzonatate;
- (43) Betaine;
- (44) Betamethasone;
- (45) Bethanechol Chloride;
- (46) Bichloroacetic Acid*;
- (47) Bimatoprost Solution 0.03%;
- (48) Biologicals;
- (49) Biphosphonate;
- (50) Bromocriptine;
- (51) Budesonide;
- (52) Buprenorphine;
- (53) Butorphanol;
- (54) Cabergoline;
- (55) Calcipotriene;
- (56) Calcitonin;
- (57) Calcitriol;
- (58) Carbamide Peroxide;
- (59) Carbidopa;
- (60) Carbol-Fuchsin;
- (61) Captopril;
- (62) Cefaclor;

ADMINISTRATIVE RULES

- (63) Cefdinir;
(64) Cefibuten;
(65) Cefadroxil;
(66) Cefditoren;
(67) Cefixime;
(68) Cefonicid Sodium;
(69) Cefpodoxime Proxetil;
(70) Cefprozil;
(71) Ceftibuten;
(72) Cefuroxime;
(73) Celecoxib;
(74) Cellulose Sodium Phosphate;
(75) Cenestin;
(76) Cephalexin;
(77) Cephadrine;
(78) Chirocaine*;
(79) Chloramphenicol;
(80) Chloroquine;
(81) Citrate Salts;
(82) Clarithromycin;
(83) Clindamycin;
(84) Clioquinol;
(85) Clostridium botulinum toxin (ab);
(86) Cloxacillin;
(87) Codeine;
(88) Colchicine;
(89) Colistimethate;
(90) Collagenase;
(91) Condylox;
(92) Cortisone;
(93) Coumadin;
(94) Cromolyn Sodium;
(95) Cyanocobalamin;
(96) Cycloserine;
(97) Danazol;
(98) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
(99) Demeclocycline Hydrochloride;
(100) Desmopressin;
(101) Desoxyribonuclease;
(102) Dexamethasone;
(103) Dextran;
(104) Dextromethorphan;
(105) Dextrose;
(106) Dextrothyroxine;
(107) Dicloxacillin;
(108) Dihydroergotamine Migranal;
(109) Didanosine;
(110) Dimethyl Sulfone (DMSO);
(111) Digitalis;
(112) Digitoxin;
(113) Digoxin;
(114) Dinoprostone;
(115) Diphylline;
(116) Dirithromycin;
(117) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
(118) DMSA;
(119) Doxercalciferol;
(120) Doxycycline;
(121) Dronabinol;
(122) Dyclonine;
(123) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
(124) Electrolyte Solutions;
(125) Emtricitabine;
(126) Enalapril;
(127) Ephedrine;
(128) Epinephrine*;
(129) Epinephrine (auto-inject);
(130) Ergoloid Mesylates;
(131) Ergonovine Maleate;
(132) Ergotamine;
(133) Erythromycins;
(134) Erythropoietin;
(135) Estradiol;
(136) Estriol;
(137) Estrogen-Progestin Combinations;
(138) Estrogens, Conjugated;
(139) Estrogen, Esterified;
(140) Estrone;
(141) Estropipate;
(142) Ethyl Chloride;
(143) Etidronate;
(144) Ezetimibe;
(145) Famciclovir;
(146) Fentanyl;
(147) Fibrinolytic;
(148) Flavoxate;
(149) Fluconazole;
(150) Fludrocortisone Acetate;
(151) Flunisolide;
(152) Fluorides;
(153) Fluoroquinolones;
(154) Fluoroquinolines;
(155) Fluorouracil;
(156) Fluticasone propionate;
(157) Fluvastatin;
(158) Fosinopril;
(159) Gaba Analogs;
(160) Gabapentin;
(161) Galantamine H. Br.;
(162) Ganciclovir;
(163) Gentamicin;
(164) Gentian Violet;
(165) Griseofulvin;
(166) Guaifenesin;
(167) Heparin — subcutaneous, sublingual and heparin locks;
(168) Hexachlorophene;
(169) Homatropine Hydrobromide*;
(170) Human Growth Hormone;
(171) Hyaluronic Acid;
(172) Hyaluronidase;
(173) Hydrocodone;
(174) Hydrocortisone;
(175) Hydrogen Peroxide;
(176) Hydromorphone;
(177) Hydroquinone;
(178) Hydroxychloroquine;
(179) Hydroxypolyethoxydodecane*;
(180) Hyoscyamine;
(181) Iloprost Inhalation Solution;
(182) Imiquimod Cream (5%);
(183) Immune Globulins*;
(184) Insulin;
(185) Interferon Alpha b w/Ribavirin;
(186) Iodine;
(187) Iodoquinol;
(188) Iron Preparations;
(189) Isosorbide Dinitrate;
(190) Isotretinoin;
(191) Itraconazole;
(192) Kanamycin Sulfate;
(193) Ketoconazole;
(194) Lactulose;
(195) Lamivudine;
(196) Letrozole;
(197) Leucovorin Calcium;
(198) Levalbuteral;
(199) Levodopa;
(200) Levonorgestrel;
(201) Levorphanol;
(202) Levothyroxine;
(203) Lincomycin;
(204) Lindane;
(205) Liothyronine;
(206) Liotrix;
(207) Lisinopril;
(208) Lisuride;
(209) Lithium;
(210) Lovastatin;
(211) Mebendazole;
(212) Meclizine;
(213) Medroxyprogesterone;
(214) Medrysone;
(215) Mefloquine;

ADMINISTRATIVE RULES

- (216) Megestrol Acetate;
(217) Mercury, Ammoniated;
(218) Mesalamine;
(219) Metformin;
(220) Methadone;
(221) Methimazole;
(222) Methoxsalen;
(223) Methscopolamine;
(224) Methylergonovine;
(225) Methylprednisolone;
(226) Methylsulfonylethane (MSM);
(227) Methyltestosterone;
(228) Methysergide;
(229) Metronidazole;
(230) Miglitol;
(231) Minerals (Oral & Injectable);
(232) Minocycline;
(233) Misoprostol;
(234) Moexipril;
(235) Monobenzene;
(236) Morphine;
(237) Mupirocin;
(238) Nafarelin acetate;
(239) Naloxone;
(240) Natamycin;
(241) Nateglinide;
(242) Nicotine;
(243) Nitroglycerin;
(244) Novobiocin;
(245) Nystatin;
(246) Olsalazine;
(247) Omeprazole;
(248) Opium;
(249) Over the Counter (OTC)
(250) Oxacillin;
(251) Oxamniquine;
(252) Oxaprozin;
(253) Oxtriphylline;
(254) Oxycodone;
(255) Oxygen;
(256) Oxymorphone;
(257) Oxytetracycline;
(258) Oxytocin*;
(259) Pancrelipase;
(260) Papain;
(261) Papavarine;
(262) Paramethasone;
(263) Paregoric;
(264) Penciclovir;
(265) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(266) Penicillin;
(267) Pentosan;
(268) Pentoxifylline;
(269) Pergolide;
(270) Perindopril;
(271) Permethrin;
(272) Phenazopyridine;
(273) Phenylalkylamine;
(274) Phenylephrine*;
(275) Physostigmine;
(276) Pilocarpine;
(277) Pimecrolimus Cream 1%;
(278) Podophyllum Resin;
(279) Polymyxin B Sulfate;
(280) Polysaccharide-Iron Complex;
(281) Potassium Iodide;
(282) Potassium Supplements;
(283) Pramoxine;
(284) Pravastatin;
(285) Prednisolone;
(286) Prednisone;
(287) Pregabalin;
(288) Progesterone;
(289) Progestins;
(290) Propionic Acids;
(291) Propylthiouracil;
(292) Prostaglandins;
(293) Proton Pump inhibitor;
(294) Pyrazinamide;
(295) Pyrethrins;
(296) Quinapril;
(297) Quinidine;
(298) Quinilones;
(299) Quinine Sulfate;
(300) Quinines;
(301) Quinolines;
(302) Ramopril;
(303) Rauwolfia Alkaloids;
(304) Rho(D) Immune globulins*;
(305) Rifabutin;
(306) Rifampin;
(307) Risendronate;
(308) Salicylamide;
(309) Salicylate Salts;
(310) Salicylic Acid;
(311) Salsalate;
(312) Scopolamine;
(313) Selenium Sulfide;
(314) Silver Nitrate;
(315) Simvastatin;
(316) Sodium Polystyrene Sulfonate;
(317) Sodium Thiosulfate;
(318) Spironolactone;
(319) Stavudine;
(320) Spectinomycin;
(321) Sucralfate;
(322) Sulfasalazine;
(323) Sulfonamide/Trimethoprim/Sulfones;
(324) Tazarotene topical gel;
(325) Tacrolimus;
(326) Telithromycin;
(327) Tenofovir;
(328) Testosterone;
(329) Tetracycline;
(330) Theophylline;
(331) Thiabendazole;
(332) Thyroid;
(333) Thyroxine;
(334) Tiagabine;
(335) Tibolone;
(336) Tiludronate;
(337) Tinidazole;
(338) Tobramycin;
(339) Opical steroids;
(340) Tramadol;
(341) Trandolapril;
(342) Troleandomycin;
(343) Tretinoin;
(344) Triamcinolone;
(345) Triamterene;
(346) Trichloroacetic Acid*;
(347) Trioxsalen;
(348) Triptans;
(349) Troleandomycin;
(350) Undecylenic Acid;
(351) Urea;
(352) Urised;
(353) Ursodiol;
(354) Valacyclovir;
(355) Vancomycin;
(356) Verapamil;
(357) Vidarabine;
(358) Vitamins (Oral & Injectable);
(359) Yohimbine;
(360) Zalcitabine;
(361) Zidovudine;
(362) Zolpidem;
(363) Local Anesthetics:
(a) Benzocaine*;
(b) Bupivacaine*;
(c) Chlorprocaine*;
(d) Dyclonine*;
(e) Etidocaine*;
(f) Lidocaine*;
(g) Lidocaine (non-injectable dosage form);

ADMINISTRATIVE RULES

- (h) Mepivocaine*;
- (i) Prilocaine*;
- (j) Procaine*;
- (k) Tetracaine*.
- (364) Vaccines:
 - (a) BCG*;
 - (b) Cholera*;
 - (c) Diphtheria*;
 - (d) DPT*;
 - (e) Haemophilus b Conjugate*;
 - (f) Hepatitis A Virus*;
 - (g) Hepatitis B*;
 - (h) Influenza Virus*;
 - (i) Japanese Encephalitis Virus*;
 - (j) Measles Virus*;
 - (k) Mumps Virus*;
 - (l) Pertussis*;
 - (m) Plague*;
 - (n) Pneumococcal*;
 - (o) Poliovirus Inactivated*;
 - (p) Poliovirus-Live Oral*;
 - (q) Rabies*;
 - (r) Rubella*;
 - (s) Smallpox*;
 - (t) Tetanus IG*;
 - (u) Tetanus Toxoid*;
 - (v) Typhoid*;
 - (w) Varicella*;
 - (x) Yellow Fever*;
- (365) SkinTests:
 - (a) Diphtheria*;
 - (b) Mumps*;
 - (c) Tuberculin*.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 681.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05; Renumbered from 850-010-0225, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05

850-060-0226

Naturopathic Formulary Compendium by Classification

The following classifications for substances listed in 850-060-0225 have been recommended by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed. A double asterisk (**) indicates examples include but are not limited to the substances listed.

- (1) Antiestrogens;
 - (a) Nafarelin Acetate;
 - (b) Tibolone;
- (2) Antigout;
 - (a) Colchicine;
 - (b) allopurinol;
- (3) Anti-infective Agents;
 - (a) Anthelmintics;
 - (A) Thiabendazole.
 - (B) Oxamniquine.
 - (C) Mebendazole.
 - (b) Antibacterials;
 - (A) Aminoglycosides**;
 - (i) Gentamicin;
 - (ii) Kanamycin Sulfate;
 - (iii) Tobramycin;
 - (B) Cephalosporins**;
 - (i) Cefaclor;
 - (ii) Cefadroxil;
 - (iii) Cefdinir;
 - (iv) Cefditoren;
 - (v) Cefibuten;
 - (vi) Cefixime;
 - (vii) Cefonicid Sodium;

- (viii) Cefpodoxime Proxetil;
- (ix) Cefprozil;
- (x) Ceftributen;
- (xi) Cefuroxime;
- (xii) Cephalexin;
- (xiii) Cephadrine;
- (C) Chloramphenicol;
- (D) Macrolides and Ketolides**;
 - (i) Azithromycin;
 - (ii) Clarithromycin;
 - (iii) Dirithromycin;
 - (iv) Erythromycins;
 - (v) Telithromycin;
 - (vi) Troleandomycin;
- (E) Penicillins**;
 - (i) Amoxicillin and Clavulanate;
 - (ii) Amoxicillin;
 - (iii) Ampicillin and Sulbactam;
 - (iv) Ampicillin;
 - (v) Bacampicillin;
 - (vi) Cloxacillin;
 - (vii) Dicloxacillin;
 - (viii) Oxacillin;
 - (ix) Penicillin;
- (F) Quinolones**;
 - (i) Fluoroquinolones;
 - (ii) Quinolones -all;
- (G) Sulfonamides;
 - (i) Sulfonamide/Trimethoprim/ Sulfones;
- (H) Tetracyclines**;
 - (i) Demeclocycline Hydrochloride;
 - (ii) Doxycycline;
 - (iii) Minocycline;
 - (iv) Oxytetracycline;
 - (v) Tetracycline;
- (I) Misc. antibacterials;
 - (i) Bacitracin;
 - (ii) Clindamycin;
 - (iii) Colistimethate;
 - (iv) Lincomycin;
 - (v) Novobiocin;
 - (vi) Polymyxin B Sulfate;
 - (vii) Spectinomycin;
 - (viii) Vancomycin;
- (c) Antifungals;
 - (A) Azoles**;
 - (i) Fluconazole;
 - (ii) Itraconazole;
 - (iii) Ketoconazole;
 - (iv) Tinidazole;
 - (B) Amphotericin B;
 - (C) Gentian Violet;
 - (D) Griseofulvin;
 - (E) Nystatin;
- (d) Antimycobacterials;
 - (A) Aminosalicic Acid;
 - (B) Cycloserine;
 - (C) Pyrazinamide;
 - (D) Rifabutin;
 - (E) Rifampin;
- (e) Antivirals;
 - (A) Interferon**;
 - (B) Nucleoside/nucleotide analogs**;
 - (i) Abacavir;
 - (ii) Acyclovir;
 - (iii) Didanosine;
 - (iv) Emtricitabine;
 - (v) Fanciclovir;
 - (vi) Ganciclovir;
 - (vii) Lamivudine;
 - (viii) Penciclovir;
 - (ix) Stavudine;
 - (x) Tenofovir;
 - (xi) Valacyclovir;
 - (xii) Vialarabine;
 - (xiii) Zalcitabine;
 - (xiv) Zidovudine;
 - (f) Antiprotozoal;

ADMINISTRATIVE RULES

- (A) Iodoquinol;
- (B) Metronidazole;
- (C) Quinines;
- (i) Chloroquine;
- (ii) Hydroxychloroquine;
- (iii) Mefloquine;
- (iv) Quinine Sulfate;
- (g) Misc;
- (A) Immune Globulins* **;
- (B) Lindane;
- (C) Permethrin;
- (D) Pyrethrins;
- (4) Antineoplastic Agents;
- (a) Anastrozole;
- (b) Letrozole;
- (5) Anti-thyroid;
- (a) Thionamides;
- (A) Methimazole;
- (B) Propylthiouracil;
- (6) Autonomic Drugs;
- (a) Parasympathomimetic;
- (A) Bethanechol;
- (B) Galantamine H. Br;
- (b) Anticholinergic;
- (A) Atropine Sulfate;
- (B) Atropine;
- (C) Belladonna;
- (D) Flavoxate;
- (E) Homatropine Hydrobromide*;
- (F) Hyoscyamine;
- (G) Meclizine;
- (H) Methscopolamine;
- (I) Physostigmine;
- (J) Pilocarpine;
- (K) Scopolamine;
- (c) Sympathomimetic;
- (A) Ephedrine;
- (B) Epinephrine*;
- (C) Epinephrine (auto-inject);
- (d) Sympatholytic;
- (A) Yohimbine;
- (e) Skeletal Muscle Relaxants;
- (A) Clostridium botulinum toxin (ab);
- (B) Baclofen;
- (f) Misc;
- (A) Nicotine;
- (7) Biologicals;
- (a) Enzymes**;
- (A) Collagenase;
- (B) Desoxyribonuclease;
- (C) Fibrinolysin;
- (D) Hyaluronidase;
- (E) Pancrelipase;
- (F) Papain;
- (b) Hormones — see hormone;
- (c) Immune globulins — see anti-infective, misc;
- (d) Interferons — see antivirals;
- (e) Prostaglandins**;
- (A) Alprostadil;
- (B) Bimatoprost;
- (C) Iloprost;
- (D) Dinoprostone;
- (E) Misoprostal;
- (f) Blood derivatives;
- (8) Blood Formation and Coagulation;
- (a) Coumarin;
- (b) Erythropoietin;
- (c) Heparin; subcutaneous, sublingual and heparin locks;
- (9) Cardiovascular Drugs;
- (a) Cardiac;
- (A) Adenosine Monophosphate;
- (B) Digitalis;
- (C) Digitoxin;
- (D) Digoxin;
- (E) Quinidine;
- (b) Antilipemic;
- (A) HMG CoA Reductase Inhibitors**;
- (i) Atorvastatin;
- (ii) Fluvastatin;
- (iii) Lovastatin;
- (iv) Pravastatin;
- (v) Simvastatin;
- (B) Ezetimibe;
- (c) Diuretics;
- (A) Spironolactone;
- (B) Triamterene;
- (d) Hypotensive;
- (A) Lisuride;
- (B) Rauwolfia Alkaloids;
- (e) Vasodilating;
- (A) Nitrates**;
- (i) Isosorbide Dinitrate;
- (ii) Mononitrate;
- (iii) Nitroglycerin;
- (B) Papavarine;
- (f) Calcium Channel blockers;
- (A) Phenylalkylamine**;
- (i) Verapamil;
- (g) ACE inhibitors**;
- (A) Benazepril;
- (B) Captopril;
- (C) Enalapril;
- (D) Fosinopril;
- (E) Lisinopril;
- (F) Moexipril;
- (G) Perindopril;
- (H) Quinapril;
- (I) Ramopril;
- (J) Trandolapril;
- (10) Central Nervous System Agents;
- (a) Analgesics and Antipyretics;
- (A) NAIDS;
- (i) Amino Aspirins;
- (ii) Celecoxib;
- (iii) Mesalamine;
- (iv) Olsalazine;
- (v) Oxaprozin;
- (vi) Propionic Acid Derivatives**;
- (aa) Fenoprofen;
- (bb) Flurbiprofen;
- (cc) Ibuprofen;
- (dd) Ketoprofen;
- (ee) Oxaprozin;
- (ff) Naproxen;
- (vii) Salicyclic Acid;
- (viii) Salicylamide;
- (ix) Salicylate Salts;
- (x) Salsalate;
- (xi) Sulfasalazine;
- (B) Opioids**;
- (i) Buprenorphine;
- (ii) Butorphanol;
- (iii) Codeine;
- (iv) Dextromethorphan;
- (v) Fentanyl;
- (vi) Hydrocodone;
- (vii) Hydromorphone;
- (viii) Levorphanol;
- (ix) Methadone;
- (x) Morphine;
- (xi) Opium;
- (xii) Oxycodone;
- (xiii) Oxymorphone;
- (xiv) Paregoric;
- (xv) Tramadol;
- (b) Opioid Antagonists;
- (A) Naloxone;
- (c) Anticonvulsants;
- (A) Gaba Analogues**;
- (i) Gabapentin;
- (ii) Pregabalin;
- (iii) Tigabine;
- (d) Anti-Parkinson's;
- (A) Bromocriptine;
- (B) Carbidopa;
- (C) Cabergoline;

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- (D) Levodopa;
- (E) Pergolide;
- (e) Psychotherapeutic;
- (A) Anxiolytics, sedatives and hypnotics;
- (i) Benzodiazepines**;
- (ii) Zolpidem;
- (B) Anti-Manic;
- (i) Lithium;
- (f) Misc;
- (A) Triptans**;
- (11) Diabetic;
- (a) Acarbose;
- (b) Insulin;
- (c) Metformin;
- (d) Miglitol;
- (e) Nateglinide;
- (12) Electrolytic;
- (a) Ammonium Chloride;
- (b) Bisphosphonates**;
- (A) Alendronate;
- (B) Etidronate;
- (C) Risendronate;
- (D) Tiludronate;
- (c) Cellulose Sodium Phosphate (calcium removing);
- (d) Dextran;
- (e) Dextrose;
- (f) Electrolyte Solutions;
- (g) Fluorides;
- (h) Iodine;
- (i) Iron Preparations;
- (j) Minerals (Oral & Injectable);
- (k) Polysaccharide-Iron Complex;
- (l) Potassium Iodide;
- (m) Potassium Supplements;
- (n) Sodium Polystyrene Sulfonate;
- (13) Ergot Derivatives**;
- (a) Dihydroergotamine;
- (b) Ergoloid Mesylates;
- (c) Ergonovine Maleate;
- (d) Ergotamine;
- (14) EENT preparations;
- (a) Acetic Acid;
- (b) Ophthalmic Solution (0.03%);
- (c) Carbamide Peroxide;
- (d) Natamycin;
- (e) Phenylephrine;
- (f) Prostaglandins — see Biologicals;
- (15) GI drugs;
- (a) Antidiarrhea — see opioids;
- (b) Cathartics and laxatives;
- (A) Lactulose;
- (c) Antiemetics;
- (A) Dronabinol;
- (d) Antiulcer and acid suppressants;
- (A) Misoprostol;
- (B) Proton Pump Inhibitors**;
- (i) Omeprazole;
- (C) Sucralfate;
- (e) Misc;
- (A) Citrate Salts;
- (B) Ursodiol;
- (16) Gold Compounds;
- (a) Auranofin;
- (17) Heavy Metal antagonists (see 850-060-225 for specific education requirements);
- (a) Deferoxamine/Desferroxamine;
- (b) DMPS;
- (c) DMSA;
- (d) EDTA;
- (e) Penicillamine;
- (f) Sodium Thiosulfate;
- (18) Hormones and synthetic substitutes**;
- (a) Adrenals;
- (A) Betamethasone;
- (B) Budesonide;
- (C) Cortisone;
- (D) Dexamethasone;
- (E) Fludrocortisone Acetate;
- (F) Flunisolide;
- (G) Fluticasone Propionate;
- (H) Hydrocortisone;
- (I) Paramethasone;
- (J) Prednisolone;
- (K) Prednisone;
- (L) Tibolone;
- (M) Triamcinolone;
- (b) Androgens;
- (A) Danazol;
- (B) Methyltestosterone;
- (C) Testosterone;
- (c) Contraceptives;
- (A) Estrogen-Progestin Combinations;
- (B) Progestins;
- (d) Estrogens and antiestrogens;
- (A) Cenestin;
- (B) Estradiol;
- (C) Estriol;
- (D) Estrogen, Esterified;
- (E) Estrogens, Conjugated;
- (F) Estrone;
- (G) Estropipate;
- (e) Pituitary;
- (A) Desmopressin;
- (B) Human Growth Hormone;
- (C) Oxytocin;
- (f) Progestins;
- (A) Medroxyprogesterone;
- (B) Medrysone;
- (C) Megestrol Acetate;
- (D) Methylprednisolone;
- (E) Progesterone;
- (F) Progestins;
- (g) Thyroid;
- (A) Dextrothyroxine;
- (B) Levonorgestrel;
- (C) Levothyroxine;
- (D) Liothyronine;
- (E) Liotrix;
- (F) Thyroxine;
- (19) Immunological;
- (a) Tacrolimus;
- (b) Rho(D) Immune globulins*;
- (20) Local anesthetics**;
- (a) Benzocaine*;
- (b) Betaine;
- (c) Bupivacaine*;
- (d) Chirocaine*;
- (e) Chloroprocaine*;
- (f) Dyclonine*;
- (g) Ethyl Chloride;
- (h) Etidocaine*;
- (i) Hydroxypolyetho-xydodecane*;
- (j) Lidocaine (non-injectable dosage form);
- (k) Lidocaine*;
- (l) Mepivocaine*;
- (m) Pramoxine;
- (n) Prilocaine*;
- (o) Procaine*;
- (p) Tetracaine*;
- (21) Prostaglandins — see Biologicals;
- (22) Skin and mucous membrane agents;
- (a) Anti-infectives;
- (A) Benzoic Acid;
- (B) Carbol-Fuchsin;
- (C) Clioquinol;
- (D) Hexachlorophene;
- (E) Iodoquinol;
- (F) Mercury, Ammoniated;
- (G) Mupirocin;
- (H) Selenium Sulfide;
- (I) Silver Nitrate;
- (J) Undecylenic Acid;
- (b) Anti-inflammatory;
- (A) Topical steroids;
- (c) Antipruritics and local anesthetics;
- (A) Pentosan;

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- (B) Phenazopyridine;
- (d) Cell stimulants and proliferants;
- (A) Anthralin;
- (B) Tretinoin;
- (e) Keratolytic;
- (A) Adapalene;
- (B) Aminolevulinic Acid;
- (C) Bichloroacetic Acid;
- (D) Imiquimod Cream (5%);
- (E) Isotretinoin;
- (F) Podophyllum Resin;
- (G) Trichloroacetic Acid*;
- (H) Urea;
- (f) Misc;
- (A) Acitretin;
- (B) Ammonium lactate lotion 12%;
- (C) Azelaic Acid;
- (D) Becaplermin;
- (E) Calcipotriene;
- (F) Condylox;
- (G) Fluorouracil;
- (H) Hydroquinone;
- (I) Methoxsalen;
- (J) Monobenzone;
- (K) Pimecrolimus Cream 1%;
- (L) Tazarotene topical gel;
- (M) Trioxsalen;
- (23) Skin Tests**;
- (a) Diphtheria*;
- (b) Mumps*;
- (c) Tuberculin*;
- (24) Upper Respiratory;
- (a) Acetylcysteine;
- (b) Albuterol Sulfate;
- (c) Benzonate;
- (d) Cromolyn Sodium;
- (e) Guaifenesin;
- (f) Levalbuteral;
- (g) Nedocromil;
- (h) Xanthines**;
- (A) Aminophylline;
- (B) Diphylline;
- (C) Oxtriphylline;
- (D) Pentoxifylline;
- (E) Theophylline;
- (25) Vaccines**;
- (a) BCG*;
- (b) Cholera*;
- (c) Diphtheria*;
- (d) DPT*;
- (e) Haemophilus b Conjugate*;
- (f) Hepatitis A Virus*;
- (g) Hepatitis B*;
- (h) Influenza Virus*;
- (i) Japanese Encephalitis Virus*;
- (j) Measles Virus*;
- (k) Mumps Virus*;
- (l) Pertussis*;
- (m) Plague*;
- (n) Pneumococcal*;
- (o) Poliovirus - Inactivated*;
- (p) Poliovirus - Live Oral*;
- (q) Rabies*;
- (r) Rubella*;
- (s) Smallpox*;
- (t) Tetanus IG*;
- (u) Tetanus Toxoid*;
- (v) Typhoid*;
- (w) Varicella*;
- (x) Yellow Fever*;
- (26) Vitamins**;
- (a) Calcitonin;
- (b) Calcitriol;
- (c) Cyanocobalamin;
- (d) Doxercalciferol;
- (e) Leucovorin Calcium;
- (f) Vitamins (Oral & Injectable);
- (27) Misc;

- (a) Colchicine (gout);
- (b) Dimethyl Sulfone (DMSO);
- (c) Hyaluronic Acid;
- (d) Hydrogen Peroxide;
- (e) MSM;
- (f) OTC Substances;
- (g) Oxygen;
- (h) Urised.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05

Board of Optometry Chapter 852

Adm. Order No.: OPT 4-2005

Filed with Sec. of State: 12-8-2005

Certified to be Effective: 12-8-05

Notice Publication Date: 10-1-05

Rules Ren. & Amended: 852-010-0025 to 852-060-0025, 852-010-0027 to 852-060-0027, 852-010-0028 to 852-060-0028

Subject: Rename Division 852-060 to "Complaints and Enforcement"

Renumber rules in 852-010 to 852-060 because the content of the rules previously in division 010 more closely pertains to subject matter on division 060.

Amend the rules in 852-060 to reflect legislative changes.

Rules Coordinator: David W. Plunkett—(503) 399-0662, ext. 23

852-060-0025

Disciplinary Action

(1) When disciplining an optometrist or any other person, the Oregon Board of Optometry may do any of the following:

- (a) Deny an initial license;
- (b) Suspend, refuse to renew or revoke a license;
- (c) Impose probation on any licensee;
- (d) Limit the practice of any licensee; or

(e) Take other disciplinary action as the Board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty or assessment of a civil penalty not to exceed \$10,000 for each violation, or both.

(2) The Board may discipline any optometrist or person, where appropriate, for the following causes:

(a) Conviction of a felony or misdemeanor where such an offense bears a demonstrable relationship to the duties of an optometrist. The record of conviction, or a copy thereof certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction;

- (b) Practicing optometry without a license;
- (c) Securing a license by practicing fraud or deceit upon the Board;
- (d) Unprofessional conduct, or gross ignorance or inefficiency in the practice of optometry;

(e) Failing to comply with the requirements of continuing education;

(f) Obtaining any fee by fraud or misrepresentation;

(g) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 383.010 to 683.335;

(h) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made;

(i) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances;

- (j) Permitting another person to use the optometrist's license;
- (k) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertising optometric services without having a licensed optometrist at the location or locations;

(l) Advertising professional methods or professional superiority;

(m) Violating the federal Controlled Substances Act;

(n) Prescribing controlled substances without a legitimate optometric purpose, or without following accepted procedures for examination of patients or for record keeping;

(o) Failing to report to the Board any adverse action taken against the optometrist or person by another licensing jurisdiction, health regulatory board, peer review body, health care institution, professional optometric society or association, governmental agency, law enforcement agency or

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court for acts similar to conduct that would constitute grounds for disciplinary action as described in this section;

(p) Having been disciplined by any health regulatory board of another state based on acts similar to acts described in this section. A certified copy of the record of disciplinary action is considered conclusive evidence of the action; or

(q) Any violation of the provisions of ORS 683.010 to 683.335.

(3) The Board shall report all disciplinary action taken by the Board to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

(4) The Board shall levy an additional fee of \$35 for each active status license renewal to cover the cost of carrying out ORS 683.140.

Stat. Auth.: ORS 683; ORS 182

Stats. Implemented: ORS 683.140, 683.180, 683.270 & 182.466

Hist.: OE 2, f. 12-5-57; OE 14, f. 2-20-73, ef. 3-1-73; OE 1-1979, f. & ef. 3-8-79; OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; Renumbered from 852-010-0025, OPT 4-2005, f. & cert. ef. 12-8-05

852-060-0027

Definition of Unprofessional Conduct

Unprofessional conduct within the meaning of ORS 683.140(1)(c) includes, but is not limited to:

(1) Fraud, misrepresentation or dishonesty.

(2) Advertising optometric services, treatments, or advice in which untruthful, improbable, misleading or deceitful statements are made.

(3) Aiding an unlicensed person in the practice of optometry.

(4) Failure to train and supervise any unlicensed person who performs any work covered in this chapter.

(5) Permitting another person to use the optometrist's license.

(6) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances.

(7) The use of threats or harassment or to delay or to obstruct any person in providing evidence in any investigation, disciplinary action, or other legal action instituted by the Board.

(8) The discharge of an employe based primarily on the employe's attempt to comply or aid in the compliance of the Board's rules.

(9) The use of threats, harassment, or any other conduct which obstructs or delays a member of the Board, a member of the Board's staff or a duly appointed agent of the Board in carrying out their functions under the Board's rules.

(10) Willfully deceiving or attempting to deceive the Board, an employe of the Board, or an agent of the Board in reference to any matter under investigation by the Board including the alteration or destruction of any records in order to obstruct or delay an investigation by the Board.

(11) Failing to respond in writing to a Board request for information as required.

(12) Failing to appear before the Board at a time and place designated by the Board for such appearance.

(13) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title "doctor", or any contraction thereof, "clinic", "institute", "specialist" or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must add the word "optometrist" or the words "doctor of optometry" or "optometric physician."

(14) Conduct which could be construed as moral turpitude; and

(15) Any conduct or practice contrary to recognized standards of ethics of the optometric profession which includes:

(a) Sexual abuse — comprises conduct which constitutes a violation of any provision of ORS 163.305 through 163.465, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil, or administrative litigation, or admitted or stipulated by the professional.

(b) Sexual Violation — Comprises professional-patient sex, whether initiated by the patient or not, and engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, including, but not limited to: sexual intercourse; genital to genital contact; oral to genital contact; oral to anal contact; oral to oral contact except CPR; touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment or where the patient has refused or has withdrawn consent; encouraging the patient to masturbate in the presence of the professional or masturbation by the professional while the patient is present.

(c) Sexual Impropriety — Comprises any behavior, gestures, or expressions that are seductive or sexually demeaning to a patient of normal sensibilities; inappropriate procedures, including, but not limited to, disrobing or draping practices that reflect a lack of respect for the patient's privacy; inappropriate comments about or to the patient, including, but not

limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, inappropriate comments on the patient's or professional's sexual orientation (homosexual or heterosexual or bisexual), making comments about potential sexual performance during an examination or consultation, requesting the details of sexual history or sexual likes or dislikes; initiation by the professional of conversation regarding the sexual problems, preferences or fantasies of the professional or the patient; kissing of a sexual nature.

(16) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.

(17) Failing to give written notification to the Board of any disciplinary action or sanction related to the practice of optometry by any state licensing agency.

(18) Failing to give written notification to the Board of any felony or misdemeanor convictions except minor traffic offenses.

(19) Failing to keep complete and accurate records for a patient.

(20) Failing to retain or make appropriate transfer of the care of patient records.

(21) Failing to comply with a Board order.

(22) Failing to use, prescribe or administer controlled substances in Schedules III — V within the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

Stat. Auth.: ORS 683; ORS 182

Stats. Implemented: ORS 683.140, 683.270 & 182.466

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 1-1993, f. & cert. ef. 2-10-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-2000, f. 4-28-00, cert. ef. 5-1-00; OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; Renumbered from 852-010-0027, OPT 4-2005, f. & cert. ef. 12-8-05

852-060-0028

Definition of Gross Ignorance or Inefficiency

In determining gross ignorance or inefficiency within the meaning of ORS 683.140(1)(c) 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 optometry in this state, the current teachings at accredited optometry schools, relevant technical reports published in recognized optometry journals, and the desirability of reasonable experimentation in the furtherance of the practice of optometry.

Stat. Auth.: ORS 683; ORS 182

Stats. Implemented: ORS 683.140, 683.270 & 182.466

Hist.: OP 1-1987, f. & ef. 4-30-87; Renumbered from 852-010-0028, OPT 4-2005, f. & cert. ef. 12-8-05

Board of Pharmacy Chapter 855

Adm. Order No.: BP 7-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-15-05

Notice Publication Date: 11-1-05

Rules Amended: 855-041-0063

Subject: 855-041-0063: The rule will allow pharmacies dealing in Parenteral Sterile Products to maintain reference materials appropriate to the standard of practice for the pharmacy.

Rules Coordinator: Karen MacLean—(971) 673-0005

855-041-0063

Sterile Parenteral Products

(1) The following rules apply to all pharmacies compounding sterile parenteral products. Pharmacies and pharmacists dispensing sterile parenteral products with expiration times of 48 hours or less shall comply with all of these rules except section (10) of this rule. Section (10) of this rule applies only to those pharmacies or pharmacists dispensing sterile parenteral products with expiration times greater than 48 hours.

(2) Pharmacist-in-Charge: The pharmacist-in-charge shall be responsible for the preparation of parenteral products compounded within the pharmacy and shall:

(a) Be responsible to ensure all pharmacy personnel involved in preparing parenteral products have training and demonstrated competence in the safe handling and compounding of parenteral products;

(b) Establish a documented, ongoing quality assurance program that monitors personnel performance, equipment, and facilities;

(c) Establish a procedure for verification by the pharmacist of the preparation of each completed parenteral product. This verification shall be accomplished by reviewing that:

(A) The drug and dose ordered are appropriate for the patient;

(B) The correct drug and solution were selected;

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- (C) The label is correct and complete;
- (D) The calculation of the amount transferred is correct.
- (d) Documentation of the verification shall be done by hand written initials of the pharmacist responsible for the review;
- (e) Develop and maintain written policies and procedures associated with the pharmacy's preparation and dispensing of parenteral products.
- (3) Work Area and Equipment:
 - (a) The pharmacy shall have a specified area for the preparation of parenteral products which shall provide space for compounding, labeling, and sterile preparation of the medication;
 - (b) The area shall be designated to avoid outside traffic and air flow;
 - (c) The area shall have clean surfaces, walls and floors;
 - (d) A sink shall be located in the area for cleaning supplies and equipment, and for hand washing by personnel;
 - (e) The area shall not be used for storage of supplies and materials in excess of what is required to prepare parenteral products.
- (4) Storage:
 - (a) The room temperature of the storage space for all raw materials shall be adequately controlled and maintained between 15–30°C.;
 - (b) There shall be a refrigerator of sufficient capacity to meet the storage requirements of all material requiring refrigeration. Refrigerator temperature shall be in the range of 2–8°C.;
 - (c) There shall be a freezer of sufficient capacity to meet storage requirements if products are to be frozen (e.g., reconstituted antibiotics). Temperatures shall be below -10°C., and there shall be a means to determine if freezing has been interrupted.
- (5) Labeling: In addition to regular labeling requirements, the label shall include:
 - (a) Rate of infusion, as appropriate;
 - (b) Expiration date;
 - (c) Storage requirements or special conditions, if applicable;
 - (d) Name and concentration of all ingredients contained in the parenteral products, including primary solution;
 - (e) Hand written initial of the pharmacist certifying for accuracy.
- (6) Patient Care Services: Consultation shall be available to the patient and/or primary caregiver concerning proper use of parenterals and related supplies furnished by the pharmacy.
- (7) Cytotoxic Medications: Any pharmacy providing cytotoxic medications shall establish procedures for their preparation, storage, administration, cleanup and disposal in accordance with current **Occupational Safety and Health Administration (OSHA) guidelines**.
- (8) Reference Requirements: Pharmacists and pharmacies involved in the preparation of sterile parenteral products must have access to a current issue of at least one pharmaceutical reference with current, properly filed supplements and updates appropriate to the preparation of sterile parenteral products and based on the standards of practice for the setting.
- (9) Policies and Procedures: Written policies and procedures associated with the pharmacy's preparation and dispensing of parenteral products is required and shall be available for inspection at the pharmacy. Written policies and procedures shall include, but not be limited to:
 - (a) Compounding, labeling and storage of parenteral products;
 - (b) Administration of intravenous therapy;
 - (c) Storage and maintenance of equipment and supplies;
 - (d) Training of personnel, patient and caregiver;
 - (e) Procedures for handling cytotoxic agents;
 - (f) Quality assurance programs;
 - (g) Recordkeeping requirements;
 - (h) Procedures for cleaning the compounding area.
- (10) Pharmacies dispensing parenteral products with expiration times greater than 48 hours shall comply with all of these rules and shall in addition:
 - (a) Have a certified and inspected laminar air flow hood or positive air flow room for the preparation of parenteral products which is certified and inspected annually. The preparation area shall be ventilated in such a manner as to not interfere with laminar flow hood conditions. Documentation of proper hood maintenance including HEPA filter inspection, prefilter maintenance, disinfecting, and cleaning shall be kept in the pharmacy for a three year period;
 - (b) Compound all parenteral products dispensed in quantities with expiration times greater than 48 hours in a laminar air flow hood or in a positive air flow room;
 - (c) Establish procedures for monitoring microbial growth;
 - (d) Establish procedures for testing the aseptic techniques of personnel and documentation thereof.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 689

Stats. Implemented:

Hist.: PB 5-1987, f. & ef. 5-1-87; PB 12-1989, f. & cert. ef. 8-11-89; BP 7-2005, f. 12-14-05, cert. ef. 12-15-05

Adm. Order No.: BP 8-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-15-05

Notice Publication Date: 11-1-05

Rules Adopted: 855-025-0001

Subject: This rule will establish the permanent rule transition from registration of technicians to licensure.

Rules Coordinator: Karen MacLean—(971) 673-0005

855-025-0001

Transition from Registration of Technician to Licensure of Technician

The existing Board file containing information on each registered pharmacy technician or applicant for registration as a pharmacy technician remains in effect when the registration program transitions to licensure of pharmacy technicians. Pharmacy technicians and applicants need not resubmit application material or other information to the Board because of the transition to licensure unless the Board specifically requests resubmission. Complaints, investigations, renewal information, criminal history information and registration history information remains in effect and carry over into the licensing history for each pharmacy technician or applicant. For the purpose of clarification of 2005 SB-512, the Oregon Board of Pharmacy may impose disciplinary action regarding technicians based on the date the Board of Pharmacy becomes aware of a violation which may result in disciplinary action.

Stat. Auth.: 689.205

Stats. Implemented: 689.225

Hist.: BP 8-2005, f. 12-14-05, cert. ef. 12-15-05

Adm. Order No.: BP 9-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Adopted: 855-025-0050

Subject: This rule will establish the permanent rule outlining grounds for discipline for licensed technicians.

Rules Coordinator: Karen MacLean—(971) 673-0005

855-025-0050

Grounds for Discipline

(1) The State Board of Pharmacy may refuse to issue or renew, or suspend, revoke, or restrict the license of a pharmacy technician or certified pharmacy technician or may impose a civil penalty upon the pharmacy technician upon the following grounds:

- (a) Repeated or gross negligence;
- (b) Incapacity of a nature that prevents a pharmacy technician or certified pharmacy technician from assisting in the practice of pharmacy with reasonable skill, competence and safety to the public;
- (c) Habitual or excess use of intoxicants, drugs or controlled substances;
- (d) Being found guilty by the Board of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;
- (e) Being found guilty by a court of competent jurisdiction of a felony as defined by the laws of this state;
- (f) Being found guilty by a court of competent jurisdiction of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;
- (g) Fraud or intentional misrepresentation in securing or attempting to secure the issuance or renewal of a pharmacy technician or certified pharmacy technician license;
- (h) Engaging an individual to engage in the duties of a pharmacy technician or certified pharmacy technician without a license or falsely using the title of pharmacy technician or certified pharmacy technician;
- (i) Aiding and abetting an individual to engage in the duties of a pharmacy technician or certified pharmacy technician without a license or falsely using the title of pharmacy technician or certified pharmacy technician;
- (j) Being found by the Board to be in violation of any violation of any of the provisions of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805 to 475.995 or 689.005 to 689.995 or the rules adopted pursuant thereto.
- (k) Failure to appropriately perform the duties of a pharmacy technician or certified pharmacy technician as outlined in OAR 855-025-0040 while assisting a pharmacist in the practice of pharmacy as defined in ORS 689.015.

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(l) Aiding and abetting an individual in performing the duties of a pharmacy technician or certified pharmacy technician or in using the title of pharmacy technician or certified pharmacy technician without a license.

(m) Incapacity of a nature that prevents a pharmacy technician or certified pharmacy technician from performing the duties of a pharmacy technician or certified pharmacy technician with reasonable skill, competence and safety to the public.

(n) Repeated or gross negligence in performing the duties of a pharmacy technician or certified pharmacy technician; or

(o) Fraud or misrepresentation in dealings relating to performing the duties of a pharmacy technician or certified pharmacy technician with:

(A) Customers, patients, or the public;

(B) Practitioners authorized to prescribe drugs, medications, or devices;

(C) Insurance companies;

(D) Wholesalers, manufacturers, or distributors of drugs, medications, or devices;

(E) Health care facilities;

(F) Government agencies;

(G) Drug outlets.

(p) Illegal use of drugs, medications, or devices without a practitioner's prescription, or otherwise contrary to federal or state law or regulations;

(q) Theft of drugs, medications, or devices or theft of any other property or services under circumstances which bear a demonstrable relationship to the performing the duties of a pharmacy technician or certified pharmacy technician;

(r) Any act or practice relating to performing the duties of a pharmacy technician or certified pharmacy technician which is prohibited by state or federal law or regulation;

(s) Authorizing or permitting any person to perform the duties of a pharmacist, pharmacy technician or certified pharmacy technician in violation of the Oregon Pharmacy Act or the rules of the Board; and

(t) Any conduct or practice by a pharmacy technician, certified pharmacy technician or pharmacy which the Board determines is contrary to the accepted standards of practice.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151 & SB 512 (2005), Sec. 8

Hist.: BP 9-2005, f. 12-14-05, cert. ef. 12-15-05

Construction Contractors Board Chapter 812

Adm. Order No.: CCB 6-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Amended: 812-003-0240

Subject: OAR 812-003-0240 is amended to implement SB 323 (Chapter 533, Oregon Laws 2005), relating to the definition of "independent contractor," clarifies that "primarily" as used in SB 323 refers to the length of time a portion of a residence is used for business purposes, deletes language that is no longer relevant, and will be heard in a joint hearing with Employment Department; Landscape Contractors Board; Consumer and Business Services, Workers Compensation Division; and Department of Revenue who will be proposing similar rules.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

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 approved December 6, 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

Adm. Order No.: CCB 7-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Adopted: 812-002-0350, 812-002-0533, 812-002-0537, 812-006-0015

Rules Amended: 812-002-0040, 812-002-0060, 812-002-0100, 812-002-0160, 812-002-0190, 812-002-0260, 812-002-0325, 812-002-0360, 812-002-0420, 812-002-0430, 812-002-0443, 812-002-0520, 812-002-0540, 812-002-0640, 812-002-0670, 812-002-0675, 812-002-0700, 812-002-0720, 812-002-0740, 812-002-0780, 812-002-0800, 812-003-0170, 812-003-0420, 812-004-0180, 812-004-0195, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0300, 812-004-0320, 812-004-0340, 812-004-0360, 812-004-0420, 812-004-0440, 812-004-0450, 812-004-0460, 812-004-0470, 812-004-0480, 812-004-0500, 812-004-0530, 812-004-0590, 812-006-0012, 812-006-0030, 812-008-0110, 812-009-0160, 812-009-0320, 812-009-0400, 812-009-0420, 812-009-0430

Rules Repealed: 812-002-0340, 812-002-0555, 812-004-0325

Rules Ren. & Amended: 812-001-0000 to 812-001-0100, 812-001-0001 to 812-001-0110, 812-001-0003 to 812-001-0120, 812-001-0007 to 812-001-0130, 812-001-0010 to 812-001-0140, 812-001-0015 to 812-001-0160, 812-001-0020 to 812-001-0200, 812-001-0022 to 812-001-0300, 812-001-0023 to 812-001-0305, 812-001-0024 to 812-001-0310, 812-001-0025 to 812-001-0051, 812-001-0040 to 812-001-0500, 812-001-0050 to 812-001-0510, 812-003-0170(3)(a)-(b) to 812-005-0210, 812-003-0170(3)(c) to 812-005-0200, 812-005-0000(1)(a) to 812-005-0100, 812-005-0000(1)(b) to 812-005-0110, 812-005-0000(1)(c) to 812-005-0120, 812-005-0000(1)(d) to 812-005-0130, 812-005-0000(2) to 812-005-0140, 812-005-0000(3) to 812-005-0150, 812-005-0000(4) to 812-005-0160, 812-005-0000(5) to 812-005-0170, 812-005-0000(6) to 812-005-0180, 812-005-0003 to 812-005-0500, 812-005-0005 to 812-005-0800

Subject: • These rules are amended and renumbered, and some have cite reference changes: 812-001-0000 to 812-001-0100; 812-001-0001 to 812-001-0110; 812-001-0003 to 812-001-0120; 812-001-0007 to 812-001-0130; 812-001-0010 to 812-001-0140; 812-001-0015 to 812-001-0160; 812-001-0020 to 812-001-0200; 812-001-0022 to 812-001-0300; 812-001-0023 to 812-001-0305; 812-001-0024 to 812-001-0310; 812-001-0025 to 812-001-0051; 812-001-0040 to 812-001-0500; and 812-001-0050 to 812-001-0510.

• 812-002-0040, 812-002-0060, 812-002-0100, 812-002-0160, 812-002-0190, 812-002-0260, 812-002-0325, 812-002-0360, 812-002-0420, 812-002-0430, 812-002-0443, 812-002-0520, 812-002-0540, 812-002-0640, 812-002-0670, 812-002-0675, 812-002-0700, 812-002-0720, 812-002-0740, 812-002-0780, 812-002-0800, 812-003-0420, 812-004-0180, 812-004-0195, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0360, 812-004-0420, 812-004-0440, 812-004-0450, 812-004-0460, 812-004-0470, 812-004-0480, 812-004-0500, 812-004-0530, 812-004-0590, 812-009-0160, 812-009-0320, 812-009-0400, 812-009-0420, and 812-009-0430 are amended to correct cite reference due to statute changes to ORS 279 that became effective 3/1/05 or to correct cite references due to changes to ORS 701 by Oregon Laws 2005, effective 1/1/06 or to correct cite references due to renumbering.

• OAR 812-002-0340 is repealed because the phrase is no longer used due to amendments to ORS 701 by section 9, chapter 432, Oregon Laws 2005 (HB 2200).

• OAR 812-002-0350 is adopted to define the term "individual."

• OAR 812-002-0533 is adopted to clarify the definition of "officer" in ORS 701.005 as amended in chapter 432 Oregon Laws 2005 (HB 2200).

• OAR 812-002-0537 is adopted to clarify the definition of "owner" in ORS 701.005 as amended in chapter 432 Oregon Laws 2005 (HB 2200).

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- OAR 812-002-0555 repealed, because the phrase defined is no longer used in ORS 701.102 as amended chapter 432 Oregon Laws 2005 (HB 2200).

- OAR 812-003-0170(3) is amended and renumbered to chapter 812 division 5 for clarity and amended to increase necessary protections for consumers.

- OAR 812-004-0300 is amended to implement chapter 207, Oregon Laws 2005 (HB 2072).

- OAR 812-004-0320 amended to implement chapter 207, Oregon Laws 2005 (HB 2072) and to allow the agency to take a second claim alleging facts similar to an earlier claim if withdrawn due to a bankruptcy.

- OAR 812-004-0325 is repealed because chapter 263, Oregon Laws 2005 (HB 2071) requires a statement of claim form be filed along with a copy of the court complaint for claims involving large commercial structures.

- OAR 812-004-0340 is amended to implement chapter 207, Oregon Laws 2005 (HB 2072) and to improve style.

- Rules in Chapter 812 division 5 are amended and renumbered, new rule language proposed to clarify ORS 701.085(7) & (8), when the agency requires a licensee to obtain a surety bond in an amount up to five times the normal bond required by law, and to correct cite references. OAR 812-005-0200 clarifies ORS 701.085, which suspends a licensee's CCB license in the event CCB Dispute Resolution Section issues a final order for damages that exceeds the licensee's bond and sets the amount of increased bond required. OAR 812-005-0210 clarifies when CCB will require an increased bond under ORS 701.085(8). OAR 812-003-0170(3),(a)-(b) to 812-005-0210; 812-003-0170(3)(c) to 812-005-0200; 812-005-0000(1)(a) to 812-005-0100; 812-005-0000(1)(b) to 812-005-0110; 812-005-0000(1)(c) to 812-005-0120; 812-005-0000(1)(d) to 812-005-0130; 812-005-0000(2) to 812-005-0140; 812-005-0000(3) to 812-005-0150; 812-005-0000(4) to 812-005-0160; 812-005-0000(5) to 812-005-0170; 812-005-0000(6) to 812-005-0180; 812-005-0003 to 812-005-0500; and 812-005-005 to 812-005-0800.

- OAR 812-006-0012 is amended to delete items incorporated into subversion testing rules and correct cite references.

- OAR 812-006-0015 adopts testing subversion rules that identify actions of testing subversion and agency response.

- OAR 812-006-0030 is amended for clarity based on advise from legal counsel and correct cite references.

- OAR 812-008-0110 is amended to remove the \$15 reinstatement fee for home inspectors. Elimination of this fee will improve service and reduce costs to home inspectors.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0051

Rules of Procedure for Board Meetings

The Construction Contractors Board adopts the following rules of procedure for Board and Committee meetings.

(1) The current edition of Sturgis Standard Code of Parliamentary Procedure shall govern the procedures of the Board and Committees in all parliamentary situations that are not otherwise provided for by law or by Board rules.

(2) A quorum must be present for the Board or Committee meeting to be called to order and to make decisions. A majority of affirmative votes among the members present are required for any official action or decision. Except in cases where a member's vote would result in a prejudiced, biased, or unfair decision or action, no member shall abstain from voting.

(3) In accordance with applicable governing statutes, the chair shall establish the time, date, and place for the Board and Committees to convene. Proper notice of all meetings, hearings, and matters requiring notice shall be given to the members of the Board, the news media, and all interested persons requesting notice.

(4) The chair shall work with the Board Administrator to determine the substance of the agenda for each meeting. The order of business for Board meetings, unless otherwise determined by the chair, shall be:

(a) Call to order.

(b) Approval of agenda and order of business.

(c) Approval of minutes of previous meetings and previous Appeal Committee meetings.

(d) Consideration of cases on appeal and oral argument, if any.

(e) Report of Administrator and staff.

(f) Unfinished business.

(g) New business.

(h) Public comment.

(i) Announcements.

(j) Adjournment.

(5) Members of the public wishing to testify shall sign an attendance form.

(6) If any person engages in disruptive conduct at a meeting, such conduct shall be grounds for the chair to expel the person from the meeting.

(7) All actions and decisions of the Board and Committees shall be fully and accurately recorded on tape. Records are a part of the public record, and shall be available for inspection by the public.

(8) Board members and guests shall address the chair, identify themselves for the sound recording, and receive recognition before speaking.

(9) No motion shall require a second.

(10) The chair shall exercise all the rights and duties of other members, including the right to introduce motions and proposals and to speak and vote on them while presiding.

(11) No member of the Board shall speak or act on behalf of the Board without specific authorization by law or by the Board. The Board shall not delegate its statutory rulemaking authority, except to an officer or employee within the agency who shall be authorized in writing by the Board to adopt temporary rules.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 192.630 & 701.215

Hist.: IBB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97; Renumbered from 812-001-0025, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0100

Notice of Proposed Rule

Except as provided in OAR 812-001-0110, before adopting, amending, or repealing any permanent rule, the Construction Contractors Board 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 before the effective date of the rule.

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

(3) By mailing or emailing a copy of the notice at least 28 days before the effective date of the rule to the:

(a) Associated Press;

(b) Oregon Labor Press;

(c) Capitol Press Room, State Capitol;

(d) Oregon Consumer League; and

(e) Oregon Department of Health.

(4) By mailing or emailing a copy of the notice to legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.335, 183.341, 670.310 & 701.235

Hist.: IBB 4, f. & ef. 12-29-75; IBB 1-1978, f. & ef. 5-23-78; IBB 6-1980, f. & ef. 11-4-80; IBB 1-1982, f. 3-31-82, ef. 4-1-82; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; Renumbered from 812-001-0000, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0110

Temporary Rule

The Construction Contractors Board Administrator may adopt, amend, or suspend a rule as provided in ORS 183.335.

Stat. Auth.: ORS 183.325 & 701.235

Stats. Implemented: ORS 183.325 & 701.235

Hist.: BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; Renumbered from 812-001-0001, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0120

Uniform and Model Rules

The Construction Contractors Board adopts the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 to 137-005-0070, revised January 15, 2004, with the following exceptions: OAR 137-003-0015, 137-005-0060, and 137-005-0070.

Stat. Auth.: ORS chapter 670.310 & 701.235

Stats. Implemented: ORS chapters 183.341

Hist.: IBB 6-1980, f. & ef. 11-4-80; IBB 1-1982, f. 3-31-82, ef. 4-1-82; IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; IBB 2-1983, f. & ef. 7-6-83; IBB 3-1984, f. & ef. 5-11-84; IBB 1-1986, f. & ef. 5-30-86; BB 3-1988, f. 11-23-88, cert. ef. 12-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 2-1992, f. &

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cert. ef. 4-15-92; CCB 3-1992(Temp), f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1995, f. 6-6-95 cert. ef. 6-15-95; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 8-2004, f. & cert. ef. 10-1-04; Renumbered from 812-001-0003, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0130

Disposal of Large Objects Submitted as Exhibits

Large objects submitted with a claim or as exhibits in a hearing or arbitration may be returned to the custody of the submitting party or disposed of by the agency after 90 calendar days following the date of the final order.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; Renumbered from 812-001-0007, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0140

Response Time to Notices

(1) Time for response to a notice delivered pursuant to ORS 701.080 shall run from the date of mailing.

(2) OAR 137-003-0520(10) shall apply to the computation of time to respond to a notice under this rule, whether the notice is related to a contested case, arbitration or any other matter.

Stat. Auth.: ORS 183.415, 670.310 & 701.235

Stats. Implemented: ORS 183.415 & 701.080

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1991, f. & cert. ef. 2-4-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04; Renumbered from 812-001-0010, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0160

Requests for Information

(1) The agency will provide the following information in response to telephone and web site requests for license information relating to a specific entity:

- Whether or not the entity is or has ever been licensed.
- The license numbers.
- The business names used by the entity of record with the agency.
- Type of business entity.
- Personal names of owners, partners, joint venturers, members, corporate officers, or trustees.
- Last known address.
- Category of license.
- Class of independent contractor license status.
- Expiration date or date upon which the license became inactive or lapsed and the reason it became inactive or lapsed.
- The date the entity first became licensed.
- The number and type of inquiries and pending claims and claims closed during the past three years where the agency issued Final Orders requiring the contractor to pay the claimant.

(2) If more information is required than that listed in section (1) of this rule, the request for information must be made in writing.

(3) The agency shall provide certification of license or non-license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:

- License numbers.
- Name of licensed entity and any assumed business names on file with the agency.
- Type of business entity.
- Category of license.
- Class of independent contractor license status.
- Personal names of owner, partners, joint venturers, members, corporate officers, or trustees.
- The important dates in the license history and the action that took place on those dates.

(4) In response to telephone requests from consumers for dispute resolution information relating to a specific licensee, the agency will provide by mail a brief explanation of the dispute resolution process and the following information for each claim filed in the previous seven years:

- Type of each claim.
 - Date on which the claim was filed.
 - The status of the claim filed.
 - Alleged amount of the claim, if known, or amount awarded.
- (5) If more information is required than that listed in section (4) of this rule, the request for information must be specified in writing.

(6) The agency may make the following charges for records:

(a) \$20 for each certification that an entity has or has not been licensed with the Construction Contractors Board.

(b) \$20 for certified copies of documents.

(c) \$5 for the first 20 copies made and 25 cents per page thereafter.

(d) \$20 for duplicate tape recordings of, Board meetings and Appeal Committee meetings.

(e) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for duplicate tape recordings of each additional 90 minutes or fraction thereof of the hearing or arbitration.

(f) Charge as determined by preparation time and production cost for mailing labels of licensees.

(g) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time.

(7) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 293.445

Stats. Implemented: ORS 183.310, 183.500, 192.430, 701.235, 701.250, 701.252

Hist.: 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 1-1996, f. 4-26-96, cert. ef. 5-1-96; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1998, f. & cert. ef. 4-30-98; Administrative correction 7-28-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; Renumbered from 812-001-0015, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0200

Consumer Protection Notices

(1) The Construction Contractors Board adopts the form entitled "Information Notice to Owner," as revised June 1, 2004. 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 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; Renumbered from 812-001-0020, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0300

Requirements for Notice of Compliance with Homebuyer Protection Act

(1) Under ORS 87.007(3), a seller of residential property must deliver a Notice of Compliance with Homebuyer Protection Act on or before the date the sale of the property closes to the purchaser of:

(a) A new single family residence, condominium or residential building; or

(b) An existing single-family residence, condominium or residential building where:

(A) The price for original construction, including but not limited to an addition to the single family residence, condominium or residential building, that is completed within three months prior to the date of the sale of the property is \$50,000 or more; or

(B) The contract price for improvements to the single-family residence, condominium or residential building that are completed within three months prior to the date of the sale of the property is \$50,000 or more.

ADMINISTRATIVE RULES

(2) The seller must deliver the notice required under ORS 87.007(3) on or before the close of the sale of the property.

(3) The notice required under ORS 87.007(3) shall be on the form adopted under OAR 812-001-0200.

(4) Under ORS 87.007(3), a seller of residential property may specify on the Notice of Compliance with Homebuyer Protection Act that ORS 87.007(2) does not apply to the sale of the property if the seller knows that no person may enforce a valid lien against the property because:

(a) The last day to perfect any lien on the property under ORS 87.035 was prior to the date of sale of the property; and

(b) No lien was perfected.

Stat. Auth.: ORS 87.007, 670.310, & 701.235

Stats. Implemented: ORS 87, 87.007, & 701

Hist.: 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; Renumbered from 812-001-0022, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0305

Surety Bond Issued to Protect Purchasers of Residential Property from Lien Claims

A seller of residential property may provide a surety bond to satisfy the requirements of ORS 87.007(2)(c), provided that the bond complies with the following requirements.

(1) The bond must be issued by an insurer authorized or approved to do business in this state.

(2) The bond must be issued on or after the date of completion of the residential property. For purposes of this rule, the "date of completion" shall be determined in accordance with ORS 87.045.

(3) The bond must be issued in an amount of not less than 25 percent of the sales price of the residential property.

(4) The bond shall remain in effect:

(a) Not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the residential property; or

(b) If one or more liens are perfected against the residential property within 75 days from the date of completion, until:

(A) All liens are released and the releases recorded;

(B) The seller files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081;

(C) The surety files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081; or

(D) The surety pays the buyer the amount of the lien or the penal sum of the bond, whichever is less.

(5) The bond shall include the following terms and conditions: "NOW, THEREFORE, the conditions of the foregoing obligation are that if the principal shall not permit any construction lien to be placed upon the subject property; shall obtain the release of all construction liens upon the subject property and have the releases recorded; or shall file a bond or deposit in accordance with ORS 87.076 to 87.081; then this obligation shall be void; otherwise to remain in full force and effect. "This bond is for the exclusive purpose of paying construction lien obligations encumbering (legal description or address of property) arising out of the sale by principal to (name(s) of purchaser(s)), in compliance with ORS 87.007(2)(c) and OAR 812-001-0305. "The bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the penalty on this bond. "The bond shall remain in effect for not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the property; or, if one or more liens are perfected against the property within 75 days from the date of completion, until (1) all liens are released and the releases recorded; (2) the principal files a bond or makes a deposit and the principal files the required affidavit under ORS 87.076 to 87.081; (3) the surety files a bond or makes a deposit and the surety files the required affidavit under ORS 87.076 to 87.081; or (4) the surety pays the liens."

Stat. Auth.: ORS 87.007, 670.310 & 701.235

Stats. Implemented: ORS 87.007

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04; Renumbered from 812-001-0023, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0310

Letter of Credit Issued to Protect Purchasers of Residential Property from Lien Claims

(1) As used in this rule, "letter of credit" means an irrevocable stand-by letter of credit.

(2) A seller of residential property may provide a letter of credit to satisfy the requirements of ORS 87.007(2)(c), provided that the letter of credit complies with the following requirements.

(a) The letter of credit must be issued by or confirmed by an Oregon state-chartered bank or a federally chartered bank that has an Oregon branch.

(b) The letter of credit must be issued on or after the date of completion of the residential property. For purposes of this rule, the "date of completion" shall be determined in accordance with ORS 87.045.

(c) The letter of credit must be issued in an amount of not less than 25 percent of the sales price of the residential property.

(d) The beneficiary of the letter of credit must be the purchaser of the property.

(e) The letter of credit shall remain in effect:

(A) Not less than 75 days after the date of completion if no lien is perfected under ORS 87.035 against the residential property; or

(B) If one or more liens are perfected against the residential property within 75 days from the date of completion, until:

(i) All liens are released and the releases recorded;

(ii) The seller files a bond or makes a deposit and the seller files the required affidavit under ORS 87.076 to 87.081; or

(iii) The issuing or confirming bank pays the purchaser of the property the amount of the lien or the amount of the letter of credit, whichever is less in accordance with the terms of the letter of credit.

(f) The letter of credit can be called by the purchaser of the property immediately if:

(A) The seller of the property permits any construction lien to be placed upon the property;

(B) The seller of the property fails to obtain the release of all construction liens upon the property and have the releases recorded; or

(C) The seller of the property fails to file a bond or deposit and record the required affidavit under ORS 87.076 to 87.081.

(g) The credit shall be available by presentation of the purchaser of the residential property at sight on the issuing, or confirming, bank when accompanied by a notice of lien filing together with the claim of lien, as provided by ORS 87.039. The credit shall be available within three business days of presentation.

Stat. Auth.: ORS 87.007, 670.310 & 701.235

Stats. Implemented: ORS 87.007

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04; Renumbered from 812-001-0024, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0500

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or

(f) Mediation by an authorized representative acting on behalf of the Construction Contractors Board in which the parties to the mediation are parties to a claim or arbitration filed under ORS 701.139 to 701.145, unless the mediator and the parties elect by written agreement consistent with the form set out in section (8) of this rule to participate in a confidential mediation.

ADMINISTRATIVE RULES

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under section (9) of this rule is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further

disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediation or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent that the agency administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, 670.310 & 701.235

Statutes Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; Renumbered from 812-001-0040, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-001-0510

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiations of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

ADMINISTRATIVE RULES

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision or law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the

court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, 670.310 & 701.235

Stat. Implemented: ORS 36.230(4)

Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; Renumbered from 812-001-0050, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0040

Appurtenance

"Appurtenance" means any accessory improvement to real estate associated with a structure.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 656.027, 701.005, 701.055 & 701.140

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0060

Bid

"Bid" as used in ORS 701.055(1) does not include a prospectus for an art project.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 279.073 & 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0100

Building Trades or Crafts

"Building trades or crafts", as used in ORS 701.005(4) and these rules, means the following special trade contractors as defined by the four-digit codes in the 1987 Standard Industrial Classification Manual:

(1) Building trade contractors including:

(a) 1711 — Plumbing, Heating and Air Conditioning.

(b) 1721 — Painting and Paper Hanging.

(c) 1731 — Electrical Work.

(d) 1741 — Masonry, Stone Setting and Other Stone Work.

(e) 1742 — Plastering, Drywall, Acoustical and Insulation Work.

(f) 1743 — Terrazzo, Tile, Marble, and Mosaic Work.

(g) 1751 — Carpentry Work.

(h) 1752 — Floor Laying and Other Floor Work.

(i) 1761 — Roofing, Siding and Sheet Metal Work.

(j) 1771 — Concrete Work.

(k) 1791 — Structural Steel Erection.

(l) 1793 — Glass and Glazing Work.

(m) 1794 — Excavation Work.

(n) 1795 — Wrecking and Demolition Work.

(o) 1796 — Installation or Erection of Building Equipment Not Elsewhere Classified.

(p) 1799 — Special Trade Contractors, Not Elsewhere Classified.

(2) Heavy construction (other than building construction) contractors, when the contractor is performing as a subcontractor, including:

(a) 1611 — Highway and Street Construction.

(b) 1622 — Bridge, Tunnel and Elevated Highways.

(c) 1623 — Water, Sewer, Pipeline and Communication and Power Line Construction.

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- (d) 1629 — Heavy Construction, Not Elsewhere Classified.
 - (3) Other
 - (a) 0783 — Tree Service.
 - (b) 7342 — Pest Control.
 - (c) 7363 — Chimney and other structural cleaning.
 - (d) 7389 — Inspection Services.
- Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005 & 701.013
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0160

Construction Management

“Construction management” is the coordinating of a construction project, including, but not limited to, selecting contractors to perform work on the project, obtaining permits, scheduling specialty contractors’ work, and purchasing materials. “Construction management” does not include consulting work performed by a registered engineer or a licensed architect when operating as provided by ORS 701.010(7).

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.280
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0190

Court, Arbitrator or Other Entity

“Court, arbitrator or other entity” means a court of competent jurisdiction or an arbitrator or other entity authorized by law or the parties to a dispute to effect a resolution to the dispute.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 183.415, 813.460 & 701.145
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0260

Dishonest or Fraudulent Conduct

“Dishonest or fraudulent conduct”, as used in ORS 701.135(1)(k) 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 contractor when the applicant or licensee has received sufficient funds as payment for the particular construction work 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 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 gross business volume certification in order to qualify for a reduced bond amount as set forth in OAR 812-003-0280; 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 279C.800 to 279C.870; or
- (9) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance.
- (10) Failing to pay wages as determined by the Bureau of Labor & Industries, Wage and Hour Division.
- (11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state, or federal government.
- (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.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.135
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2000(Temp), f. 9-21-00, cert. ef. 9-21-00 thru 3-19-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0325

Good Cause

“Good cause” as used in ORS 279C.585 exists if the prime contractor that substituted an undisclosed first-tier subcontractor can show that a reasonable person with the knowledge possessed by the prime contractor when the substitution was made would have concluded that:

- (1) The substitution was consistent with, and did not violate, public policy expressed in ORS 279C.305, that public agencies shall make every effort to construct public improvements at the least cost to the public; and
- (2) One or more of the following facts was true:
 - (a) The subcontractor was financially unstable.
 - (b) The subcontractor had an unacceptable performance history on past contracts.
 - (c) The subcontractor had an unacceptable history of untimely performance.
 - (d) The subcontractor had an unacceptable history of filing excessive claims and lawsuits on past contracts.
 - (e) The subcontractor had an unacceptable work safety record.
 - (f) The subcontractor did not have sufficient human resources to do the work required under contracts entered into by the subcontractor.
 - (g) The subcontractor failed or refused to meet insurance requirements of the prime.
 - (h) The subcontractor failed or refused to meet requirements of ORS 279C.505(2).
 - (i) The subcontractor’s ability to successfully perform the project and protect the guarantees placed by the prime contractor was substantially jeopardized.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 279.322
Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0350

Individual

“Individual”, as used in ORS chapter 701, means a natural person.
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701
Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0360

Inspect

“Inspect”, as used in ORS 701.005(3), means the examination of a structure or its appurtenances for the purposes of determining the condition of the structure, identifying construction faults, exposing potential maintenance problems, assessing life expectancy, and/or estimating repair costs, and does not include pest control examinations for non-wood-destroying organisms and does not include pest control examinations for wood destroying organisms except when conducted as part of an inspection for the transfer of real estate.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0420

Lapse in License

“Lapse in license” as used in ORS 701.065(2)(b)(A), 701.115(4); 812-006-0020(1)(b), and 812-006-0020(2)(b) commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed or reinstated by the agency.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.065, 701.115 & 701.225
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2003(Temp), f. & cert. ef. 7-9-03 thru 1-3-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0430

Large Commercial Structure

“Large commercial structure” has the meaning given that phrase in ORS 701.005.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.005
Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0443

Legal Capacity to Contract

“Legal capacity to enter into contracts” as used in ORS 701.075(2)(b), means the attaining of the age of 18 for any sole proprietor, partner of any general partnership, limited liability partnership, limited partnership or joint venture, corporate officer, member, or any other persons similarly situated who holds or could hold the authority to enter into a contract on behalf of the licensed entity.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.075
Hist.: CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

ADMINISTRATIVE RULES

812-002-0520

Occupancy

"Occupancy" may occur at the time of but not be limited to the first occurring of any of the following events: a majority of furniture and personal belongings is moved in, utility service begins, certificate of occupancy is issued, resident prepares meals and remains overnight.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010 & 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0533

Officer

(1) "Officer", as used in ORS chapter 701 and these rules means:

(a) A person described as an "officer" in ORS 701.005;

(b) A partner in a partnership, or limited liability partnership;

(c) A responsible managing individual described in section 3, chapter 432, Oregon Laws 2005; or

(d) A person who has a financial interest in a business and manages or shares in the management of the business; or

(2) "Officer", as used in ORS chapter 701 and these rules, includes an

individual who has a financial interest in another business and who is an officer of that other business if that other business owns more than fifty percent of the particular business.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: OL 2005 Ch. 432

Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0537

Owner (as used in ORS 701.102 and section 3, chapter 432, Oregon Laws 2005)

"Owner", as used in ORS 701.102 and section 3, chapter 432, Oregon Laws 2005, means:

(1) A person described as an "owner" in section 3, chapter 432, Oregon Laws 2005;

(2) A general partner in a limited partnership;

(3) A majority stockholder in a corporation;

(4) A manager in a manager-managed limited liability company;

(5) A member in a member-managed limited liability company; or

(6) A person who has a financial interest in a business and manages or shares in the management of the business.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: OL 2005 Ch. 432

Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0540

Owner of a Structure

(1) "Owner of a structure" means a person not required to be licensed under ORS chapter 701 who:

(a) Has a structure built by contractor;

(b) Purchases or enters into an agreement to purchase a structure from a contractor or developer; or

(c) Owns, leases, or rents a structure on which alterations or repairs are being or have been made.

(2) "Owner of a structure" may also include:

(a) An association of unit owners that files a claim related to the common elements of a condominium, as those phrases are defined in ORS 100.005.

(b) The following agents of persons described in section (1) of this rule:

(A) Property managers licensed under ORS chapter 696; or

(B) A person who is acting on behalf of an incapacitated person, based on guardianship, power of attorney, or other legal representation.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010 & 701.225

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0640

Renewal

"Renewal" (of license) as used in ORS 701.065, 701.085 and 701.115 includes but is not limited to the act of submitting a replacement bond, a bond rider, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any prerequisite education.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 670.410, 701.055, 701.065, 701.075, 701.105, 701.115, 701.125 & 701.130

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0670

Respondent

"Respondent" means a contractor that a claim is filed against under ORS 701.139 to 701.180 or that the board proposes to impose a civil penalty against under ORS chapter 701, including but not limited to ORS 701.992.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139 & 701.145

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0675

Small Commercial Structure

"Small commercial structure" has the meaning given that term in ORS 701.005.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0700

Structure

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, or an improvement attached to real estate or any part thereof as described in ORS 701.005(3).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.058, 279.073, 646.605 & 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0720

Subcontractor

"Subcontractor" is an entity who has a contract, either oral or written, with a contractor but not with the owner of the structure to perform work subject to ORS chapter 701 and who is responsible for a specific portion of the entire project.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 279C.555 & 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0740

Substantial Completion

"Substantial completion" may occur at the time of but not be limited to the first occurring of any of the following events: final inspection is completed, certificate of occupancy is issued, the structure or portion of structure is in a habitable or usable condition, most or all of payment is made. Work under a warranty provision of a contract or repair to already completed work does not extend the date of substantial completion, except that removal and replacement of completed work may extend the date of substantial completion to the date the replacement work was substantially complete.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0780

Work as a Contractor Does Not Include

"Work as a contractor", as used in ORS 701.055, does not include:

(1) Sign painting unless the total area of all signs is more than 60 square feet.

(2) Work performed by persons engaged in creating objects, which exist exclusively for aesthetic reasons and have no other function, for example, murals, sculptures, etc., if said work by such person does not incorporate electrical or plumbing.

(3) Work performed by government agencies, except a school district.

(4) Work performed in setting, placing, removing, or repairing grave markers or monuments in cemeteries.

(5) Work by an employee when both the employer and employee are in compliance with applicable employer/employee requirements of ORS chapters 305, 314, 316, 317, 318, 656, 657, and state and federal wage and hour laws.

(6) Concrete pumping.

(7) Utility connections done by utility company employees when the connection is owned by a utility company.

(8) Installation or repair of stand-alone industrial equipment when such activities are exempt from the requirement for a building permit under the Oregon Structural Specialty Code.

(9) Inspections done under contract with government agencies.

(10) Cable television work done by cable television franchise holders.

(11) Operation of a crane, including the lifting and placement of trusses or other construction materials onto the structure.

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(12) Improvement of lots with the intent of selling the lots without structures when contracting with licensed contractors to perform the improvement of lots.

(13) Arranging for work to be performed by a licensed construction contractor when the person who arranges for the work is a real estate licensee, licensed under ORS chapter 696; the real estate licensee is representing the seller of the property; and the real estate licensee is acting as the agent for the seller, as evidenced by a contract or agreement between the real estate licensee and the seller.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 634.116, 701.010, 701.055 & 701.085

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 1-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-002-0800

Work Period

"Work Period" as used in, OAR 812-003-0150, 812-004-0320 and 812-004-0600 means the time period from the date a contractor accepts a payment, offers a written proposal, enters into a contract or begins construction, whichever occurs first, until the date the contractual work is substantially completed by the contractor, or if not substantially completed, the date the work by the contractor ceased.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-003-0170

Bond Amounts

(1) The following surety bond amounts are required under ORS 701.085(2)-(5):

- (a) General Contractor — All Structures: \$15,000
- (b) General Contractor — Residential: \$15,000
- (c) Specialty Contractor — All Structures: \$10,000
- (d) Specialty Contractor — Residential: \$10,000
- (e) Limited Contractor: \$5,000
- (f) Inspector: \$10,000
- (g) Licensed Developer: \$15,000

(2) A contractor may obtain or maintain a bond in an amount that exceeds the amount required under section (1) of this rule if the bond obtained or maintained is in an amount that is equal to an amount required under section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-003-0420

Davis Bacon Act

(1) On all construction projects regulated under the state Prevailing Wage Law, ORS 279C.800 to 279C.870 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.055(11) to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries, 800 NE Oregon #32, Portland OR 97232.

(2) The initial list of subcontractors will be submitted to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries on the same date that the initial Payroll and Certified Statement form (WH-38) is due. Instructions for submitting form WH-38 are contained in OAR 839-016-0010.

(3) The primary contractor will prepare and submit updated lists of subcontractors with each submittal of the Payroll and Certified Statement form (WH-38).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 279.348 - 279.365, 701.055 & 701.075

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0180

Claimant's Responsibility to Pursue Claim

(1) Throughout the processing of a claim, a claimant has the responsibility to pursue the claim and to respond in a timely manner to requests from the agency for information or documentation.

(2) The agency may close a claim under OAR 812-004-0260 if:

(a) The claimant fails to respond to a written request from the agency, or to provide requested information or documentation within a time limit specified in that request; or

(b) The claimant fails to respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 812-004-0260.

Stat. Auth.: ORS 670.310, 701.235 & 701.145

Stats. Implemented: ORS 183.415, 183.460 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0195

Exhibits

(1) If a party to a claim submits a document that is larger than 8-1/2 inches by 14 inches or a photograph as an exhibit, the agency may require that the party submit four copies of the document or photo.

(2) The disposal of large exhibits is subject to OAR 812-001-0007.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.450 & 183.460

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0240

Exhaustion of Surety Bond

At any time during the processing of a claim, if the agency becomes aware of partial or full exhaustion of the surety bond by prior claims, it may notify the claimant and close the claim file, or it may process the claim to a final order and close the claim file.

Stat. Auth.: ORS 670.310, 701.235 & 701.145

Stats. Implemented: ORS 183.415, 183.460, 701.085, 701.145 & 701.150

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0250

Award of Claim-Processing Fee, Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a claim that are payable from respondent's bond required under ORS 701.085, including, but not limited to an order of the board arising from a judgment, award or decision by a court, arbitrator or other entity may not include an award for:

- (a) Attorney fees;
- (b) Court costs;
- (c) Interest;
- (d) Costs to pursue litigation or the claim;
- (e) Service charges or fees; or
- (f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the claim.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond required under ORS 701.085 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien claim may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

(b) An order or arbitration award in an owner claim may include interest expressly allowed as damages under a contract that is the basis of the claim.

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a claim processing fee paid by the claimant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court, arbitrator or other entity that are related to the portion of the order or award of the court, arbitrator or other entity that is within the jurisdiction of the board if the order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

- (A) That was initiated by the respondent; or
 - (B) That the agency required the claimant to initiate under ORS 701.145 because of the nature or complexity of the claim.
- (3) This rule does not apply to a claim filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145 & 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0260

Order Closing a Claim

(1) If the agency closes a claim because the claimant failed to act in response to a request from the agency, the closure of the claim is an order that is not an order in a contested case. An order to close a claim is subject

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to a motion for reconsideration under ORS 183.484 and OAR 137-004-0080 and an appeal for judicial review under ORS 183.484.

(2) The agency may close a claim under this rule only if it complies with the following:

(a) The agency must include notification in its request to claimant that failure to act as requested may result in closure of the claim and that closure of the claim will prevent access to the bond.

(b) The agency may not close the claim sooner than 14 days after giving the notification required in subsection (2)(a) of this rule.

(c) The agency shall notify the parties to the claim that the claim is closed and cite the statutes and rules under which the order may be appealed.

(3) The agency may reopen a claim closed under this rule if the record of the claim contains evidence that shows that the cause of the failure of claimant to act as requested by the agency was due to excusable neglect by the claimant. The agency may reopen the claim:

(a) In response to a motion for reconsideration; or

(b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the claim.

(4) At the agency's discretion, the agency may refer a claim to the Office of Administrative Hearings for a contested case hearing on whether closure of the claim under this rule is proper.

(5) A party must file a motion for reconsideration of an order closing a claim under this rule before seeking judicial review of the order.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.480, 701.140 & 701.145

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0300

Filing Date of Claims

(1) Except as provided under section (3) of this rule, a claim submitted to the agency for processing under ORS 701.145 shall be deemed to have been filed when a Statement of Claim is received by the agency that:

(a) Meets the requirements of OAR 812-004-0340(1) and (2)(m); and

(b) Contains information sufficient to identify the claimant and respondent.

(2) The agency shall return a Statement of Claim that fails to meet the requirements of section (1) of this rule to the person who submitted the claim.

(3) If the agency returns a Statement of Claim to a person under section (2) of this rule because the person failed to meet the requirements of OAR 812-004-0340(2)(m) related to pre-claim notice, that person may resubmit the Statement of Claim with the required evidence. If the resubmitted Statement of Claim satisfies the agency that the person met the requirements under OAR 812-002-0340(2)(m.) before the agency received the original Statement of Claim, the claim shall be deemed to have been filed on the date the Statement of Claim was first received by the agency.

(4) A Statement of Claim that does not fully comply with the requirements of OAR 812-004-0340 is subject to 812-004-0350.

(5) The date of filing of a claim submitted to the agency for processing under ORS 701.146 is the date when claimant complies with ORS 701.146(2) and 701.147(1).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0320

Jurisdictional Requirements

(1) A claim must be of a type described under ORS 701.140.

(2) A claim must be filed with the agency within the time allowed under ORS 701.143.

(3) A claim will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section shall be determined as follows:

(a) For an owner claim, primary contractor claim or subcontractor claim, respondent will be considered licensed if respondent was licensed during all or part of the work period.

(b) For a material claim, respondent will be considered licensed if one or more invoices involve material delivered while respondent was licensed. Damages will be awarded only for material delivered within the period of time that respondent was licensed.

(c) For an employee or employee trust claim, respondent will be considered licensed if respondent was licensed on one or more days that claimant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which respondent was licensed.

(4)(a) Claimant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the claim requires that claimant be licensed under ORS 701.055 in order to perform the work; and

(B) Claimant files a claim arising out of a contract to construct the work at issue and the claim is for unpaid labor or materials furnished under the contract.

(b) As used in section (4) of this rule, "properly licensed" means the claimant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the claim;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to claimant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on claimant's license.

(5) Claims will be accepted only when one or more of the following relationships exists between the claimant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the claimant and the respondent, or their agents;

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;

(c) A contract between claimant and respondent providing that claimant is a trustee authorized to receive employee benefit payments from respondent for employees of respondent; or

(d) A real estate purchase conditioned upon an inspection report or repairs made by the respondent.

(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 fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) 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 701.140 that is the same as an allegation contained in a claim previously filed by the same claimant against the same respondent, except that the agency may process a claim that would otherwise be dismissed under this section (7) 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; or

(c) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a claim under ORS 701.143.

(9) A claim by a person furnishing material, or renting or supplying equipment to a contractor may not include a claim for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Claims by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount.

(11) The agency may process a claim against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.065, 701.139, 701.140, 701.143, 701.145, 701.146 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0340

Form of Claims

(1) A claim must be submitted on a Statement of Claim form provided by the agency. The agency may require the use of the most recent revision of the Statement of Claim form.

(2) The claimant shall submit the following information with the Statement of Claim if applicable:

(a) The name, address and telephone number of the claimant;

(b) The name, address, telephone number and license number of the licensee;

(c) The amount, if known at the time the Statement of Claim is filed, that the claimant alleges is due from the licensee after crediting payments, offsets and counterclaims in favor of the licensee to which claimant agrees;

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- (d) Identification of the type of claim;
- (e) The date on which the contract was entered into;
- (f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;
- (g) The location of the work at issue in the claim, described by a postal address or other description sufficient to locate the work site on a map and on the ground;
- (h) The beginning and ending date of the work or invoices;
- (i) Payments, offsets and counterclaims of the contractor, if known;
- (j) Whether the project involves work on a residential, small commercial or large commercial structure;
- (k) A certification by the claimant that the Statement of Claim is true;
- (l) If a court judgment or arbitration award is the basis for the claim, a copy of the judgment or award, the original complaint and any answers or counter-suits related to the parties to the claim filed in the court action or arbitration;
- (m) Documentation described in section (9) of this rule that is related to the pre-claim notice requirement in ORS 701.147.
- (n) Additional information required under sections (3) through (8) of this rule.
 - (3) A subcontractor claim must include copies of each original invoice relating to the claim.
 - (4) An employee claim must include copies of time cards or other evidence of the amount of compensation claimed.
 - (5) An employee trust claim must include the name of each employee that is the subject of the claim, the dates that employee worked without payment of employee benefits and the following information for each date and employee:
 - (a) The hours worked without payment of employee benefits;
 - (b) The amount of the unpaid benefits;
 - (c) The address of the job site where the employee worked; and
 - (d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.
 - (6) A construction lien claim must include evidence that the claimant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lien claimant, if applicable, and any foreclosure documents.
 - (7) A material claim must include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the claim.
 - (8) A claim involving negligent or improper work must include a list of the alleged negligent or improper work. A claim involving a breach of contract shall describe the nature of the breach of contract.
 - (9) A claim must include one of the following:
 - (a) A copy of the pre-claim notice required under ORS 701.147 and of the certified or registered mail receipt for the pre-claim notice; or
 - (b) Written evidence that respondent had actual notice of the dispute that is the subject of the claim at least 30 days before claimant filed the claim. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:
 - (A) A return receipt signed by respondent indicating receipt of a notice of intent to file a claim sent to respondent by claimant; or
 - (B) A letter signed by respondent acknowledging receipt of a notice of intent to file a claim.
 - (c) Written evidence that claimant and respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the claim. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:
 - (A) Copies of a complaint or answer in the court action; or
 - (B) Copies of a document that initiated the mediation or arbitration.
 - (d) Evidence that claimant and respondent are parties to another claim filed with the agency arising from the same contract or issues that are the subject of the claim.
 - (10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by claimant alleging that respondent had actual knowledge of the dispute as written evidence required under section (9) of this rule.
 - (11) The Statement of Claim form must be signed by the claimant or an agent of the claimant.
 - (12) A Statement of Claim that does not comply with the requirements of this rule is subject to OAR 812-004-0350.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & 701.146
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002,

f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0360

Addition of Claim Items at On-Site Meeting

If the agency does an on-site meeting of a claim, the claimant may add new claim items up to and through the initial on-site meeting. New items added to a timely filed claim under this rule shall be considered timely filed.

Stat. Auth.: ORS 670.310, 701.140, 701.145 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0420

Processing Owner and Primary Contractor Claim Together

If an owner claim based on the same facts and issues is received at any time during the processing of a primary contractor claim, the two claims will be processed together.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0440

Contracts with Arbitration Agreements

(1) If a claim is based on a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as set forth in ORS 701.180. Unless the contract requires mediation or arbitration by the agency, the agency shall take the following action:

(a) The agency shall inform the claimant by written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the claim unless the agency receives within 30 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the claimant; or

(B) Evidence that the claimant or respondent initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the claim.

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (1)(a) of this rule from the claimant within 30 days of the date of the written notice described in subsection (1)(a) of this rule, the agency may close the claim under OAR 812-004-0260. The agency may not close the claim under section (1) of this rule if the respondent initiates mediation or arbitration under the contract prior to the expiration of the 30-day period for providing the waiver or evidence of initiation of mediation or arbitration.

(c) The agency shall inform the respondent by written notice that:

(A) Respondent must initiate mediation or arbitration under the contract within the time allowed under ORS 701.180 and that failure to initiate mediation or arbitration within this time period is a waiver of respondent's right to mediation or arbitration under the contract;

(B) The agency will continue to process the claim if respondent fails to initiate mediation or arbitration under the contract within the time allowed under ORS 701.180 or if respondent signs a written waiver of mediation or arbitration; and

(C) The agency will suspend processing of the claim if respondent or claimant initiates mediation or arbitration under the contract.

(d) If respondent fails to submit evidence to the agency that respondent initiated mediation or arbitration under the contract within the time allowed under ORS 701.180 and if claimant waives mediation or arbitration within the time allowed under subsection (1)(a) of this rule, the agency will continue to process the claim.

(e) If mediation or arbitration under the contract is properly commenced under section (1) of this rule, the agency shall suspend processing the claim until the mediation or arbitration is complete.

(2) If a claim is based on a contract that contains an agreement by the parties to mediate and arbitrate disputes arising out of the contract, the claim shall be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and arbitration within the time allowed under ORS 701.180 if:

(a) The respondent commences mediation within the time allowed under ORS 701.180; and

(b) If the claim is not resolved in mediation, the respondent submits to arbitration within 30 days of the completion of mediation, unless the parties to the claim mutually agree on a different schedule.

(3) Notwithstanding receipt of a notice of intent to file a claim under ORS 701.147 or any prior communication from the agency referencing a claim, for purposes of ORS 701.180, a respondent receives notice of a

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claim when the agency sends the respondent the notice described under subsection (1)(c) of this rule.

(4) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the claim as a contested case.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145 & 701.180

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0053; 1BB 3-1984, f. & ef. 5-11-84; 1BB 2-1985(Temp), f. & ef. 3-5-85; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0015; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0042; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0450

On-site Meeting and Attendance of Claimant

(1) The agency may schedule an on-site meeting among the parties for the purpose of discussion of a settlement of a claim and investigation of the claim under ORS 701.145. The agency shall mail notice of the meeting no less than 14 days prior to the date scheduled for the meeting. The notice shall include notification of the requirements of section (2) and (3) of this rule and shall comply with the requirements of OAR 812-004-0260.

(2) If the agency schedules an on-site meeting, the following apply:

(a) The claimant must allow access to the property that is the subject of the claim.

(b) The claimant or an agent of the claimant must attend the meeting. An agent of the claimant must have knowledge of all claim items included in the claim and must have authority to enter into a settlement of the claim. The agency may waive the requirement that an agent have authority to enter into a settlement of the claim if there is evidence that the respondent will not attend the on-site meeting.

(c) The claimant must allow the respondent to be present at the on-site meeting as required by ORS 701.145.

(3) If the claimant fails to comply with the requirements of section (2) of this rule, the agency may close the claim under OAR 812-004-0260.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0460

Agency Recommendation of Resolution

If it appears that the respondent has breached a contract or performed work negligently or improperly, the agency may recommend to the claimant and respondent a resolution consistent with the terms of the contract, generally accepted building practices, and industry standards.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0580; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0470

Challenge to Investigation Report

Claimant or respondent may challenge and offer evidence to disprove the agency's investigation report, if any, at an arbitration or contested case hearing.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145(12)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0580; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0480

Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the claimant and respondent for their consideration and agreement at an on-site meeting conducted under OAR 812-004-0450.

(2) If claimant and respondent sign a settlement agreement, the agreement shall be binding upon each party unless breached by the other.

(3) Settlement agreements may be considered by the agency to be substituted contracts and damages may be based on the settlement.

(4) If at any time during the processing of the claim, the claimant accepts a promissory note from the respondent or other compromise as settlement of the claim, the agency may consider the agreement to be a substituted contract, and base the continued processing of the claim on the substituted contract.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0500

Closure of Claim After Settlement

If claimant and respondent agree to a settlement, the following apply:

(1) The agency shall notify the claimant that the claimant must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days of the date shown on the settlement for completion of the terms of the settlement. This notice must comply with the requirements of OAR 812-004-0260.

(2) If the claimant notifies the agency that the terms of the settlement agreement have been fulfilled, the agency shall close the claim.

(3) If the claimant does not notify the agency as required under section (1) of this rule, the agency may close the claim under OAR 812-004-0260.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0530

Construction Lien Claims

(1) Upon acceptance of a construction lien claim, the agency shall send a copy of the claim to the respondent and shall initiate an investigation to determine the validity of the claim.

(2) For a construction lien claim to be valid, the following conditions must be met:

(a) The claimant must have paid the respondent for work performed or materials supplied or equipment rented subject to ORS chapter 701 and the primary contractor must have failed to pay the subcontractor or material or equipment supplier, thereby causing the subcontractor or material or equipment supplier to file a lien against the claimant's property;

(b) The lienor must have delivered to the claimant a "Notice of the Right to Lien" as specified in ORS 87.018, 87.021, and 87.025; and

(c) The lienor must have filed the lien with the recording officer of the county in accordance with ORS 87.035.

(3) If the respondent contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the respondent's account, the respondent may subpoena the lienor and pertinent records to an arbitration or contested case hearing on a claim processed under this rule.

(4) If at any time prior to the issuance of an order the agency determines that the lien is unenforceable or invalid, the agency shall dismiss the claim. Prior to such dismissal, the lienor shall be notified, by certified mail, of the lienor's opportunity to become a party, as that term is defined in ORS 183.310, to the claim and to request an arbitration or hearing.

(5)(a) A construction lien claim may include attorney fees, court costs, interest and service charges if these items are included as part of the construction lien or incurred as costs to discharge the lien. An award to claimant for attorney fees incurred to discharge the lien shall not exceed the amount of the lien.

(b) A construction lien claim may not include excess interest paid as a result of the inability of the claimant to refinance at a lower interest rate due to the existence of the lien.

(6) The agency may reduce the amount awarded to the claimant by:

(a) Any amount the claimant owes the primary contractor; and

(b) Any amount included for tools or equipment not fabricated into the structure.

(7) If a claimant files two or more claims against the respondent relating to work performed under the same contract and if the claimant has not paid the respondent the full amount of the contract, the amount awarded on each claim will be reduced on a pro rata basis. A proposed or final order may not be issued on a claim until all claims involving the claimant and the respondent filed within the same 90-day period are ready for an order.

(8) If an action is filed to enforce a lien that is the subject of a claim, the agency shall send notice to the claimant that:

(a) The claimant has the right to request a stay of the proceedings until the agency's processing of the claim is complete;

(b) The agency will hold the claim open for 60 days from the date of the notice to allow the claimant to obtain a stay or to file a counter-suit or complaint in the foreclosure action; and

(c) The agency may close the claim under section (11) of this rule if the agency does not receive evidence within 60 days from the date of the notice:

(A) That claimant obtained a stay; or

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(B) That claimant filed the claim as a counter-suit or complaint in the court.

(9)(a) Upon timely receipt of evidence that claimant obtained a stay, the agency will resume processing the claim.

(b) Upon timely receipt of evidence that claimant filed a counter-suit or complaint in the court under paragraph (8)(c)(B) of this rule, the agency shall suspend process the claim and send notice to the claimant of the requirements of OAR 812-004-0520(3). Further processing of the claim shall be under OAR 812-004-0520.

(10) Time limitations in this rule supersede conflicting time limitations in OAR 812-004-0520.

(11) The agency may close a construction lien claim under OAR 812-004-0260 if the agency does not receive evidence that claimant obtained a stay or filed a counter-suit or complaint required under subsection (8)(c) of this rule within the time limitation in the notice required under section (8) of this rule.

(12) If a construction lien claim involves the same facts and issues as any other open claim, the agency shall process the claims together.

Stat. Auth.: ORS 87.057, 87.058, 670.310, 701.145 & 701.235
Stats. Implemented: ORS 87.058 & 701.145

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1981, f. & ef. 3-11-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0069; 1BB 1-1985(Temp), f. & ef. 2-7-85; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0046; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0220; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-004-0590

Referral of Claim to Arbitration or Contested Case Hearing or Removal to Court

(1) If a hearing on a claim is conducted by the Office of Administrative Hearings:

(a) The hearing shall be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing shall be held as a contested case hearing under OAR 137-003-0501 to 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the claim makes a timely written request under section (4) of this rule that the claim be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the claim be heard as a contested case.

(2) Subject to section (3) of this rule, a claim shall be decided in court if:

(a) The claimant files a complaint in court that alleges the elements of the claim in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the claim and that allows the claimant to file a response alleging the elements of the claim.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limitation in this rule constitutes waiver of the right to have the claim decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery shall be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a claim be heard as a contested case filed under subsection (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery shall be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(b) A referral of a claim to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the claim be heard as a contested case under subsection (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the claim.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (4) of this rule or a copy of a

filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the claim being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the claimant in a claim does not seek \$1,000 or more, a hearing on the claim may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the claim under ORS 701.139 to 701.180 is at issue; or

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the claim.

(8) The amendments to this rule that became effective on or after July 1, 2002 apply to a claim that is referred to the Office of Administrative Hearings after July 1, 2002.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002, f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-005-0100

Notice of Intent to Take Action

Except as provided under authority of ORS 701.135(2), if the agency intends to revoke or suspend a license, or assess a civil penalty, it shall issue and serve on the respondent a notice of intent to take an action, giving the opportunity for hearing. The notice may include the statement that an answer to the assertions or charges will be required.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183.413, 183.415, 183.470 & 701.102

Hist.: 1BB 7-1980(Temp), f. & ef. 11-4-80; 1BB 8-1980, f. & ef. 12-9-80; 1BB 2-1981, f. & ef. 6-4-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-11-080; 1BB 4-1985, f. & ef. 12-8-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 6-1997, f. & cert. ef. 11-26-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; Renumbered from 812-005-0000(1)(a), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-005-0110

Hearing Request

A hearing request, and answer when required, shall be made in writing to the agency by the respondent or the respondent's attorney. An answer shall include:

(1) An admission or denial or each factual matter alleged in the notice.

(2) A short and plain statement of each relevant defense the respondent may have.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183.413, 183.415 & 701.102

Hist.: 1BB 7-1980(Temp), f. & ef. 11-4-80; 1BB 8-1980, f. & ef. 12-9-80; 1BB 2-1981, f. & ef. 6-4-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-11-080; 1BB 4-1985, f. & ef. 12-8-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 6-1997, f. & cert. ef. 11-26-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; Renumbered from 812-005-0000(1)(b), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-005-0120

Default Orders

If the agency issues a notice of intent to take an action and no answer or written request for hearing is received by the agency within 21 days of the date of mailing the notice, the agency may issue a default order.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 183.415, 701.102 & 701.135

Hist.: 1BB 7-1980(Temp), f. & ef. 11-4-80; 1BB 8-1980, f. & ef. 12-9-80; 1BB 2-1981, f. & ef. 6-4-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-11-080; 1BB 4-1985, f. & ef. 12-8-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 6-1997, f. & cert. ef. 11-26-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; Renumbered from 812-005-0000(1)(c), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-005-0130

Hearing

If the agency issues a notice of intent to take an action and an answer or a written request for hearing is timely received, the agency will set an

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812-005-0500

Form of Complaint Regarding Public Contracts

(1) A person providing information to the agency must submit the information on a form provided by the agency if the information is submitted for purposes of:

(a) ORS 701.227 alleging that a contractor failed to pay a person who supplied labor or materials within 60 days after the date when the contractor received payment; or

(b) ORS 279C.590, in accordance with the subcontractor disclosure requirements pursuant to ORS 279C.370.

(2) The agency may require the use of the most recent version of a form submitted under section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.135, 701.235 & 701.227

Stats. Implemented: ORS 701.135, 701.227 & 279C.590

Hist.: CCB 5-2000(Temp), f. & cert. ef. 5-9-00 thru 11-4-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2002, f. & cert. ef. 3-1-02; Renumbered from 812-005-0003, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to use a written contract as required by ORS 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(13) Failure to conform to information provided on the application in violation of ORS 701.075(4), issuance of a \$1,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application.

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130, the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(8), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(15) Failure to comply with any part of ORS chapters 316, 656, or 657, ORS 701.035, 701.075, or section 3, chapter 432, Oregon Laws 2005, as authorized by ORS 701.100, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.135, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840:

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and
(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to

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six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a claim with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.055(11)(a), failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of ORS 701.135(1)(f), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992
Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.100, 701.135, 701.175, 701.227, 701.992 & section 3, chapter 432, Oregon Laws 2005
Hist.: IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; IBB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; ; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-006-0012

Testing Requirements

(1) The agency shall arrange for the development and administration of a test covering the topics listed in OAR 812-006-0060.

(2) No business may be licensed unless the business' responsible managing individual has:

(a) Passed a test approved by the agency with a passing score approved by the agency; or

(b) Documented an exemption to the testing requirements to the agency's satisfaction under OAR 812-006-0020.

(3) A person seeking to take the test shall:

(a) Pay any fees required by the test administrator;

(b) Provide approved government-issued picture identification to the test administrator;

(c) Pay for any state-certified interpreter needed to take the test; and

(d) Complete the test within a time limit approved by the agency.

(4) A person taking the test shall be allowed to use an Oregon Contractor's Reference Manual during the test.

(5) A person taking the test shall not:

(a) Retake the same version of the test on consecutive attempts; and

(b) Be accompanied by anyone while taking the test, except a state-certified interpreter.

(6) After the test is completed, a person shall not review the test questions or answers.

(7) There are no reciprocal agreements with other states or organizations that test contractors.

Stat. Auth.: ORS 670.310, 701.235 & 701.280

Stats. Implemented: ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2001(Temp), f. & cert. ef. 5-18-01 thru 11-13-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-006-0015

Testing Subversion

(1) Testing subversion is the use of any means to alter the results of a test to cause the results to inaccurately represent the competency of an examinee. Testing subversion includes, but is not limited to:

(a) Communication between examinees inside the testing room;

(b) Giving or receiving any unauthorized assistance on the test while the test is in process;

(c) Having any printed or written matter or other devices except the Oregon Construction Contractor's Reference Manual in the examinee's possession during the test;

(d) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured test questions or other secured examination material prior to, during or after the administration of the examination;

(e) Copying another examinee's answers or looking at another examinee's materials while a test is in process;

(f) Permitting anyone to copy answers to the test;

(g) Copying or removing any test questions from the testing area;

(h) Allowing another person to take the test in the examinee's place;

(i) Writing notes or questions in the Oregon Construction Contractor's Reference Manual during the test; or

(j) Leaving the room during the test.

(2) At the discretion of the agency or its designees, if there is evidence of testing subversion by an examinee prior to, during, or after the administration of the test, one or more of the following may occur:

(a) The examinee may be denied the privilege of taking the test if testing subversion is detected before the administration of the test;

(b) If the testing subversion detected has not yet compromised the integrity of the test, such steps as are necessary to prevent further testing subversion shall be taken, and the examinee may be permitted to continue with the test;

(c) The examinee may be requested to leave the testing facility if testing subversion is detected during the test. If the examinee does not leave the facility, the examinee will be deemed a trespasser;

(d) The examinee's test results may be invalidated and the application fee forfeited; or

(e) The examinee may not be allowed to sit for an examination for up to one year.

(3) If testing subversion is detected after the administration of the test, the agency or its designee shall make appropriate inquiry to determine the facts concerning the testing subversion and the agency or its designee may take any of the actions described in this rule.

Stat. Auth.: ORS 670.310, 701.235 & Sec. 2, Ch. 432, OL 2005

Stats. Implemented: Sec. 2, Ch. 432, OL 2005

Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-006-0030

Education Provider Approval

(1) No education shall meet the requirements of section 2, chapter 432, Oregon Laws 2005 unless it is offered by a provider approved by the agency.

(2) To receive agency approval, individuals and organizations shall make application and sign an agreement with the agency prior to offering the 16 hours of education.

(a) The provider application shall include, but will not be limited to, provisions for:

(A) Recording the name, address, and contact information, and name of responsible administrator of the provider.

(B) Submitting instructor resumes or work summaries that demonstrate that all its instructors have at least two years experience either teaching adults or working in subject areas outlined in the Oregon Contractors Reference Manual.

(b) No provider may instruct any part of the 16-hour course until there is a fully executed agreement.

(c) A provider must comply at all times with the following requirements:

(A) The provider will provide 16-hours of instruction which will exclude registration and breaks.

(B) The provider will verify that each student taking the 16-hour course has a current agency-approved manual.

(C) The provider will instruct using all the approved curriculum and the approved course manual.

(D) The provider will send electronic course completion records to the agency in a format approved by the agency and keep course completion records for a minimum of five years.

(E) The provider will communicate law changes and program procedural changes sent to them in writing from the agency to the provider's instructors and will implement these changes within 30 business days.

(F) The provider will only use approved instructors who have at least two years total experience either teaching adults or working in the instructor's subject area or a combination of the two.

(G) The provider will request and receive in writing agency approval of all instructors at least 10 business days before instructor is scheduled to teach.

ADMINISTRATIVE RULES

(H) The provider will provide a mechanism for students to contact their instructor(s) outside of class for a minimum of one hour per week for 90 days from date of enrollment in course.

(I) The provider will give all students information about how to contact instructors and hours of availability before the end of the 16-hour course.

(J) The provider will comply with all applicable federal and state laws.

(K) The agency may publicize a provider's test passage rate for its students.

(3) The agency may revoke a provider's right to offer classes and terminate the agreement of a provider at any time the provider fails to:

- (a) Meet any requirement of the agreement; and
- (b) Comply with administrative rules in 812-006-0030.

(4) The agency may revoke a provider's right to offer classes and terminate the agreement of a provider:

(a) Whose students do not pass the agency test on their first attempt at least 70 percent of the time after the provider has provided classes for three months, and

(b) That fails to maintain the 70 percent first attempt test passing rate during the remaining period of the agreement.

(c) Who acquires or attempts to acquire agency test questions by unauthorized means, including but not limited to, photographing, photocopying or videotaping any part of the agency's test or paying or offering incentives to individuals or business entities to write down, photograph or videotape any part of the agency's test.

Stat. Auth.: ORS 701.075 & 701.280

Stats. Implemented: ORS 701.075 & 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 1-2005(Temp), f. & cert. ef. 1-5-05 thru 7-1-05; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-008-0110

Prescribed Fees

The following prescribed fees are established:

- (1) Application to become certified, \$50.
- (2) Test, first attempt, \$50.
- (3) Test, each sitting to retake one or more sections, \$25.
- (4) Certification, \$75 per year.
- (5) Certification renewal (two years), \$150.
- (6) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) Except as set forth in subsection (6)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of \$40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350

Stats. Implemented: ORS 293.445, 701.350 & 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-13-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-009-0160

Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) Subject to sections (7) and (8) of this rule, if a claim is referred for a hearing to determine the amount, if any, that a respondent owes a claimant, the administrative law judge may not issue an order in an amount greater than the total amount claimant alleges respondent owes claimant in:

(a) The most recent declaration of damages or amended declaration of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The Statement of Claim filed under OAR 812-004-0340, if no declaration of damages was filed.

(3) If a claim is referred for a hearing to determine whether any portion of a judgment is within the jurisdiction of the agency, the administra-

tive law judge may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the claimant or dismiss the claim.

(5) An administrative law judge shall consider any amounts due to the respondent from the claimant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in section (8) of this rule and OAR 812-009-0200, an administrative law judge shall issue a proposed and final order under OAR 137-003-0645(4) that shall automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 812-009-0400;

(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR 137-033-0655 (1);

(c) The agency issues an amended proposed order under OAR 137-003-0655 (3); or

(d) The agency notifies the parties and the administrative law judge that the agency will issue the final order.

(7) If a limitation on damages under section (2) of this rule is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

(8) If a limitation of damages under section (2) of this rule is based on a declaration of damages or Statement of Claim that does not include a request for an award of the claim processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the claim processing fee paid by the claimant under OAR 812-004-0110 and 812-004-0400.

(9) If a claim is referred for a hearing solely to determine if the Board has jurisdiction over the claim and the administrative law judge finds that the Board has jurisdiction over the claim, the administrative law judge shall issue an intermediate order that the Board resume processing the claim. The Board may accept the order to resume processing or issue a proposed and final order to dismiss the claim for lack of jurisdiction.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-009-0320

Entry of Agency Evidence

Contested case enforcement hearings may be held before an administrative law judge. The agency's evidence may be entered into the record by the administrative law judge, or by another representative of the agency.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-009-0400

Exceptions to Agency Orders, Claims

(1) After a contested case claim hearing, claimant or respondent may file written exceptions if they believe that the administrative law judge has made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2)(a) To be considered, the first exceptions must be received by the agency within 21 days of the date of mailing the proposed order.

(b) If one party files timely exceptions, the opposing party may also file exceptions if those exceptions are received by the agency within 14 days after the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 812-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board's Appeal Committee at a regular meeting of the committee.

(4) The exceptions must substantially conform to the requirements of OAR 812-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to 15 days before the Committee meeting date if the original exceptions were timely received.

ADMINISTRATIVE RULES

(6)(a) If a party filing exceptions intends to rely on oral testimony given at the hearing, the party shall include in the exceptions:

(A) A notice of the intention to rely on oral testimony; and

(B) A request for a copy of the tape of the hearing with the fee required under OAR 812-001-0160.

(b) After receipt, exceptions containing a notice of an intention to reply on oral testimony under subsection (6)(a) of this rule, the agency shall send a copy of the tape of the hearing to the party that did not file the exceptions without charge unless that party also filed exceptions that included a notice of intention to rely on oral testimony.

(c) The party that filed the notice of intention to rely on oral testimony shall prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions. The party must deliver the transcript to the agency 21 days after the date the agency mails the tape of the hearing to the party.

(d) The agency shall mail a copy of the transcript to the other party to the claim.

(7)(a) The party opposing the exceptions may prepare a typed transcript of the portions of the hearing testimony that the party contends support opposition to the exceptions. The opposing party must deliver the transcript to the agency 21 days after the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency shall mail a copy of the transcript prepared under section (7) of this rule to the party that filed the exceptions.

(8) The Appeal Committee may refuse to consider evidence of oral testimony submitted by a party if the party fails to comply with the requirements of sections (6) and (7) of this rule.

(9) Claimant and respondent may appear before the members of the Committee to argue for or against the proposed order.

(10) The agency may waive or extend the time limitations in sections (5) through (7) of this rule on a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.460 & 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-009-0420

Exceptions to Agency Orders, Enforcement

(1) After a contested case enforcement hearing, the respondent may file written exceptions if the respondent does not believe the proposed order is supported by the evidence received at the hearing. To be considered, exceptions must be received by the agency within 21 days of the date of mailing of the proposed order. If written exceptions are not timely received, the agency may issue a final order as proposed.

(2) If exceptions are timely received, the matter will be set for consideration by the Appeal Committee at its next meeting for which agenda space is available. Written argument in opposition to the proposed order will be accepted up to 15 days before the Appeal Committee meeting date if the original exceptions were timely received. The agency may waive the 15 day requirement.

(3) The respondent may appear before the members of the Appeal Committee to argue against the proposed order, if the agency receives written notice of intent to do so before the Appeal Committee meeting date. Oral argument will be permitted only if the original exceptions were timely received.

Stat. Auth.: ORS 183.310, 670.310, 701.235, 701.280 & 701.992

Stats. Implemented: ORS 183.460 & 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

812-009-0430

Form of Exceptions to Agency Order in a Claim

(1) Exceptions to an agency order filed by a party to a claim under OAR 812-009-0400 or a respondent under 812-009-0420 shall conform to the following requirements:

(a) Exceptions shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions shall be titled "Exceptions to Proposed Order." If the exceptions are filed in a claim, the first page shall show the claim number, the names of the parties to the claim and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page shall show the name of the respondent at the top of the page.

(c) Each page of the exceptions shall be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information shall be included in the exceptions:

(A) The pages on which the finding of fact appear and the number, if any of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the finding of fact is not supported by the evidence in the record.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information shall be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information shall be included in the exceptions:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony shall be included in the exceptions.

(h) The party submitting the exceptions shall sign and date the exceptions.

(2) The Appeal Committee may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183, 701.145 & 701.147

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06

Department of Agriculture, Oregon Sheep Commission Chapter 644

Adm. Order No.: SHEEP 1-2005

Filed with Sec. of State: 12-15-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 5-1-05

Rules Amended: 644-010-0010

Subject: The amended rule will increase the assessment rate on the sale of wool through commercial channels from one and one half cent per pound to two cents per pound, effective January 1, 2006.

Rules Coordinator: Richard Kosesan—(503) 370-7024

644-010-0010

Assessments

(1) Any first purchaser shall deduct and withhold an assessment of two cents (\$.02) per pound from the price paid to the producer thereof, after January 1, 2006, for all wool produced in Oregon.

(2) All casual sales of wool made by the producer direct to the consumer and in an amount less than 200 pounds in any calendar year shall be exempt from the assessment.

(3) Any person (including producers eligible for exemption from assessment as casual sales) may donate to the Commission. Such authorization may be made by so indicating and signing such donation on the payment slips prepared by the first handler (who will include such donations in the quarterly report).

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.304(2) & 576.325

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SC 1-1985, f. & ef. 11-20-85; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2005, f. 12-15-05 cert. ef. 1-1-06

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

Adm. Order No.: BCD 26-2005

Filed with Sec. of State: 12-15-2005

ADMINISTRATIVE RULES

Certified to be Effective: 1-1-06

Notice Publication Date: 5-1-05, 6-1-05

Rules Amended: 918-090-0000, 918-090-0010, 918-090-0200, 918-090-0210

Subject: This rulemaking moves the current experience requirements for licensed specialty code inspectors into the application process creating one location for all license requirements.

Rules Coordinator: Nicole M. Jantz—(503) 373-0226

918-090-0000

Purpose and Scope

(1) These rules establish registration requirements for businesses that perform specialty code inspections or plan reviews, and establish license requirements for individuals who perform specialty code inspections or plan reviews who are not employed by the division or a municipality.

(2) Nothing in these rules is meant to change existing requirements for individual certification to perform plan reviews and inspections under OAR chapter 918, division 098, 281, 695, or 780.

(3) For the purpose of these rules “plan reviewer” and “plans examiner” have the same meaning.

(4) Persons approved and certified by the division who perform amusement ride or boiler inspections under the authority of ORS Chapters 460 and 480 and rules adopted thereunder are not required by OAR chapter 918, division 090 rules to be licensed or registered.

Stat. Auth: ORS 455.457

Stats. Implemented: ORS 455.455 & 455.457

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 26-2005, f. 12-15-05, cert. ef. 1-1-06

918-090-0010

Definitions

As used in OAR chapter 918, division 090, unless the context requires otherwise:

(1) “Employed” means working directly for an employer as an employee and completing a withholding exemptions certificate required by ORS 316.162 to 316.212.

(2) “Employee” means an individual who has completed a withholding exemptions certificate required by ORS 316.162 to 316.212.

(3) “Designated Licensed Plan Reviewer” means a licensed plan reviewer authorized by the division or a municipality to perform simple one- and two-family plan reviews directly for a permit applicant on their behalf.

(4) “Division” is defined in OAR 918-001-0005.

(5) “Inspector” is a person appropriately certified under OAR chapter 918, division 098, 281, 695 or 780 who inspects work performed under the state specialty codes and approves the required inspections.

(6) “Licensed Plan Reviewer or Inspector” is an individual who is licensed to perform specialty code inspections or plan reviews under ORS 455.457 and these rules.

(7) “Limited Licensed Plan Reviewer or Inspector” is an individual who:

(a) Is licensed to perform specialty code inspections or plan reviews under ORS 455.457 and these rules;

(b) Contracts directly with a municipality or the division to perform specialty code inspections or plan reviews on a temporary basis to backfill a vacant position or to supplement existing employees;

(c) Works under the authority of a designated state certified building official employed by a municipality or the division; and

(d) Whose contract or contracts to perform plan reviews and inspections do not exceed \$10,000 annually.

(8) “Municipality” is defined in ORS 455.010.

(9) “Person” means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other entity, public or private, however organized.

(10) “Plan Reviewer” is a person who is appropriately certified under OAR chapter 918, division 098, 281 or 780 who reviews plans for compliance with the state specialty code(s) and approves the plans for permit and construction.

(11) “Registrant” means those businesses registered with the division under OAR chapter 918, division 090 rules to engage in the business of performing plan review and inspection services.

(12) “Specialty Code” is defined in ORS 455.010.

Stat. Auth: ORS 455.455, 455.457, 455.459, 455.461 & 455.463

Stats. Implemented: ORS 455.455, 455.457, 455.459, 455.461 & 455.463

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 26-2005, f. 12-15-05, cert. ef. 1-1-06

918-090-0200

Licensing Scope

(1) An individual licensed before July 1, 2005 may perform specialty code plan reviews or inspections under ORS 455.457 and these rules as follows:

(a) Licensed Plan Reviewer or Inspector:

(A) performs specialty code plan reviews or inspections not as an employee of a municipality or the division; or

(B) be Employed to perform plan reviews or inspections for one or more municipalities, but also may performs plan reviews or inspections as other than an employee of a municipality or the division.

(b) Limited Licensed Plan Reviewer or Inspector:

(A) Contracts directly with a municipality or the division to perform specialty code inspections or plan reviews on a temporary basis to backfill a vacant position or supplement existing employees; and

(B) Works under the authority of the designated state certified building official who is a municipal or state employee.

(2) An individual licensed on or after July 1, 2005 may perform specialty code plan reviews or inspections as outlined in Section (1), but are restricted in scope of work for commercial or residential based on experience demonstrated under OAR 918-090-0210.

(3) An employee of a municipality or the division need not be licensed while performing plan reviews or inspections on behalf of another municipality while in the official capacity as an employee of the division or municipality.

Stat. Auth: ORS 455.457

Stats. Implemented: ORS 455.457

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 26-2005, f. 12-15-05, cert. ef. 1-1-06

918-090-0210

Licensing Application Requirements

(1) Licensed Plan Reviewer or Inspector Applicants must submit an application on division-supplied forms that shall include a listing of current specialty code certifications along with a \$100 application fee. The applicant shall pass a division-approved examination on the substance and intent of the laws and rules related to the licensure of plan reviewers and inspectors. If an applicant fails to take the examination within 60 days of being approved to do so, the applicant must reapply. Applicants who fail the division approved examination shall be required to pay a \$25 fee and wait 30 days before retaking the required examination, but shall not make more than three attempts in a 12-month period.

(2) Limited Licensed Plan Reviewer or Inspector Applicants must submit an application on a division-supplied form, that shall include a listing of current specialty code certifications, along with a \$50 application fee. The applicant shall identify the building inspection programs for which they will be working. No examination is required for the limited plan reviewer and inspector license.

(3) Applicants shall first apply for and obtain the required specialty code certifications under OAR chapter 918, division 098, 281, 695, or 780, prior to becoming a Licensed Plan Reviewer or Inspector or a Limited Licensed Plan Reviewer or Inspector under these rules.

(4) Beginning July 1, 2005, individuals applying to be a Licensed Plan Reviewer or Inspector, or a Limited Licensed Plan Reviewer or Inspector must demonstrate a minimum level of experience to the division. An individual’s scope of work will be restricted based on certification and experience. The division will designate the scope of work allowed based on an applicants experience. License applicants must obtain the appropriate certificate recognized under OAR 918-098-1010 through 918-098-1220. In addition to obtaining the appropriate certification under Chapter 918, division 098, license applicants must demonstrate to the division the following:

(a) To perform plan reviews and inspections on residential structures either

(A) Two years of construction or inspection related experience or its equivalent; or

(B) An approved one year inspection-related program and one year of construction or inspection-related experience; or

(C) A degree from a division approved two year inspection related program or its equivalent.

(b) To perform plan reviews and inspections on all structures either

(A) An Oregon registration as an architect, an Oregon certified professional engineer, or a Bachelor or Master degree in architecture, civil or structural engineering; or

(B) 4 years diversified experience designing commercial structures;

or

(C) 4 years diversified experience as a plans examiner in another jurisdiction reviewing commercial structures for compliance with a recognized code for building construction.

ADMINISTRATIVE RULES

(5) Licensed Plan Reviewer or Inspector, and Limited Licensed Plan Reviewer or Inspector must renew every two years on division-approved forms, submit the form with payment to the division before the license expiration date, meet continuing education requirements outlined in subsection (c), and update or change any information that is no longer current.

(a) Licensed Plan Reviewer or Inspector must pay a \$50 renewal fee.

(b) Limited Licensed Plan Reviewer or Inspector must pay a \$25 renewal fee.

(c) Licensed Plan Reviewer or Inspector, and Limited Licensed Plan Reviewer or Inspector must also meet continuing education requirements as determined by the division related to legislative changes in the substance and purpose of ORS 455.455 through 455.467, and the rules adopted thereunder.

(d) An individual who submits a license renewal after the expiration date must reapply for a new license and meet all requirements of a new applicant.

(6) A Licensed Plan Reviewer or Inspector, and Limited Licensed Plan Reviewer or Inspector license is valid only for the specialty code certifications held by the licensee. A licensed individual must work within the scope of the license or may be subject to sanctions under OAR 918-098-1500. The license shall be suspended or revoked if the licensee no longer holds at least one current certification as a plans examiner or inspector.

(7) Individuals denied licensure may appeal this decision to the director and request contested case procedures under ORS Chapter 183.

Stat. Auth.: ORS 455.457

Stats. Implemented: ORS 455.457

Hist.: BCD 16-2000, f. 8-4-00, cert. ef. 10-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 29-2002, f. & cert. ef. 10-1-02; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 26-2005, f. 12-15-05, cert. ef. 1-1-06

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

Adm. Order No.: FCS 4-2005

Filed with Sec. of State: 12-8-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Adopted: 441-910-0092, 441-910-0093

Rules Amended: 441-910-0000, 441-910-0010, 441-910-0020, 441-910-0030, 441-910-0040, 441-910-0050, 441-910-0080, 441-910-0090, 441-910-0095, 441-910-0110, 441-910-0120

Rules Repealed: 441-910-0060, 441-910-0070, 441-910-0130

Rules Ren. & Amended: 441-910-0100 to 441-910-0055

Subject: The new rules set maximum fees that debt consolidation agencies may charge to consumers, implementing legislation enacted in the 2005 session. The amendments update and clarify existing rules. Three rules are being repealed as they are no longer deemed necessary.

Rules Coordinator: Berri Leslie—(503) 947-7478

441-910-0000

Definitions

The definitions of terms used in OAR chapter 441, division 910, are:

(1) "Comprehensive counseling session" means an interview, other than for a bankruptcy pre-filing briefing or which does not concurrently result in a debt management plan, lasting a minimum of 45 minutes with a client's full and active participation covering the following topics:

- Causes and conditions of the client's current financial situation;
- The client's goals and responsibilities;
- Options available to the client;
- Development of a spending plan or budget; and
- Possible referrals to outside organizations or agencies.

(2) "Fee" means a sum of money paid by the client that is retained by the debt consolidating agency for services rendered or to be rendered, regardless of the term used by the debt consolidating agency for this sum of money.

(3) "Fidelity bond" means insurance coverage against losses due to employee dishonesty.

(4) "For-profit debt consolidating agency" means a debt consolidating agency other than a non-profit debt consolidating agency.

(5) "Non-profit debt consolidating agency" means an organization which is exempt from taxation under section 501(c)(3) of the **Internal Revenue Code of 1954**, as amended and in effect on April 1, 1983, and which actually operates as a non-profit organization.

(6) "Surety bond" means insurance coverage against losses due to failure in performance of required duties or responsibilities.

(7) "Trust account" means an account held in a financial institution into which all funds received or handled by the debt consolidating agency on behalf of the agency's clients are initially deposited.

(8) "Voluntary contribution" means a payment of money by a creditor to support the debt consolidating agency's services.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.632

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0000; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0010

Certificate of Registration

(1) The director may issue a certificate of registration to a debt consolidating agency upon receipt of a completed application and the required fee specified in ORS 697.632.

(2) Application for registration shall be on forms provided by the director and shall include:

(a) The information set forth in ORS 697.632(1)(a) through (f);

(b) Telephone and fax numbers of the business and all offices;

(c) All office locations;

(d) Trust and operating account information, including account number, name on the account, and name and address of the financial institution or institutions;

(e) A copy of the fidelity bond or the original surety bond required by ORS 697.642;

(f) A copy of any disclosure documents, agreements or contracts to be signed by a client; and

(g) A copy of the applicant's proposed fee schedule.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0005; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 5-2000, f. & cert. ef. 3-9-00; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0020

Duration of Registration

(1) A registration or renewal of a registration shall be issued on the date all qualifications are met.

(2) The expiration date will be the last day of the calendar month two years after the date the certificate or renewal of registration was issued.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; DC 17-1984, f. & ef. 5-1-84; Renumbered from 814-106-0010; FCS 5-2000, f. & cert. ef. 3-9-00; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0030

Renewal

An application for renewal of a certificate of registration must be submitted before the renewal date on a form provided by the director and include:

(1) Payment of the fee specified in ORS 697.632;

(2) Any change in information that has not already been filed with the director under OAR 441-910-0050;

(3) A current list of agents including desk names; and

(4) A copy of the current fee schedule.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.632(2)

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0015; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0040

Assumed Business Name

Before registration or renewal of registration of a debt consolidating agency:

(1) An assumed business name used by an individual or a corporation must be registered with the Corporation Division of the Oregon Secretary of State.

(2) A corporation must be registered to do business in Oregon with the Secretary of State.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.632(1)

Hist.: DC 2-1984, f. & ef. 1-16-84; DC 11-1984, f. & ef. 4-17-84; Renumbered from 814-106-0025; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0050

Update Filings

(1) At least ten days prior to a change in ownership, address, bonding company, deposit information for any for-profit debt consolidating agency

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that used a deposit in lieu of a surety bond, or information relating to the trust or operating account, the debt consolidating agency shall notify the director in writing of the changes.

(2) No later than seven days after learning of an arrest of any debt consolidating agency owner, supervisor, or employee on a charge involving fraud, the debt consolidating agency shall notify the director in writing of the known allegations.

Stat. Auth.: ORS 697
Stats. Implemented: ORS 697.632(2)

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0030; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0055

Audit Charges

(1) Audit charges shall be paid upon receipt of the invoice.

(2) The rate of charge payable by a debt consolidating agency is \$60 an hour for each person used in performance of the audit conducted under ORS 697.732.

(3) Notwithstanding section (2) of this rule:

(a) If the director's examiner is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$60 per hour plus actual cost to the director for travel and subsistence for each such examiner;

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the debt consolidating agency is the actual cost to the director for the contract consultant.

Stat. Auth.: ORS 697.632
Stats. Implemented: ORS 697.732

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0055; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; Renumbered from 441-910-0100, FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0080

Joint Trust Accounts

An account in a financial institution may not be used jointly as a trust account and an operating account.

Stat. Auth.: ORS 697
Stats. Implemented: ORS 697.682

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0045; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0090

Voluntary Contributions

(1) A debt consolidating agency may not withhold a "voluntary contribution" from the amount remitted to a client's creditor without first giving the creditor notice in writing.

(2) A debt consolidating agency may not withhold more than 15 percent of a monthly payment to a creditor as a "voluntary contribution."

(3) Any change in the percentage or termination of the "voluntary contribution" must be authorized by the creditor.

(4) A creditor's decision to make or not to make a "voluntary contribution" shall have no bearing on the priority of that creditor's accounts or the amount paid to that creditor.

(5) A creditor shall be informed of items in sections (1) through (4) of this rule before authorizing the contribution.

Stat. Auth.: ORS 697
Stats. Implemented: ORS 697.692(3)

Hist.: DC 2-1984, f. & ef. 1-16-84; DC 11-1984, f. & ef. 4-17-84; Renumbered from 814-106-0050; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0092

Fee for General Counseling

(1) A non-profit debt consolidating agency may submit to the director a written request to charge a fee not to exceed \$35 for a comprehensive counseling session.

(2) The request must demonstrate the need to charge the fee by including:

(a) The debt consolidating agency's total fund balance or net worth for the prior two fiscal years;

(b) Projected costs of providing comprehensive counseling sessions;

(c) Any sources of revenue to cover the projected costs of providing comprehensive counseling sessions; and

(d) Any other information the debt consolidating agency deems relevant for the director's decision.

(3) A debt consolidating agency must consider the consumer's ability to pay the fee described in section (1) of this rule, and if appropriate, reduce or waive the fee.

(4) A debt consolidating agency may not charge the set-up fee described in ORS 697.692 to any client who has paid the counseling fee described in section (1) of this rule.

(5) A debt consolidating agency may charge no more than one fee described in section (1) of this rule to any client in any 90 day period.

(6) Any approval of the fee will be made in writing by the director and is effective until approval is cancelled or withdrawn by the director.

Stat. Auth.: ORS 697.692
Stats. Implemented: ORS 697.692
Hist.: FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0093

Fee for Bankruptcy Pre-filing Briefing

(1) A non-profit debt consolidating agency that has been approved by the Executive Office for U.S. Trustees to provide the briefing described in 11 U.S.C. 109(h)(1) may submit a written request to charge a fee:

(a) Not to exceed \$85 per individual per briefing, provided that the briefing is conducted face to face; or

(b) Not to exceed \$50 per individual per briefing for all other methods of conducting the briefing.

(2) The request must:

(a) Describe the briefing process or processes to be used by the debt consolidating agency; and

(b) Document approval by the Executive Office for U.S. Trustees to conduct the briefings.

(3) The debt consolidating agency must consider the individual's ability to pay the fee described in section (1) of this rule, and if appropriate, reduce or waive the fee.

(4) An additional fee may not be charged for briefing materials provided to the individual.

(5) Any approval of the fee will be made in writing by the director and is effective until approval is cancelled or withdrawn by the director.

Stat. Auth.: ORS 697.692
Stats. Implemented: ORS 697.692
Hist.: FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0095

Fee for Education Class

(1) At least 30 days prior to conducting a new category of education classes, a debt consolidating agency may submit a written request for approval of fees to be charged.

(2) The request shall enumerate all expenses by category and include a description of the purpose of the class and a description of all materials for which the debt consolidating agency seeks to charge consumers.

(3) Expenses for which approval is sought must not exceed the actual cost for materials and services.

(4) If the expenses for which approval is sought are associated with a federally or state mandated class, the debt consolidating agency must identify the class in its request and indicate whether or not the agency has been certified to provide the education.

(5) Approval by the Director shall be made in writing for each category of class and shall continue for each such class taught until cancelled or withdrawn by the Director.

(6) Prior to making any substantive changes to materials used in an approved class or any increase in fees charged, the debt consolidating agency must submit the proposed changes to the Director for review and approval.

Stat. Auth.: ORS 697.632
Stats. Implemented: ORS 697.692(5)
Hist.: FCS 5-2000, f. & cert. ef. 3-9-00; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0110

Claims

(1) A person having a claim against a debt consolidating agency may notify the director. The notification must be in writing and include:

(a) Name, address, and telephone number of the claimant;

(b) Name, address, and telephone number of the debt consolidating agency;

(c) Amount of money involved;

(d) A brief statement of the nature of the claim; and

(e) A copy of the contract with relevant documents attached.

(2) If a court judgment is the basis for the claim, a copy of the judgment must be attached.

Stat. Auth.: ORS 697
Stats. Implemented: ORS 697.782

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0060; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

441-910-0120

Response to Claims

(1) A copy of a claim received by the director will be sent to the debt consolidating agency.

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(2) The debt consolidating agency must respond in writing to the director within 15 business days.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.732(1)

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0065; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 4-2005, f. 12-8-5, cert. ef. 1-1-06

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

Adm. Order No.: OSHA 4-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Amended: 437-002-0005, 437-002-0100, 437-002-0260, 437-002-0280, 437-002-0300

Subject: Federal OSHA published in the September 13, 2005 Federal Register a final rule to delete from its standards three references to national consensus standards and two references to industry standards that are outdated. Deleting these references does not reduce employee protections. By eliminating the outdated references OSHA clarifies employer obligations under the applicable OSHA standards and reduces administrative burdens on employers and OSHA.

This final rule updates standards on hazardous materials, flammable and combustible liquids; general environmental controls, temporary labor camps; hand and portable powered tools and other hand held equipment, guarding of portable powered tools; welding, cutting, and brazing, arc welding and cutting; and special industries, sawmills. All in general industries standards.

Oregon OSHA adopts all these changes to remain at least as effective as Federal OSHA standards, with the exception of amending 1910.142 Temporary Labor Camps, which Oregon did not adopt. OAR 437-002-0142 Labor Camps, applies in Oregon.

Please visit OR-OSHA's web site: www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0005

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following Federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/98, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.1, Purpose and scope; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(2) 29 CFR 1910.2, Definitions; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(3) 29 CFR 1910.3, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(4) 29 CFR 1910.4, Amendments to this part; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(5) 29 CFR 1910.5, Applicability of standards; published 6/27/74, Federal Register, vol. 39, no. 125, pp. 23503-23504; amended 6/30/93, FR vol. 58, no. 124, p. 35308.

(6) 29 CFR 1910.6, Incorporation by reference; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23504; amended 2/10/84, FR vol. 49, no. 29, p. 5321; 3/7/96, FR vol. 61, no. 46, p. 9230; 3/23/99, FR vol. 64, no. 55, p. 13908; 9/13/05, FR vol. 70, no. 176, p. 53925.

(7) 29 CFR 1910.7, Definition and requirements for a Nationally Recognized Testing Laboratory; published 4/12/88, Federal Register, vol. 53, no. 70, pp. 12120-12125; and amended 5/11/88, FR vol. 53, no. 91, p. 16838.

NOTE: These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office.**

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 17-1988, f. & ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 4-2005, f. & cert. ef. 12-14-05

437-002-0100

Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the fol-

lowing federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/02, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.101 Compressed gases (General requirements), published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(2) 29 CFR 1910.102 Acetylene, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(3) 29 CFR 1910.103 Hydrogen, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 4/12/88, FR vol. 53, p. 12121; 8/6/90, FR vol. 55, no. 151, p. 32015; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9236.

(4) 29 CFR 1910.104 Oxygen, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 3/7/96, FR vol. 61, no. 46, p. 9237.

(5) 29 CFR 1910.105 Nitrous oxide, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9237.

(6) 29 CFR 1910.106 Flammable and combustible liquids, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 1/27/75, FR vol. 40, p. 3982; 6/2/75, FR vol. 40, p. 23743; 10/24/78, FR vol. 43, p. 49746; 11/7/78, FR vol. 43, p. 51759; 9/7/82, FR vol. 47, p. 39164; 9/12/86, FR vol. 51, p. 34560; 4/12/88, FR vol. 53, p. 12121; 8/6/90, FR vol. 55, no. 151, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9237; 9/13/05, FR vol. 70, no. 176, p. 53925.

(7) 29 CFR 1910.107 Spray finishing using flammable and combustible materials, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 9/12/80, FR vol. 45, p. 60704; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12121; 3/7/96, FR vol. 61, no. 46, p. 9237; amended with AO 3-2003, removed 1910.107, and Oregon note added, f. and ef. 4/21/03.

(8) 29 CFR 1910.108 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(9) 29 CFR 1910.109 Explosives and blasting agents, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49747; 9/12/80, FR vol. 45, p. 60704; 4/12/88, FR vol. 53, p. 12122; 2/24/92, FR vol. 57, no. 36, p. 6403; 3/29/93, FR vol. 58, no. 58, p. 16496; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9237; 6/18/98, FR vol. 63, no. 117, p. 33466.

(10) 29 CFR 1910.110 Storage and handling of liquefied petroleum gases, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49747; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12122; 6/20/90, FR vol. 55, p. 25094; 8/6/90, FR vol. 55, no. 151, p. 32015; 3/19/93, FR vol. 58, no. 52, p. 15089; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9237; 6/18/98, FR vol. 63, no. 117, p. 33466.

(11) 29 CFR 1910.111 Storage and handling of anhydrous ammonia, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49748; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12122; 3/7/96, FR vol. 61, no. 46, p. 9238; 1/8/98, FR vol. 63, no. 5, p. 1269; 6/18/98, FR vol. 63, no. 117, p. 33466; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(12) Reserved for 29 CFR 1910.112 (Reserved)

(13) Reserved for 29 CFR 1910.113 (Reserved)

(14) 29 CFR 1910.114 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(15) 29 CFR 1910.115 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(16) 29 CFR 1910.116 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(17) 29 CFR 1910.119 Process safety management of highly hazardous chemicals, published 2/24/92, Federal Register, vol. 57, no. 36, pp. 6403-6417; amended 3/4/92, FR vol. 57, no. 43, p. 7847; 6/1/92, FR vol. 57, no. 105, pp. 23060-1.

NOTE: Excepted rules adopted by reference by OR-OSHA by Admin. Order 6-1994 on 9/30/94.) Amended 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(18) 29 CFR 1910.120 Hazardous waste operations and emergency response, Interim Final Rules, published 12/19/86, Federal Register, vol. 51, no. 244, pp. 45663-45675; and amended 5/5/87, FR vol. 52, no. 85, pp. 16241-16243. Final Rules were published 3/6/89, FR vol. 54, no. 42, pp. 9294-9335; amended 4/13/90, FR vol. 55, no. 72, pp. 14072-14075; 4/18/91, FR vol. 56, no. 75, pp. 15832-15833; amended 8/22/94, FR vol. 59, no. 161, pp. 43270-43275; 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(19) 29 CFR 1910.121 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(20) 29 CFR 1910.122 Table of contents, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

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(21) 29 CFR 1910.123 Dipping and coating operations: Coverage and definitions, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(22) 29 CFR 1910.124 General requirements for dipping and coating operations, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909; amended with AO 4-2002, repeal (g)(2), and Oregon note added, f. and ef. 5/30/02.

(23) 29 CFR 1910.125 Additional requirements for dipping and coating operations that use flammable or combustible liquids, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13910.

(24) 29 CFR 1910.126 Additional requirements for special dipping and coating applications, published 3/23/99, Federal Register, vol. 64, no. 55, p. 13911.

NOTE: These standards are on file with the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: APD 19-1988, f. & ef. 11-17-88; APD 12-1989, f. & ef. 7-14-89; OSHA 22-1990, f. 9-28-90, cert. ef. 10-1-90; OSHA 3-1992, f. & cert. ef. 2-6-92; OSHA 3-1993, f. & cert. ef. 2-23-93; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 4-2002, f. & cert. ef. 5-30-02; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2004, f. & cert. ef. 9-15-04; OSHA 4-2005, f. & cert. ef. 12-14-05

437-002-0260

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/96, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.241 Definitions, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49750.

(2) 29 CFR 1910.242 Hand and portable powered tools and equipment, general, published 6/27/74, Federal Register, vol. 39, p. 23502.

(3) 29 CFR 1910.243 Guarding of portable powered tools, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49750; 2/10/84, FR vol. 49, p. 5323; 2/1/85, FR vol. 50, p. 4649; 3/7/96, FR vol. 61, no. 46, p. 9240; 9/13/05, FR vol. 70, no. 176, p. 53925.

(4) 29 CFR 1910.244 Other portable tools and equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 2/10/84, FR vol. 49, p. 5323.

These rules are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 10-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 4-2005, f. & cert. ef. 12-14-05

437-002-0280

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following Federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/97, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.251 Definitions, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/12/88, FR vol. 53, p. 12122; amended 4/11/90, FR vol. 55, no. 70, p. 13696; 3/7/96, FR vol. 61, no. 46, p. 9240.

(2) 29 CFR 1910.252 General Requirements, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 23073; 10/24/78, FR vol. 43, p. 49750; 2/10/84, FR vol. 49, p. 5323; 9/29/86, FR vol. 51, p. 34562; 4/11/90, FR vol. 55, no. 70, pp. 13696-13701; 3/7/96, FR vol. 61, no. 46, p. 9240; 1/8/98, FR vol. 63, no. 5, p. 1284.

(3) 29 CFR 1910.253 Oxygen-Fuel Gas Welding and Cutting, published 4/11/90, Federal Register, vol. 55, no. 70, pp. 13701-13709; 3/7/96, FR vol. 61, no. 46, p. 9241.

(4) 29 CFR 1910.254 Arc Welding and Cutting, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/28/75, FR vol. 40, p. 18426; 4/11/90, FR vol. 55, no. 70, pp. 13709-13710; 3/7/96, FR vol. 61, no. 46, p. 9241; 9/13/05, FR vol. 70, no. 176, p. 53925.

(5) 29 CFR 1910.255 Resistance Welding, published 4/11/90, Federal Register, vol. 55, no. 70, pp. 13710-13711.

These rules are on file with the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 232-1990, f. 9-28-90, cert. ef. 12-1-90; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 4-2005, f. & cert. ef. 12-14-05

437-002-0300

Adoption by Reference

In addition to and not in lieu of any other health and safety codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/99, and any subsequent amendments published in the Federal Register as listed below:

(1) Reserved for 29 CFR 1910.261 Pulp, Paper, and Paperboard Mills

(2) 29 CFR 1910.262 Textiles, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 23073; 2/10/84, FR vol. 49, p. 5324; 3/7/96, FR vol. 61, no. 46, p. 9241; 6/18/98, FR vol. 63, no. 117, p. 33467.

(3) 29 CFR 1910.263 Bakery Equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49765; 11/7/78, FR vol. 43, p. 51760; 3/7/96, FR vol. 61, no. 46, p. 9241.

(4) 29 CFR 1910.264 Laundry Machinery and Operations, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49765; 11/7/78, FR vol. 43, p. 51760.

(5) 29 CFR 1910.265 Sawmills, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 23073; 10/24/78, FR vol. 43, p. 49751; 11/7/78, FR vol. 43, p. 51760; 4/12/88, FR vol. 53, p. 12123; 8/6/90, FR vol. 55, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9241; 6/18/98, FR vol. 63, no. 117, p. 33467; 9/13/05, FR vol. 70, no. 176, p. 53925.

(6) Reserved for 29 CFR 1910.266 Pulpwood Logging.

NOTE: In Oregon, Pulpwood Logging rules are Oregon-initiated rules provided in Division 6, Forest Activities.

(7) Reserved for 29 CFR 1910.267 Agricultural Operations

(8) 29 CFR 1910.268 Telecommunications, published 3/26/75, Federal Register, vol. 40, p. 13441; amended 10/24/78, FR vol. 43, p. 49751; 4/6/82, FR vol. 47, p. 14706; 9/28/87, FR vol. 52, p. 36387; 6/7/89, FR vol. 54, p. 24334; 3/7/96, FR vol. 61, no. 46, p. 9242; 6/18/98, FR vol. 63, no. 117, p. 33467.

(9) 29 CFR 1910.269 Electric power generation, transmission and distribution, published 1/31/94, Federal Register, vol. 59, no. 20, pp. 4435-4476; amended 6/30/94, FR vol. 59, no. 125, pp. 33658-33664; amended 4/6/01, OR-OSHA Admin. Order 5-2001.

(10) 29 CFR 1910.272 Grain Handling Facilities, and Appendices A, B and C, published 12/31/87, Federal Register, vol. 52, no. 251, p. 49625; amended 5/18/88, FR vol. 53, no. 96, p. 17695; 6/7/84, FR vol. 54, p. 24334; 6/20/90, FR vol. 55, no. 119, p. 25093; 3/8/96, FR vol. 61, p. 9577; 3/7/96, FR vol. 61, no. 46, p. 9242.

(11) 29 CFR 1910.274 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9242.

(12) 29 CFR 1910.275 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9242.

NOTE: These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services, and the **United States Government Printing Office**.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: APD 10-1988, f. & ef. 7-7-88; OSHA 233-1990, f. 9-28-90, ef. 12-1-90; OSHA 27-1990, f. 12-12-90, ef. 2-1-91; OSHA 14-1991, f. 10-10-91, cert. ef. 11-1-91; OSHA 7-1993, f. 6-8-93, cert. ef. 8-1-93; OSHA 11-1993, f. 8-4-93, cert. ef. 10-1-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 6-1995, f. 4-18-95, cert. ef. 6-1-95; OSHA 3-1996, f. & cert. ef. 7-22-96; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 3-1999, f. & cert. ef. 4-30-99; OSHA 5-2001, f. & cert. ef. 4-6-01; OSHA 4-2004, f. & cert. ef. 9-15-04; OSHA 4-2005, f. & cert. ef. 12-14-05

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

Adm. Order No.: WCD 8-2005

Filed with Sec. of State: 12-6-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Adopted: 436-055-0085, 436-060-0137, 436-060-0510, 436-120-0755

Rules Amended: 436-010-0005, 436-010-0008, 436-010-0210, 436-010-0220, 436-010-0230, 436-010-0240, 436-010-0250, 436-010-0265, 436-010-0270, 436-010-0280, 436-010-0290, 436-010-0300, 436-010-0340, 436-015-0008, 436-015-0030, 436-015-0040, 436-015-0070, 436-015-0080, 436-015-0110, 436-030-0003, 436-030-0005, 436-030-0007, 436-030-0009, 436-030-0015, 436-030-0020, 436-030-0023, 436-030-0034, 436-030-0055, 436-030-0065, 436-030-0115, 436-030-0155, 436-030-0165, 436-030-0175, 436-030-0185, 436-030-0575, 436-030-0580, 436-035-0005, 436-035-0007,

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436-035-0008, 436-035-0009, 436-035-0011, 436-035-0012, 436-035-0016, 436-035-0017, 436-035-0019, 436-035-0110, 436-035-0190, 436-035-0230, 436-035-0330, 436-035-0340, 436-035-0350, 436-035-0360, 436-035-0380, 436-035-0390, 436-035-0395, 436-035-0400, 436-035-0410, 436-035-0420, 436-035-0430, 436-035-0500, 436-050-0003, 436-050-0008, 436-050-0100, 436-050-0110, 436-050-0170, 436-050-0220, 436-050-0230, 436-055-0070, 436-055-0100, 436-060-0002, 436-060-0008, 436-060-0009, 436-060-0010, 436-060-0015, 436-060-0017, 436-060-0020, 436-060-0025, 436-060-0030, 436-060-0035, 436-060-0040, 436-060-0055, 436-060-0060, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0140, 436-060-0147, 436-060-0150, 436-060-0155, 436-060-0180, 436-060-0190, 436-060-0200, 436-060-0500, 436-105-0500, 436-110-0002, 436-110-0005, 436-110-0310, 436-110-0326, 436-110-0327, 436-110-0335, 436-110-0337, 436-110-0345, 436-120-0003, 436-120-0008, 436-120-0320, 436-120-0900

Subject: Changes directly related to 2005 legislation are marked with asterisks *. Some changes apply only to injuries that occur on or after 1/1/2006. Substantive amendments affect:

- *Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings – moved to the Workers' Compensation Board, for all hearings held on or after January 2, 2006.

- *Independent medical examinations (IME)s – including a worker's right to contest the location of the exam and associated increase to 90 days for the insurer to accept or deny the claim if the worker prevails; penalty to worker for failure to attend; penalty to medical provider for failure to forward diagnostic records to the IME provider; requirement (effective 7/1/2006) for the director to develop a list of medical providers who are authorized to perform IMEs and for all IMEs to be scheduled with a physician on the list.

- *The reporting and processing of aggravation claims;
- Elective surgery notification;
- Types of care that are reimbursable after the worker becomes medically stationary (clarification only);

- *Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval;

- Closure notice requirements in fatal claims;
- Required procedures when five years of work history are not available;

- Reduced insurer reporting requirements for claims in which workers have no permanent impairment;

- *Permanent total disability – including limitations on benefits if the worker incurs a new injury; criteria for re-examination or reduction; required vocational evaluations and suspension of benefits for failure to attend or non-cooperation; appeals of termination; automatic eligibility for vocational assistance upon termination of permanent total disability (by final order);

- The reconsideration record – video recordings, duplicate records;

- *Penalties upon reconsideration – limitations;
- *Insurer data reporting necessary for the Workers' Compensation Division to assess the impact of legislative changes on permanent partial disability awards;

- *The effect of a regular work release on awards of work disability and social/vocational factors;

- Requirements to round percentages of impairment – hearing and vision no longer taken to the 100th of a percent;

- Rating of impairment for skin disorders – signs and symptoms need not be present upon examination;

- Insurer's notice to employer of policy cancellation to include a statement that the guaranty contract will terminate;

- Insurers' reporting of names or positions of key contacts to the Workers' Compensation Division;

- *The right of self-insured public utilities with assets in excess of \$500 million to obtain excess workers' compensation insurance coverage from an eligible surplus lines insurer;

- *Required training for certified claims examiners on interactions with independent medical exam providers;

- Adjustments – up and down – of insurer claims processing compliance thresholds (affecting penalties);

- *The dollar amount employers can pay for medical services on non-disabling claims;

- *Requirement (effective 7/1/2006) that Worker Requested Medical Examinations be conducted by a medical provider on the list of authorized independent medical examination providers maintained by the director;

- Increase of certain maximum penalty amounts to the \$2,000 statutory maximum;

- Eligibility for Preferred Worker Program benefits – workers must be authorized to work in the United States;

- *Reimbursement from the Workers' Benefit Fund of permanent total disability (PTD) payments made by the insurer during an appeal of termination of PTD – if the insurer prevails;

- For the purposes of reimbursement of wage subsidies under the Employer-at-Injury Program, allowance for supplemental documentation to clarify information not fully explained by the payroll record;

- *Provision for direct assistance to workers under ORS 656.622 to promote re-employment;

- *Reimbursement from the Workers' Benefit Fund of the insurer's vocational assistance costs incurred after the insurer appeals an administrative order to provide such assistance (if the insurer prevails);

- Deletion of the penalty matrix for three types of violations of the vocational assistance rules;

- Provision for the director to impose a civil penalty for violation of ORS chapter 656, in addition to violation of rules and orders of the director.

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

436-010-0005

Definitions

For the purpose of these rules, OAR 436-009, and 436-015, unless the context otherwise requires:

(1) "Administrative Review" means any decision making process of the director requested by a party aggrieved with an action taken under these rules except the hearing process described in OAR 436-001.

(2) "Attending Physician" means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury or illness and who is:

(a) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or an oral surgeon licensed by the Oregon Board of Dentistry;

(b) A medical doctor, doctor of osteopathy, or oral surgeon practicing in and licensed under the laws of another state;

(c) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits, during that 30 day period, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon;

(d) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits during that 30 day period, whichever first occurs, a doctor or physician of chiropractic practicing and licensed under the laws of another state; or

(e) Any medical service provider authorized to be an attending physician in accordance with a managed care organization contract.

(3) "Authorized nurse practitioner" means a nurse practitioner licensed under ORS 678.375 to 678.390 who has certified to the director that the nurse practitioner has reviewed informational materials about the workers' compensation system provided by the director and has been assigned an authorized nurse practitioner number by the director.

(4) "Board" means the Workers' Compensation Board and includes its Hearings Division.

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(5) "Chart note" means a notation made in chronological order in a medical record in which the medical service provider records such things as subjective and objective findings, diagnosis, treatment rendered, treatment objectives, and return to work goals and status.

(6) "Coordinated Health Care Program" means an employer program providing for the coordination of a separate policy of group health insurance coverage with the medical portion of workers' compensation coverage, for some or all of the employer's workers, which provides the worker with health care benefits even if a worker's compensation claim is denied.

(7) "Current Procedural Terminology" or "CPT"® means the Current Procedural Terminology codes and terminology most recently published by the American Medical Association unless otherwise specified in these rules.

(8) "Customary Fee" means a fee that falls within the range of fees normally charged for a given service.

(9) "Days" means calendar days.

(10) "Direct control and supervision" means the physician is on the same premises, at the same time, as the person providing a medical service ordered by the physician. The physician can modify, terminate, extend, or take over the medical service at any time.

(11) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(12) "Eligible" means an injured worker who has filed a claim and is employed by an employer who is located in an MCO's authorized geographical service area, covered by an insurer who has a contract with that MCO. "Eligible" also includes a worker with an accepted claim having a date of injury prior to contract when that worker's employer later becomes covered by an MCO contract.

(13) "Enrolled" means an eligible injured worker has received notification from the insurer that the worker is being required to treat under the auspices of the MCO. However, a worker may not be enrolled who would otherwise be subject to an MCO contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical service area.

(14) "First Chiropractic Visit" means a worker's first visit to a chiropractic physician on the initial claim.

(15) "Health Care Practitioner" has the same meaning as a "medical service provider."

(16) "HCFA form 2552" (Hospital Care Complex Cost Report) means the annual report a hospital makes to Medicare.

(17) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(18) "Home Health Care" means medically necessary medical and medically related services provided in the injured worker's home environment. These services might include, but are not limited to, nursing care, medication administration, personal hygiene, or assistance with mobility and transportation.

(19) "Hospital" means an institution licensed by the State of Oregon as a hospital.

(20) "Initial Claim" means the first open period on the claim immediately following the original filing of the occupational injury or disease claim until the worker is first declared to be medically stationary by an attending physician or authorized nurse practitioner. For nondisabling claims, the "initial claim" means the first period of medical treatment immediately following the original filing of the occupational injury or disease claim ending when the attending physician or authorized nurse practitioner does not anticipate further improvement or need for medical treatment, or there is an absence of treatment for an extended period.

(21) "Inpatient" means an injured worker who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(22) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(23) "Interim Medical Benefits" means those services provided under ORS 656.247 on initial claims with dates of injury on or after January 1, 2002 that are not denied within 14 days of the employer's notice of the claim.

(24) "Mailed or Mailing Date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by facsimile or "fax" are considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(25) "Managed Care Organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR chapter 436, division 015.

(26) "Medical Evidence" includes, but is not limited to: expert written testimony; written statements; written opinions, sworn affidavits, and testimony of medical professionals; records, reports, documents, laboratory, x-ray and test results authored, produced, generated, or verified by medical professionals; and medical research and reference material utilized, produced, or verified by medical professionals who are physicians or medical record reviewers in the particular case under consideration.

(27) "Medical Service" means any medical treatment or any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulances, and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(28) "Medical Service Provider" means a person duly licensed to practice one or more of the healing arts.

(29) "Medical Provider" means a medical service provider, a hospital, medical clinic, or vendor of medical services.

(30) "Medical Treatment" means the management and care of a patient for the purpose of combating disease, injury, or disorder. Restrictions on activities are not considered treatment unless the primary purpose of the restrictions is to improve the worker's condition through conservative care.

(31) "Non-attending Physician" means a medical service provider who is not qualified to be an attending physician, or a chiropractor who no longer qualifies as an attending physician under ORS 656.005 and subsections (2)(c) and (2)(d) of this rule.

(32) "Outpatient" means a worker not admitted to a hospital prior to and extending past midnight for treatment and lodging. Medical services provided by a health care provider such as emergency room services, observation room, or short stay surgical treatments which do not result in admission are also considered outpatient services.

(33) "Parties" mean the worker, insurer, MCO, attending physician, and other medical provider, unless a specific limitation or exception is expressly provided for in the statute.

(34) "Physical Capacity Evaluation" or "PCE" means an objective, directly observed, measurement of a worker's ability to perform a variety of physical tasks combined with subjective analyses of abilities by worker and evaluator. Physical tolerance screening, Blankenship's Functional Evaluation, and Functional Capacity Assessment will be considered to have the same meaning as Physical Capacity Evaluation.

(35) "Physical Restorative Services" means those services prescribed by the attending physician or authorized nurse practitioner to address permanent loss of physical function due to hemiplegia, a spinal cord injury, or to address residuals of a severe head injury. Services are designed to restore and maintain the injured worker to the highest functional ability consistent with the worker's condition. Physical restorative services are not services to replace medical services usually prescribed during the course of recovery.

(36) "Report" means medical information transmitted in written form containing relevant subjective or objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.

(37) "Residual Functional Capacity" means an individual's remaining ability to perform work-related activities despite medically determinable impairment resulting from the accepted compensable condition. A residual functional capacity evaluation includes, but is not limited to, capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, bending/stooping, twisting, kneeling, crouching, crawling, and reaching, and the number of hours per day the worker can perform each activity.

(38) "Specialist Physician" means a licensed physician who qualifies as an attending physician and who examines a worker at the request of the attending physician or authorized nurse practitioner to aid in evaluation of disability, diagnosis, and/or provide temporary specialized treatment. A specialist physician may provide specialized treatment for the compensable injury or illness and give advice and/or an opinion regarding the treatment being rendered, or considered, for a workers' compensable injury.

(39) "Usual Fee" means the fee charged the general public for a given service.

(40) "Work Capacity Evaluation" or "WCE" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluation.

(41) "Work Hardening" means an individualized, medically prescribed and monitored, work oriented treatment process. The process involves the worker participating in simulated or actual work tasks that are

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structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the worker to a specific job.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.000 et seq. & 656.005

Hist.: WCB 4-1976, f. 10-20-76, ef. 11-1-76; WCD 7-1978(Admin), f. & ef. 6-5-78; WCD 2-1980(Admin), f. 1-28-80, ef. 2-1-80; WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0005, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 4-1986(Admin), f. 6-26-86, ef. 7-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0008

Administrative Review

(1) Administrative review before the director:

(a) Except as otherwise provided in ORS 656.704, the director has exclusive jurisdiction to resolve all matters concerning medical services disputes arising under ORS 656.245, 656.247, 656.260, 656.325 and 656.327.

(b) A party need not be represented to participate in the administrative review before the director.

(c) Any party may request that the director provide voluntary mediation or alternative dispute resolution after a request for administrative review or hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement must be in writing and be approved by the director. Any mediated agreement may include an agreement on attorney fees, if any, to be paid to the claimant or claimant's attorney. If the dispute does not resolve through mediation or alternative dispute resolution, a director's order will be issued.

(2) Administrative review and hearing processes for change of attending physician or authorized nurse practitioner issues are in OAR 436-010-0220; additional independent medical examination (IMEs) matters are in OAR 436-010-0265; and fees and non-payment of compensable medical billings are described in OAR 436-009-0008.

(3) Except for disputes regarding interim medical benefits, when there is a formal denial of the compensability of the underlying claim, or a denial of the causal relationship between the medical service or treatment and the accepted condition or the underlying condition, the parties may apply to the Hearings Division of the Workers' Compensation Board to resolve the compensability issue.

(4) All issues pertaining to disagreement about medical services within a Managed Care Organization (MCO), including disputes under ORS 656.245(4)(a) about whether a change of provider will be medically detrimental to the injured worker, are subject to the provisions of ORS 656.260. A party dissatisfied with an action or decision of the MCO must first apply for and complete the internal dispute resolution process within the MCO before requesting an administrative review of the matter by the director.

(5) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all disputes subject to dispute resolution within a Managed Care Organization, upon completion of the MCO process, the aggrieved party must request administrative review by the director within 60 days of the date the MCO issues its final decision. If a party has been denied access to an MCO internal dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving the particular type of dispute, the insurer must advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due. For disputes regarding interim medical benefits on denied claims, the date the insurer should have known of the dispute is no later than one year from the claim denial, or 45 days after the bill is perfected, which ever occurs last. Filing a request for administrative

review under this rule may also be accomplished in the manner prescribed in OAR 438 chapter, division 005.

(c) Disputes regarding elective surgery must be processed in accordance with OAR 436-010-0250.

(d) The director may, on the director's own motion, initiate a medical services or medical treatment review at any time.

(e) Medical provider bills for treatment or services which are subject to director's review will not be deemed payable pending the outcome of the review.

(6) Parties must submit requests for administrative review to the director in the form and format provided in Bulletins 293 or 253. When an insurer or the worker's representative submits a request without the required information, the director may dismiss the request or hold initiation of the administrative review until the information is submitted. Unrepresented workers may seek help from the director to meet the filing requirements. The requesting party must notify at the same time all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number;

(b) Specify what issues are in dispute and specify with particularity the relief sought;

(c) Provide the specific dates of the unpaid disputed treatment or services.

(7) In addition to medical evidence relating to the medical dispute, all parties may submit other relevant information, including but not limited to, written factual information, sworn affidavits, and legal argument for incorporation into the record. Such information may also include timely written responses and other evidence to rebut the documentation and arguments of an opposing party. The director may take or obtain additional evidence consistent with statute.

(8) When a request for administrative review is filed under ORS 656.247, 656.260, or 656.327, the insurer must provide a record packet, without cost, to the director and all other parties or their representatives as follows:

(a) Except for disputes regarding interim medical benefits, the packet must include certification that there is no issue of compensability of the underlying claim or condition. If there is a denial which has been reversed by the Hearings Division, the Board, or the Court of Appeals, a statement from the insurer regarding its intention, if known, to accept or appeal the decision.

(b) The packet must include a complete, indexed copy of the worker's medical record and other documents that are arguably related to the medical dispute, arranged in chronological order, with oldest documents on top, and numbered in Arabic numerals in the lower right corner of each page. The number must be preceded by the designation "Ex." and pagination of the multiple page documents must be designated by a hyphen followed by the page number. For example, page two of document ten must be designated "Ex. 10-2." The index must include the document numbers, description of each document, author, number of pages, and date of the document. The packet must include the following notice in bold type:

As required by OAR 436-010-0008, we hereby notify you that the director is being asked to review the medical care of this worker. The director may issue an order that could affect reimbursement for the disputed medical service(s).

(c) If the insurer requests review, the packet must accompany the request, with copies sent simultaneously to the other parties.

(d) If the requesting party is other than the insurer, or if the director has initiated the review, the director will request the record from the insurer. The insurer must provide the record within 14 days of the director's request in the form and format described in this rule.

(e) If the insurer fails to submit the record in the time and format specified in this rule, the director may penalize or sanction the insurer under OAR 436-010-0340.

(9) If the director determines a review by a physician is indicated to resolve the dispute, the director, in accordance with OAR 436-010-0330, may appoint an appropriate medical service provider or panel of providers to review the medical records and, if necessary, examine the worker and perform any necessary and reasonable medical tests, other than invasive tests. Notwithstanding ORS 656.325(1), if the worker is required by the director to submit to a medical examination as a step in the administrative review process, the worker may refuse an invasive test without sanction.

(a) A single physician selected to conduct a review must be a practitioner of the same healing art and specialty, if practicable, of the medical service provider whose treatment or service is being reviewed.

(b) When a panel of physicians is selected, at least one panel member must be a practitioner of the healing art and specialty, if practicable, of the medical service provider whose treatment or service is being reviewed.

(c) When such an examination of the worker is required, the director will notify the appropriate parties of the date, time, and location of the

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examination. The physician or panel must not be contacted directly by any party except as it relates to the examination date, time, location, and attendance. If the parties wish to have special questions addressed by the physician or panel, these questions must be submitted to the director for screening as to the appropriateness of the questions. Matters not related to the issues before the director are inappropriate for medical review and will not be submitted to the reviewing physician(s). The examination may include, but is not limited to:

- (A) A review of all medical records and diagnostic tests submitted,
- (B) An examination of the worker, and
- (C) Any necessary and reasonable medical tests.

(10) The director will review the relevant information submitted by all parties and the observations and opinions of the reviewing physician(s).

(a) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

- (A) A party fails to honor the agreement;
- (B) The agreement was based on misrepresentation;
- (C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the dispute.

(b) If the dispute is not resolved by agreement and if the director determines that no bona fide dispute exists in a claim not enrolled in an MCO, the director will issue an order under ORS 656.327(1). If any party disagrees with an order of the director that no bona fide medical dispute exists, the party may appeal the order to the Board within 30 days of the mailing date of the order. Upon review, the order of the director may be modified only if it is not supported by substantial evidence in the record developed by the director.

(c) If the director issues an administrative order resolving a bona fide dispute:

(A) For disputes arising under ORS 656.245, 656.260, or 656.327, a party may file a request for hearing within 30 days of the mailing date of the order.

(B) For disputes arising under ORS 656.247, a party may file a request for hearing within 60 days of the mailing date of the order.

(C) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed before the administrative order becomes final.

(D) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this subsection and may respond to such evidence submitted by others.

(E) Any party requesting reconsideration or responding to a reconsideration request must simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(11) If the director issues an order declaring an already rendered medical treatment or medical service inappropriate, or otherwise in violation of the statute or medical rules, the worker is not obligated to pay for such.

(12) In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director will award an attorney fee to be paid by the insurer or self-insured employer, as provided in ORS 656.385. The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration will be given to the results achieved and the time devoted to the case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed \$2000, nor fall outside the ranges for fees as provided in the following matrix:

Estimated Benefit Achieved — Professional Hours Devoted

***** — 1-2 hours — 2.1-4 hours — 4.1-6 hours — 6.1-8 hours — over 8 hours
*** \$1-\$2000 — \$100-400 — \$200-700 — \$300-750 — \$600-1000 — \$800-1250
\$2001-\$4000 — \$200-500 — \$400-800 — \$600-900 — \$800-1300 — \$1050-1500
\$4001-\$6000 — \$300-700 — \$600-1000 — \$800-1250 — \$1000-1450 — \$1300-1750
Over \$6000 — \$400-900 — \$800-1300 — \$1050-1600 — \$1350-1800 — \$1550-2000

(a) An attorney must submit the following to the director in order to be awarded an attorney fee:

- (A) A current, valid retainer agreement, and
- (B) A statement of hours spent on the issue before the director if greater than two hours. In the absence of such a statement, the director will assume the time spent was 1-2 hours.

(b) In determining the value of the results achieved, the director may consider, but is not limited to, the following:

(A) The fee allowed by the fee schedule provided in OAR 436-009;

(B) The overall cost of the medical treatment or service; or

(C) A written agreement between the parties regarding the value of the benefit to the worker submitted to the director prior to the issuance of an order.

(c) If any party believes extraordinary circumstances exist that justify a fee outside of the ranges provided in the above matrix or above \$2000, they may submit a written or faxed statement of the extraordinary circumstances to the director. Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.

(d) An assessed attorney fee must be paid within 30 days of the date the order authorizing the fee becomes final.

(13) Any party who disagrees with an action or administrative order under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of an order under ORS 656.245, 656.260, or 656.327, or within 60 days of the mailing date of an order under ORS 656.247. OAR 436-001 applies to the hearing.

(a) In the review of orders issued under ORS 656.327(2), 656.260(14) and (16), and 656.247, no new medical evidence or issues will be admitted at hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.

(b) For claims not enrolled in an MCO, disputes about whether a medical service after a worker is medically stationary is compensable within the meaning of ORS 656.245(1)(c) and whether a medical treatment is unscientific, unproven, outmoded, or experimental under ORS 656.245(3), are subject to administrative review by the director. If appealed, review at hearing is subject to the "no new medical evidence or issues rule" in subsection (13)(a) of this rule. However, if the disputed medical service or medical treatment is determined compensable under ORS 656.245(1)(c) or 656.245(3) all disputes and assertions about whether the compensable medical services are excessive, inappropriate, ineffectual, or in violation of the director's rules regarding the performance of medical services are subject to the substantial evidence rule at hearing.

(14) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254 or 656.745 may request a hearing by the Hearings Division of the board as follows:

(a) A written request for a hearing must be mailed to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The request must be mailed to the division within 60 days after the mailing date of the order or notice of assessment.

(c) The division will forward the request and other pertinent information to the board.

(15) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (14) of this rule, under these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (13) of this rule.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331 & 656.704

Hist.: WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0210

Who May Provide Medical Services and Authorize Timeloss

(1) Attending physicians and authorized nurse practitioners may authorize time loss and manage medical services subject to the limitations of these rules. However, an MCO may designate any medical service provider as an attending physician who may provide medical services to an enrolled worker in accordance with ORS 656.260.

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(2) Authorized primary care physicians and authorized nurse practitioners may provide medical services to injured workers subject to the terms and conditions of the governing MCO.

(3) Attending physicians and authorized nurse practitioners may prescribe treatment or services to be carried out by persons licensed to provide a medical service. Attending physicians may prescribe treatment or services to be carried out by persons not licensed to provide a medical service or treat independently only when such services or treatment is rendered under the physician's direct control and supervision. Reimbursement to a worker for home health care provided by a worker's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.

(4) Physician assistants may provide compensable medical services for a period of 30 days from the date of injury or 12 visits on the initial claim, whichever occurs first. Thereafter, medical services provided are not compensable without authorization of an attending physician. Additionally, those physician assistants practicing in Type A, Type B, and Type C rural hospital areas as specified in ORS 656.245, may authorize the payment of temporary disability compensation for a period not to exceed 30 days from the date of first visit on the initial claim. Definitions of Type A, Type B, and Type C rural hospitals are contained in ORS 442.470. A list of rural hospitals is provided in Appendix A.

(5) Authorized nurse practitioners, out-of-state nurse practitioners, and physician assistants working within the scope of their license and as directed by the attending physician, need not be working under a written treatment plan as prescribed in OAR 436-010-0230(4)(a), nor under the direct control and supervision of the attending physician.

(6) A physician assistant, licensed under ORS 677.515, may provide services when the physician assistant is approved for practice by the Board of Medical Examiners.

(7) Effective October 1, 2004, in order to provide any compensable medical service under ORS chapter 656, a nurse practitioner licensed under ORS 678.375 to 678.390 must certify in a form provided by the director that the nurse practitioner has reviewed a packet of materials which the director will provide upon request and must have been assigned an authorized nurse practitioner number by the director. An authorized nurse practitioner may:

(a) Provide compensable medical services to an injured worker for a period of 90 days from the date of the first nurse practitioner visit on the initial claim. Thereafter, medical services provided by an authorized nurse practitioner are not compensable without authorization of an attending physician; and

(b) Authorize temporary disability benefits for a period of up to 60 days from the date of the first nurse practitioner visit on the initial claim.

(8) In accordance with ORS 656.245(2)(a), with the approval of the insurer, the worker may choose an attending physician outside the state of Oregon. Upon receipt of the worker's request, or the insurer's knowledge of the worker's request to treat with an out-of-state physician, the insurer must give the worker written notice of approval or denial of the worker's choice of attending physician within 14 days.

(a) If the insurer does not approve the worker's out-of-state physician, notice to the worker must clearly state the reason(s) for the denial which may include, but are not limited to, the out-of-state physician's refusal to comply with OAR 436-009 and 436-010, and identify at least two other physicians of the same healing art and specialty whom it would approve. The notice must also inform the worker that if the worker disagrees with the denial, the worker may refer the matter to the director for review under the provisions of OAR 436-010-0220.

(b) If the insurer approves the worker's choice of out-of-state attending physician, the insurer must immediately notify the worker and the medical service provider in writing of the following:

(A) The Oregon fee schedule requirements;

(B) The manner in which the out-of-state physician may provide compensable medical treatment or services to Oregon injured workers; and

(C) Billings for compensable services in excess of the maximum allowed under the fee schedule may not be paid by the insurer.

(9) After giving prior approval, if the out-of-state physician does not comply with these rules, the insurer may object to the worker's choice of physician and must notify the worker and the physician in writing of the reason for the objection, that payment for services rendered by that physician after notification will not be reimbursable, and that the worker may be liable for payment of services rendered after the date of notification.

(10) If the worker is aggrieved by an insurer decision to object to an out-of-state attending physician, the worker or the worker's representative may refer the matter to the director for review under the provisions of OAR 436-010-0220.

Stat. Auth.:ORS 656.726(4)

Stats. Implemented: ORS 656.005(12), 656.245 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; Renumbered from 436-069-0301, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0050; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0220

Choosing and Changing Medical Providers

(1) A newly selected attending physician, authorized nurse practitioner, or a specialist physician who becomes primarily responsible for the worker's care, must notify the insurer not later than five days after the date of change or first treatment, using **Form 827**. An attending physician or authorized nurse practitioner:

(a) Is primarily responsible for the worker's care,

(b) Authorizes time loss,

(c) Monitors ancillary care and specialized care, and

(d) Is determined by the facts of the case and the actions of the physician, not whether a **Form 827** is filed.

(2) The worker may have only one attending physician or authorized nurse practitioner at a time. Simultaneous or concurrent treatment by other medical service providers must be based upon a written request of the attending physician or authorized nurse practitioner, with a copy of the request sent to the insurer. Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be authorized by the injured worker's attending physician or authorized nurse practitioner to be reimbursable. Fees for services by more than one physician at the same time are payable only when the service is sufficiently different that separate medical skills are needed for proper care.

(3) The worker is allowed to change his or her attending physician or authorized nurse practitioner by choice two times after the initial choice. Referral by the attending physician or authorized nurse practitioner to another attending physician or authorized nurse practitioner, initiated by the worker, will count in this calculation. The limitations of the worker's right to choose physicians or authorized nurse practitioners under this section begin with the date of injury and extend through the life of the claim. For purposes of this rule, the following are not considered changes by choice of the worker:

(a) Emergency services by a physician;

(b) Examinations at the request of the insurer;

(c) Consultations or referrals for specialized treatment or services initiated by the attending physician or authorized nurse practitioner;

(d) Referrals to radiologists and pathologists for diagnostic studies;

(e) When workers are required to change medical service providers to receive compensable medical services, palliative care, or time loss authorization because their medical service provider is no longer qualified as an attending physician or authorized to continue providing compensable medical services.

(f) Changes of attending physician or authorized nurse practitioner required due to conditions beyond the worker's control. This could include, but not be limited to:

(A) When the physician terminates practice or leaves the area;

(B) When a physician is no longer willing to treat an injured worker;

(C) When the worker moves out of the area requiring more than a 50 mile commute to the physician;

(D) When the 90 day period for treatment or services by an authorized nurse practitioner has expired;

(E) When the nurse practitioner is required to refer the worker to an attending physician for a closing examination or because of a possible worsening of the worker's condition following claim closure; and

(F) When a worker is subject to managed care and compelled to be treated inside an MCO;

(g) A Worker Requested Medical Examination;

(h) Whether a worker has an attending physician or authorized nurse practitioner who works in a group setting/facility and the worker sees another group member due to team practice, coverage, or on-call routines; or

(i) When a worker's attending physician or authorized nurse practitioner is not available and the worker sees a medical provider who is covering for that provider in their absence.

(4) When a worker has made an initial choice of attending physician or authorized nurse practitioner and subsequently changed two times by choice or reaches the maximum number of changes established by the MCO, the insurer must inform the worker by certified mail that any subsequent changes by choice must have the approval of the insurer or the director. If the insurer fails to provide such notice and the worker subsequently

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chooses another attending physician or authorized nurse practitioner, the insurer must pay for compensable services rendered prior to notice to the worker. If an attending physician or authorized nurse practitioner begins treatment without being informed that the worker has been given the required notification, the insurer must pay for appropriate services rendered prior to the time the insurer notifies the medical service provider that further payment will not be made and informs the worker of the right to seek approval of the director.

(5)(a) If a worker not enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the limit established in section (3) of this rule, the worker must request approval from the insurer. Within 14 days of receipt of a request for a change of medical service provider or a **Form 827** indicating the worker is choosing to change his or her attending physician or authorized nurse practitioner, the insurer must notify the worker in writing whether the change is approved. If the insurer objects to the change, the insurer must advise the worker of the reasons, advise that the worker may request director approval, and provide the worker with **Form 2332** (Worker's Request to Change Attending Physician or Authorized Nurse Practitioner) to complete and submit to the director if the worker wishes to make the requested change.

(b) If a worker enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the changes allowed in the MCO contract or certified plan, the worker must request approval from the insurer. Within 14 days of receiving the request, the insurer must notify the worker in writing whether the change is approved. If the insurer denies the change, the insurer must provide the reasons and give notification that the worker may request dispute resolution through the MCO. If the MCO does not have a dispute resolution process for change of attending physician or authorized nurse practitioner issues, the insurer shall give notification that the worker may request director approval and provide the worker with a copy of **Form 2332**.

(6) Upon receipt of a worker's request for an additional change of attending physician or authorized nurse practitioner, the director may notify the parties and request additional information. Upon receipt of a written request from the director for additional information, the parties will have 14 days to respond in writing.

(7) After receipt and review, the director will issue an order advising whether the change is approved. The change of attending physician or authorized nurse practitioner will be approved if the change is due to circumstances beyond the worker's control as described in section (3) of this rule. On a case by case basis consideration may be given, but is not limited to, the following:

(a) Whether there is medical justification for a change, including whether the attending physician or authorized nurse practitioner can provide the type of treatment or service that is appropriate for the worker's condition.

(b) Whether the worker has moved to a new area and wants to establish an attending physician or authorized nurse practitioner closer to the worker's residence.

(c) Whether such a change will cause unnecessary travel costs or lost time from work.

(8) Any party that disagrees with the director's order may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order. OAR 436-001 applies to the hearing.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0401, 5-1-85; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0060; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0230

Medical Services and Treatment Guidelines

(1) Medical services provided to the injured worker must not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(2) An employer or insurer representative may not attend a worker's medical appointment without written consent of the worker. The consent form must state that the worker's benefits cannot be suspended if the worker refuses to have a representative present. The worker has the right to refuse such attendance. The insurer must retain a copy of a signed consent form in the claim file.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment and services. Unless otherwise provided for by statute, or within utilization and treatment standards under an MCO contract, treatment typically does not exceed 15 office visits by any and all attending physicians or authorized nurse practitioners in the first 60 days from first date of treatment, and two visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment.

(4)(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A).

(b) The attending physician, authorized nurse practitioner, or specialist physician must sign a copy of the treatment plan within 30 days of the commencement of treatment and send it to the insurer. Failure of the physician or nurse practitioner to sign or mail the treatment plan may subject the attending physician or authorized nurse practitioner to sanctions under OAR 436-010-0340, but shall not affect payment to the ancillary medical service provider.

(c) Medical services prescribed by an attending physician, specialist physician, or authorized nurse practitioner and provided by a chiropractor, naturopath, acupuncturist, or podiatrist will be subject to the treatment plan requirements set forth in subsection (4)(a) and (b) of this rule.

(d) Unless otherwise provided for within utilization and treatment standards under an MCO contract, the usual range for therapy visits does not exceed 20 visits in the first 60 days, and 4 visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment or services. The attending physician or authorized nurse practitioner must document the need for medical services in excess of these guidelines when submitting a written treatment plan. The process outlined in OAR 436-010-0008 should be followed when an insurer believes the treatment plan is inappropriate.

(5) The attending physician or authorized nurse practitioner, when requested by the insurer or the director through the insurer to complete a physical capacity or work capacity evaluation, must complete the evaluation within 20 days, or refer the worker for such evaluation within seven days. The attending physician or authorized nurse practitioner must notify the insurer and the worker in writing if the worker is incapable of participating in such evaluation.

(6) Prescription medications are required medical services under the provisions of ORS 656.245(1)(a), (1)(b), and (1)(c) and do not require prior approval under the palliative care provisions of OAR 436-010-0290. A pharmacist, dispensing physician, or authorized nurse practitioner must dispense generic drugs to injured workers in accordance with and under ORS 689.515. For the purposes of this rule, the worker will be deemed the "purchaser" and may object to the substitution of a generic drug. However, payment for brand name drugs are subject to the limitations provided in OAR 436-009-0090. Workers may have prescriptions filled by a provider of their choice, unless otherwise provided for in accordance with an MCO contract. Except in an emergency, drugs and medicine for oral consumption supplied by a physician's or authorized nurse practitioner's office are compensable only for the initial supply to treat the worker with the medication up to a maximum of 10 days, subject to the provisions of this rule and OAR 436-009-0090. Compensation for certain drugs are limited as provided in OAR 436-009-0090.

(7) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured worker or they are provided in accordance with a utilization and treatment standard adopted by the director. Vitamin B-12 injections are not reimbursable unless necessary because of a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(8) X-ray films must be of diagnostic quality and accompanied by a report. 14" x 36" lateral views are not reimbursable.

(9) Upon request of either the director or the insurer, original diagnostic studies, including, but not limited to, actual films, must be forwarded to the director, the insurer, or the insurer's designee, within 14 days of receipt of a written request.

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(a) Diagnostic studies, including films must be returned to the medical provider within a reasonable time.

(b) The insurer must pay for a reasonable charge made by the provider for the costs of delivery of diagnostic studies, including films.

(c) If a medical provider does not forward the films to the director or the insurer within 14 days of receipt of a written request, civil penalties may be imposed.

(10) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the worker requires an item not usually considered necessary in the great majority of workers with similar impairments. Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist.

(11) Physical restorative services may include but are not limited to a regular exercise program or swim therapy. Such services are not compensable unless the nature of the worker's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The attending physician or authorized nurse practitioner must justify by report why the worker requires services not usually considered necessary for the majority of injured workers.

(12) The cost of repair or replacement of prosthetic appliances damaged when in use at the time of and in the course of a compensable injury, is a compensable medical expense, including when the worker received no physical injury. For purposes of this rule, a prosthetic appliance is an artificial substitute for a missing body part or any device by which performance of a natural function is aided, including but not limited to hearing aids and eye glasses.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0201, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0040; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0240

Reporting Requirements for Medical Providers

(1) The act of the worker in applying for workers' compensation benefits constitutes authorization for any medical provider and other custodians of claims records to release relevant medical records under ORS 656.252 and diagnostic records required under ORS 656.325. Medical information relevant to a claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part. The authorization is valid for the duration of the work related injury or illness and is not subject to revocation by the worker or the worker's representative. However, this authorization does not authorize the release of information regarding:

(a) Federally funded drug and alcohol abuse treatment programs governed by Federal Regulation 42, CFR 2, which may only be obtained in compliance with this federal regulation, or

(b) The release of HIV related information otherwise protected by ORS 433.045(3). HIV related information should only be released when a claim is made for HIV or AIDS or when such information is directly relevant to the claimed condition(s).

(2) Any physician, hospital, clinic, or other medical service provider, must provide all relevant information to the director, the insurer or their representative upon presentation of a signed **Form 801, 827, or 2476** (Release of Information). "Signature on file," printed on the worker's signature line of any authorized Release of Information prescribed by the director, is a valid medical release, provided the insurer maintains the signed original in accordance with OAR 436-010-0270. However, nothing in this rule will prevent a medical provider from requiring a signed authorized Release of Information.

(3) When the worker has initiated a claim or wishes to initiate a claim, the worker and the first medical service provider on the initial claim must complete the first medical report (**Form 827**) in every detail, to include the worker's name, address, and social security number (SSN), and information required by ORS 656.252 and 656.254. The medical service provider must mail it to the proper insurer no later than 72 hours after the worker's first

visit (Saturdays, Sundays, and holidays will not be counted in the 72-hour period).

(a) Diagnoses stated on **Form 827** and all subsequent reports must conform to terminology found in the International Classification of Disease-9-Clinical Manifestations (ICD-9-CM) or taught in accredited institutions of the licentiate's profession.

(b) The worker's SSN will be used by the director to carry out its duties under ORS chapter 656. The worker may voluntarily authorize additional use of the worker's SSN by various government agencies to carry out their statutory duties.

(4) All medical service providers must notify the worker at the time of the first visit of the manner in which they can provide compensable medical services and authorize time loss. The worker must also be notified that they may be personally liable for noncompensable medical services. Such notification should be made in writing or documented in the worker's chart notes.

(5) Attending physicians or authorized nurse practitioners must, upon request from the insurer, submit verification of the worker's medical limitations related to the worker's ability to work, resulting from an occupational injury or disease. If the insurer requires the attending physician or authorized nurse practitioner to complete a release to return to work form, the insurer must use Form 3245.

(6) Medical providers must maintain records necessary to document the extent of medical services provided to injured workers.

(7) Progress reports are essential. When time loss is authorized by the attending physician or authorized nurse practitioner, the insurer may require progress reports every 15 days through the use of the physician's report, Form 827. Chart notes may be sufficient to satisfy this requirement. If more information is required, the insurer may request a brief or complete narrative report. Fees for such narrative reports must be in accordance with OAR 436-009-0015(1), 436-009-0070(2) or (3), whichever applies

(8) Reports may be handwritten and include all relevant or requested information.

(9) All records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(10) The medical provider must respond within 14 days to the request for relevant medical records as specified in section (1) of this rule, progress reports, narrative reports, original diagnostic studies, including, but not limited to, actual films, and any or all necessary records needed to review the efficacy of medical treatment or medical services, frequency, and necessity of care. The medical provider must be reimbursed for copying documents in accordance with OAR 436-009-0070(1). If the medical provider fails to provide such information within fourteen (14) days of receiving a request sent by certified mail, penalties under OAR 436-010-0340 or 436-015-0120 may be imposed.

(11) The attending physician or authorized nurse practitioner must inform the insurer and the worker of the anticipated date of release to work, the anticipated date the worker will become medically stationary, the next appointment date, and the worker's medical limitations. To the extent any medical provider can determine these matters they must be included in each progress report. The insurer must not consider the anticipated date of becoming medically stationary as a release to return to work.

(12) At the time the attending physician or authorized nurse practitioner declares the worker medically stationary, the attending physician or authorized nurse practitioner must notify the worker, the insurer, and all other medical providers who are providing services to the worker. For disabling claims, if the worker has been under the care of an authorized nurse practitioner, the authorized nurse practitioner must follow the requirements of OAR 436-010-0280 regarding the determination and reporting of permanent impairment and closing examinations. The attending physician must send a closing report to the insurer within 14 days of the examination in which the worker is declared medically stationary, except where a consulting physician examines the worker. The procedures and time frames for a consulting physician to perform the closing exam are provided in OAR 436-010-0280.

(13) The attending physician or authorized nurse practitioner must advise the worker, and within five days provide the insurer with written notice, of the date the injured worker is released to return to regular or modified work. The physician or nurse must not notify the insurer or employer of the worker's release to return to regular or modified work without first advising the worker.

(14) When an injured worker files a claim for aggravation, the claim must be filed on Form 827 and must be signed by the worker or the worker's representative and the attending physician. The attending physician, on the worker's behalf, must submit the aggravation form to the insurer within five days of the examination where aggravation is identified. When an insurer or self-insured employer receives a completed aggravation form, it must process the claim. Within 14 days of the examination the attending

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physician must also send a written report to the insurer that includes objective findings that document:

(a) Whether the worker is unable to work as a result of the compensable worsening; and

(b) Whether the worker has suffered a worsened condition attributable to the compensable injury under the criteria contained in ORS 656.273.

(15) The attending physician, authorized nurse practitioner, or the MCO may request consultation regarding conditions related to an accepted claim. The attending physician, authorized nurse practitioner, or the MCO must promptly notify the insurer of the request for consultation. This requirement does not apply to diagnostic studies performed by radiologists and pathologists. The attending physician, authorized nurse practitioner, or MCO must provide the consultant with all relevant clinical information. The consultant must submit a copy of the consultation report to the attending physician, authorized nurse practitioner, the MCO, and the insurer within 10 days of the date of the examination or chart review. No additional fee beyond the consultation fee is allowed for this report. MCO requested consultations that are initiated by the insurer, which include examination of the worker, must be considered insurer medical examinations subject to the provisions of OAR 436-010-0265.

(16) A medical service provider must not unreasonably interfere with the right of the insurer, under OAR 436-010-0265(1), to obtain a medical examination of the worker by a physician of the insurer's choice.

(17) Any time an injured worker changes his or her attending physician or authorized nurse practitioner:

(a) The new provider is responsible for:

(A) Submitting Form 827 to the insurer not later than five days after the change or the date of first treatment; and

(B) Requesting all available medical information, including information concerning previous temporary disability periods, from the previous attending physician, authorized nurse practitioner, or from the insurer.

(b) The requirements of paragraphs (A) and (B) also apply anytime a worker is referred to a new physician qualified to be an attending physician or to a new authorized nurse practitioner primarily responsible for the worker's care.

(c) Anyone failing to forward requested information within 14 days to the new physician or nurse will be subject to penalties under OAR 436-010-0340.

(18) Injured workers, or their representatives, are entitled to copies of all protected health information in the medical records. These records should ordinarily be available from the insurers, but may also be obtained from medical providers under the following conditions:

(a) A medical provider may charge the worker for copies in accordance with OAR 436-009-0070(1), but a patient may not be denied summaries or copies of his/her medical records because of inability to pay.

(b) For the purpose of this rule, "protected health information in the medical record" means any oral or written information in any form or medium that is created or received and relates to:

(A) The past, present, or future physical or mental health of the patient;

(B) The provision of health care to the patient; and

(C) The past, present, or future payment for the provision of health care to the patient.

(c) A worker or the worker's representative may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Upon request, the entire health information record in the possession of the medical provider will be provided to the worker or the worker's representative. This includes records from other healthcare providers, except that the following may be withheld:

(A) Information which was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information;

(B) Psychotherapy notes;

(C) Information compiled for use in a civil, criminal, or administrative action or proceeding; and

(D) Other reasons specified by federal regulation.

[ED. NOTE: Forms referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth. ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252, 656.254 & 656.273

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0101, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0030; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0250

Elective Surgery

(1) "Elective Surgery" is surgery which may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function or health.

(2) Except as otherwise provided by the MCO, when the attending physician or surgeon upon referral by the attending physician or authorized nurse practitioner, believes elective surgery is needed to treat a compensable injury or illness, the attending physician, authorized nurse practitioner, or the surgeon must give the insurer notice at least seven days prior to the date of the proposed surgery. Notification must provide the medical information that substantiates the need for surgery, and the approximate surgical date and place if known. A chart note is considered "notice" if the information required by this section is included in the note.

(3) When elective surgery is recommended, the insurer may require an independent consultation with a physician of the insurer's choice.

(a) The insurer must notify the recommending physician, the worker and the worker's representative, within seven days of receipt of the notice of intent to perform surgery, whether or not a consultation is desired.

(A) The insurer's notice must either communicate approval to the physician; or

(B) If approval is not given, the insurer must submit a completed **Form 440-3228** (Elective Surgery Notification) to the recommending physician.

(b) If the form is not completed or insurer approval is not communicated to the physician, the physician is not required to respond.

(c) When requested, the consultation must be completed within 28 days after notice to the physician.

(4)(a) Within seven days of the consultation, the insurer must notify the recommending physician of the insurer's consultant's findings.

(b) When the insurer's consultant disagrees with the proposed surgery, the recommending physician and insurer should endeavor to resolve any issues raised by the insurer's consultant's report. Where medically appropriate, the recommending physician, with the insurer's agreement to pay, may obtain additional diagnostic testing, clarification reports or other information designed to assist them in their attempt to reach an agreement regarding the proposed surgery.

(c) When the recommending physician determines that agreement cannot be reached and that further attempts to resolve the matter would be futile, the recommending physician must notify the insurer, the worker and the worker's representative of such by signing **Form 440-3228** or providing other written notification.

(5) If the insurer believes the proposed surgery is excessive, inappropriate, ineffectual, or is in violation of these medical rules and cannot resolve the dispute with the recommending physician, the insurer must request an administrative review by the director within 21 days of the notice provided in subsection (4)(c) of this rule. Failure of the insurer to timely respond to the physician's elective surgery request either by communicating the insurer's approval of the surgery or by submitting a completed **Form 440-3228**, or to timely request administrative review under this rule shall bar the insurer from later disputing whether the surgery is or was excessive, inappropriate, or ineffectual.

(6) If the recommending physician and consultant disagree about the need for surgery, the insurer may inform the worker of the consultant's opinion. The decision whether to proceed with surgery remains with the attending physician and the worker.

(7) A recommending physician who prescribes or proceeds to perform elective surgery and fails to comply with the notification requirements in section (2) of this rule, may be subject to civil penalties as provided in ORS 656.254 and OAR 436-010-0340.

(8) Surgery which must be performed before seven days, because the condition is life threatening or there is rapidly progressing deterioration or acute pain not manageable without surgical intervention, is not considered elective surgery. In such cases the attending physician or authorized nurse practitioner should endeavor to notify the insurer of the need for emergency surgery.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth. ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.260 & 656.327

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0501, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0070; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

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436-010-0265

Insurer Medical Examinations (IME)

(1) The insurer may obtain three medical examinations of the worker by physicians of their choice for each opening of the claim. These examinations may be obtained prior to or after claim closure. Effective July 1, 2006, the insurer must choose a physician to perform the independent medical examination from the director's list in section (13) of this rule. A claim for aggravation, Board's Own Motion, or reopening of a claim where the worker becomes enrolled or actively engaged in training according to rules adopted under ORS 656.340 and 656.726 permits a new series of three medical examinations. For purposes of this rule, "independent medical examination" (IME) means any medical examination including a physical capacity or work capacity evaluation or consultation that includes an examination, except as provided in section (5) of this rule, that is requested by the insurer and completed by any medical service provider, other than the worker's attending physician. The examination may be conducted by one or more medical providers with different specialty qualifications, generally done at one location and completed within a 72-hour period. If the medical providers are not at one location, the examination is to be completed within a 72-hour period and at locations reasonably convenient to the worker.

(2) When the insurer has obtained the three medical examinations allowed under this rule and wishes to require the worker to attend an additional examination, the insurer must first notify and request authorization from the director. Insurers that fail to first notify and request authorization from the director, may be assessed a civil penalty. The process for requesting such authorization will be as follows:

(a) The insurer must submit a request for such authorization to the director in a form and format as prescribed by the director in Bulletin 252 including, but not limited to, the reasons for an additional IME, the conditions to be evaluated, dates, times, places, and purposes of previous examinations, copies of previous IME notification letters to the worker, and any other information requested by the director. A copy of the request must be provided to the worker and the worker's attorney; and

(b) The director will review the request and determine if additional information is necessary prior to issuing an order approving or disapproving the request. Upon receipt of a written request for additional information from the director, the parties will have 14 days to respond. If the parties do not provide the requested information, the director will issue an order approving or disapproving the request based on available information.

(3) In determining whether to approve or deny the request for an additional IME, the director may give consideration, but is not limited, to the following:

(a) Whether an IME involving the same discipline(s) or review of the same condition has been completed within the past six months.

(b) Whether there has been a significant change in the worker's condition.

(c) Whether there is a new condition or compensable aspect introduced to the claim.

(d) Whether there is a conflict of medical opinion about a worker's medical treatment or medical services, impairment, stationary status, or other issue critical to claim processing/benefits.

(e) Whether the IME is requested to establish a preponderance for medically stationary status.

(f) Whether the IME is medically harmful to the worker.

(g) Whether the IME requested is for a condition for which the worker has sought treatment or services, or the condition has been included in the compensable claim.

(4) Any party aggrieved by the director's order may request a hearing by the Hearings Division of the board under ORS 656.283 and OAR chapter 438.

(5) For purposes of determining the number of IMEs, any examinations scheduled but not completed are not counted as a statutory IME. The following examinations are not considered IMEs and do not require approval as outlined in section (2) of this rule:

(a) An examination conducted by or at the request or direction of the worker's attending physician or authorized nurse practitioner;

(b) An examination obtained at the request of the director;

(c) A consultation obtained in accordance with OAR 436-010-0250(3);

(d) An examination of a permanently totally disabled worker required under ORS 656.206(5);

(e) An examination by a consulting physician that has been arranged by the insurer, the worker's attending physician or authorized nurse practitioner in accordance with OAR 436-010-0280; and

(f) A consultation requested by the Managed Care Organization (MCO) for the purpose of clarifying or refining a plan for medical services as provided under its contract.

(6) Examinations must be at times and intervals reasonably convenient to the worker and must not delay or interrupt proper treatment of the worker.

(7) When a worker is required to attend an IME by a physician of the insurer's choice, the insurer must comply with the notification and reimbursement requirements contained in OAR 436-009-0025 and 436-060-0095.

(8) A medical service provider who unreasonably fails to timely provide diagnostic records required for an IME in accordance with OAR 436-010-0230(9) and 436-010-0240(10) may be assessed a penalty under ORS 656.325.

(9) When a worker objects to the location of an IME, the worker may request review by the director within six business days of the mailing date of the appointment notice.

(a) The request may be made in-person, by telephone, facsimile, or mail.

(b) The director may facilitate an agreement between the parties regarding location.

(c) If necessary, the director will conduct an expedited review and issue an order regarding the reasonableness of the location.

(d) The director will determine if there is substantial evidence to support a finding that the travel is medically contraindicated, or unreasonable based on a showing of good cause.

(A) For the purposes of this rule, "medically contraindicated" means that the travel required to attend the IME exceeds the travel or other limitations imposed by the attending physician, authorized nurse practitioner or other persuasive medical evidence, and alternative methods of travel will not overcome the limitations.

(B) For the purposes of this rule, "good cause" means the travel would impose a hardship for the worker that outweighs the right of the insurer or self-insured employer to select an IME location of its choice.

(10) If a worker fails to attend an IME without notifying the insurer or self-insured employer before the date of the examination or without sufficient reason for not attending, the director may impose a monetary penalty against the worker for such failure under OAR 436-010-0340.

(11) When scheduling an IME, the insurer must provide **Form 440-3227** (Invasive Medical Procedure Authorization) to the medical service provider.

(12) If a medical service provider intends to perform an invasive procedure as part of an IME, the provider must explain the risks involved in the procedure to the worker and the worker's right to refuse the procedure. The worker then must check the applicable box on **Form 440-3227** either agreeing to the procedure or declining the procedure, and sign the form. For the purposes of this rule, an invasive procedure is a procedure in which the body is entered by a needle, tube, scope, or scalpel.

(13) Effective July 1, 2006, any physician licensed in Oregon wishing to perform an IME for a workers' compensation claim must meet the director's criteria and be included on the list of authorized physicians maintained by the Director of the Department of Consumer and Business Services under ORS 656.325.

(14) The physician conducting the examination will determine the conditions under which the examination will be conducted. Subject to the physician's approval, the worker may use a video camera or tape recorder to record the examination.

(a) A worker may elect to have an observer present during the IME, except for a psychological examination. An observer in a psychological examination is not allowed unless the examining physician approves the presence of the observer.

(b) The worker must submit a signed form to the examining physician acknowledging that the worker understands the worker may be asked sensitive questions during the examination in the presence of the observer; unless the physician otherwise approves, an observer is not allowed in the examination if this requirement is not met.

(c) An observer cannot participate in or obstruct the examination.

(d) The worker's attorney or any representative of the worker's attorney cannot be an observer. Only a person who does not receive compensation in any way for attending the examination can be an injured worker's observer.

(e) The IME physician must verify that the injured worker and any observer have been notified of the requirement in sub-section (b).

(15) Upon completion of the examination, the examining physician(s) must:

(a) Send a copy of the report to the insurer within seven days of the exam date.

(b) Sign a statement at the end of the report verifying who performed the examination and dictated the report, the accuracy of the content of the report, and acknowledging that any false statements may result in sanction by the director.

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(16) The insurer must forward a copy of the signed report to the attending physician or authorized nurse practitioner within 72 hours of its receipt of the report.

(17) Prior to the examination date, a physician selected to complete a Worker Requested Medical Examination under OAR 436-060-0147 must be on the list of IME physicians maintained by the director under ORS 656.325.

(18) Insurer claims examiners must be trained and certified in accordance with OAR 436-055-0085 regarding appropriate interactions with IME providers.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264

Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0270

Insurer's Rights and Duties

(1) Insurers must notify the injured worker in writing, immediately following receipt of notice or knowledge of a claim, of the manner in which they may receive medical services for compensable injuries.

(2) Insurers may obtain relevant medical records, using a computer-generated equivalent of **Form 2476** (Release of Information), with "signature on file" printed on the worker's signature line, provided the insurer maintains a worker-signed original of the release form.

(3) The insurer must notify the attending physician or authorized nurse practitioner, if known, and the MCO, if any, when it denies or partially denies a previously accepted claim. In claims which have been denied, the insurer shall notify the medical service provider and MCO, if any, within ten days of any change of status of the claim.

(4) Upon request, the insurer must forward all relevant medical information to return-to-work specialists, vocational rehabilitation organizations, or new attending physician or authorized nurse practitioner within 14 days.

(5) In disabling and non-disabling claims, immediately following notice or knowledge that the worker is medically stationary, insurers must notify the injured worker and the attending physician or authorized nurse practitioner in writing which medical services remain compensable under the system. This notice must list all benefits the worker is entitled to receive under ORS 656.245(1)(c).

(6) When a medically stationary date is established by the insurer and is not based on the findings of an attending physician or authorized nurse practitioner, the insurer must notify all medical service providers of the worker's medically stationary status. Applicable to all injuries occurring on or after October 23, 1999, the insurer will be responsible for reimbursement to all medical service providers for services rendered until the insurer provides the notice to the attending physician or authorized nurse practitioner.

(7) Insurers must reimburse workers for actual and reasonable costs for travel, prescriptions, and other claim related services paid by a worker in accordance with ORS 656.245(1)(e), 656.325, and 656.327.

(a) Reimbursement by the insurer to the worker for transportation costs to visit his or her attending physician may be limited to the theoretical distance required to realistically seek out and receive care from an appropriate attending physician of the same specialty who is in a geographically closer medical community in relationship to the worker's home. If a worker seeks medical services from an authorized nurse practitioner, reimbursement by the insurer to the worker for transportation costs to visit his or her authorized nurse practitioner may be limited to the theoretical distance required to realistically seek out and receive care from an appropriate nurse practitioner of the same specialty who is in a geographically closer medical community in relationship to the worker's home. All medical practitioners within a metropolitan area are considered part of the same medical community and therefore are not considered geographically closer than any other physician in that metropolitan medical community for purposes of travel reimbursement.

(b) A worker who relocates within the State of Oregon may continue treating with the established attending physician or authorized nurse practitioner and be reimbursed transportation costs.

(c) Prior to limiting reimbursement under subsection (7)(a) of this rule, the insurer must provide the worker a written explanation and a list of providers who can timely provide similar medical services within a reasonable traveling distance for the worker. The insurer must inform the worker that medical services may continue with the established attending physician or authorized nurse practitioner; however, reimbursement of transportation costs may be limited as described.

(d) When the director decides travel reimbursement disputes the determination will be based on principles of reasonableness and fairness

within the context of the specific case circumstances as well as the spirit and intent of the law.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0801, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0100; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-000; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0280

Determination of Impairment

(1) The attending physician or authorized nurse practitioner must notify the insurer of the date on which the worker became medically stationary from the compensable injury or illness and whether or not the worker is released to any form of work. The medically stationary date should not be a projected date and should relate to an examination. On disabling claims, when finding or notification that the worker is medically stationary, a determination of permanent impairment for claim closure must be done under OAR 436-030-0020(2). An authorized nurse practitioner must refer the worker to a licensed physician who qualifies as an attending physician to complete a closing examination if there is a reasonable expectation of permanent impairment under ORS 656.214(1)(a) and OAR 436-030-0020(2)(b).

(2) A report must be submitted to the insurer by the attending physician or authorized nurse practitioner within 14 days of the examination in which the worker was determined medically stationary unless:

(a) The attending physician does not wish to perform the closing examination, in which case, he or she must arrange or request the insurer arrange, within eight days of the examination in which the worker is declared medically stationary, for the worker to be examined by a consulting physician for all or any part of the closing examination; or

(b) The authorized nurse practitioner refers the worker for a closing examination, in which case he or she must arrange or request the insurer arrange, within eight days of the examination in which the worker is declared medically stationary, for the worker to have a closing examination under section (1) of this rule. A closing examination scheduled and performed under this subsection is not an IME or a change of attending physician.

(3) An examination must be performed when the attending physician or authorized nurse practitioner is notified by the insurer that the worker's accepted injury is no longer the major contributing cause of the worker's condition and a denial has been issued.

(a) The attending physician must submit a closing report within 14 days of the examination. If the attending physician refers the worker to a consulting physician for all or any part of the closing examination, the examination must be scheduled within five days of the denial notification.

(b) The authorized nurse practitioner must either refer the worker for a closing examination or provide a written statement, in accordance with sections (1) and (2) of this rule.

(4) Under this rule, closing reports for examinations performed by a physician other than the attending physician must be submitted to the attending physician within seven days of the examination asking whether or not the physician concurs with the report and requesting a description of any finding or conclusion with which the attending physician disagrees. The attending physician must review the report and, within seven days of receipt of the report, concur in writing or provide a report to the insurer describing any finding/conclusion with which the attending physician disagrees.

(5) The physician conducting the examination must provide all objective findings of impairment pursuant to these rules and in accordance with OAR 436-035-0007.

(6) The closing examination report does not include any rating of impairment or disability, but describes impairment findings to be rated by either the insurer or the director. Physicians must provide comments regarding the validity of the examination findings as they pertain to the accepted compensable conditions.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

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(8) The attending physician must specify the worker's residual functional capacity or refer the worker for completion of a second level PCE or WCE (as described in OAR 436-009-0070(4) pursuant to the following:

(a) A PCE when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A WCE when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(9) When the worker's condition is not medically stationary and a denial has been issued because the worker's accepted injury is no longer the major contributing cause of the worker's condition, the physician must estimate the worker's future impairment and residual functional capacity according to OAR 436-035-0014.

Stat. Auth: ORS 656.726(4) & 656.245(2)(b)(B)

Stats. Implemented: ORS 656.245 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0290

Medical Care After Medically Stationary

(1) Palliative care means medical services rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal, or permanently alleviate or eliminate a medical condition. Palliative care is compensable when it is prescribed by the attending physician and is necessary to enable the worker to continue current employment or a vocational training program. When the worker's attending physician believes that palliative care is appropriate to enable the worker to continue current employment or a current vocational training program, the attending physician must first submit a written request for approval to the insurer.

(a) The request must:

(A) Describe any objective findings;

(B) Identify by ICD-9-CM diagnosis, the medical condition for which palliative care is requested;

(C) Detail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and frequency and duration of the care, not to exceed 180 days;

(D) Explain how the requested care is related to the compensable condition; and

(E) Describe how the requested care will enable the worker to continue current employment, or a current vocational training program, and the possible adverse effect if the care is not approved.

(b) Insurers must date stamp all palliative care requests upon receipt. Within 30 days of receipt, the insurer must send written notification to the attending physician, worker, and worker's attorney approving or disapproving the request as prescribed.

(A) Palliative care may begin following submission of the request to the insurer. If approved, services are payable from the date the approved medical service begins. If the requested care is ultimately disapproved, the insurer is not liable for payment of the medical service.

(B) If the insurer disapproves the requested care, the insurer must explain, in writing:

(i) Any disagreement with the medical condition for which the care is requested;

(ii) Why the requested care is not acceptable; and/or

(iii) Why the requested care will not enable the worker to continue current employment or a current vocational training program.

(c) If the insurer fails to respond in writing within 30 days, the attending physician or injured worker may request approval from the director within 120 days from the date the request was first submitted to the insurer. If the request is from a physician, it must include a copy of the original request and may include any other supporting information.

(d) When the attending physician or the injured worker disagrees with the insurer's disapproval, the attending physician or the injured worker may request administrative review by the director in accordance with OAR 436-010-0008, within 90 days from the date of insurer's notice of disapproval. In addition to information required by OAR 436-010-0008(6), if the request is from a physician, it must include:

(A) A copy of the original request to the insurer; and

(B) A copy of the insurer's response.

(e) When the worker, insurer, or director believes palliative care, compensable under ORS 656.245(1)(c)(J), is excessive, inappropriate, ineffectual, or in violation of the director's rules regarding the performance of

medical services, the dispute will be resolved in accordance with ORS 656.327 and OAR 436-010-0008.

(f) Subsequent requests for palliative care are subject to the same process as the initial request; however, the insurer may waive the requirement that the attending physician submit a supplemental palliative care request.

(2) Curative medical care is compensable when the care is to stabilize a temporary and acute waxing and waning of symptoms of the worker's condition.

(a) The director must approve curative care arising from a generally recognized, non-experimental advance in medical science since the worker's claim was closed that is highly likely to improve the worker's condition and that is otherwise justified by the circumstances of the claim. When the attending physician believes that curative care is appropriate, the physician must submit a written request for approval to the director. The request must:

(A) Describe any objective findings.

(B) Identify by ICD-9-CM diagnosis, the medical condition for which the care is requested.

(C) Describe in detail the advance in medical science that has occurred since the worker's claim was closed that is highly likely to improve the worker's condition.

(D) Provide an explanation, based on sound medical principles, as to how and why the care will improve the worker's condition.

(E) Describe why the care is otherwise justified by the circumstances of the claim.

(3) In addition to sections (1) and (2) of this rule, medical services after a worker's condition is medically stationary are compensable when they are:

(a) Provided to a worker who has been determined permanently and totally disabled.

(b) Prescription medications.

(c) Services necessary to administer or monitor administration of prescription medications.

(d) Prosthetic devices, braces, and supports.

(e) Services to monitor the status, replacement or repair of prosthetic devices, braces, and supports.

(f) Services provided under an accepted claim for aggravation.

(g) Services provided under Board's Own Motion.

(h) Services necessary to diagnose the worker's condition.

(i) Life-preserving modalities similar to insulin therapy, dialysis, and transfusions.

[Publications: Publications referenced are available from the agency.]

Stat. Auth: ORS 656.726

Stats. Implemented: ORS 656.245

Hist.: WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0041; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0300

Process for Requesting Exclusion of Medical Treatment from Compensability

(1) If an injured worker or insurer believes that any medical treatment is unscientific, unproven as to its effectiveness, outmoded, or experimental, either party may initiate a request for exclusion of the medical treatment from compensability under ORS 656.245(3). The request must include documentation on why the medical treatment should be excluded from compensability for workers' compensation claims. Request for administrative review of an individual worker's treatment under ORS 656.327 does not initiate review under this process.

(2) The investigation will include a request for advice from the licensing boards of practitioners who might be affected and the Medical Advisory Committee.

(3) The director will issue an order and may adopt a rule declaring the treatment to be non-compensable. The decision of the director is appealable under ORS 656.704.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245

Hist.: WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0045; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-010-0340

Sanctions and Civil Penalties

(1) If the director finds any medical service provider in violation of the medical reporting requirements established under ORS 656.245,

ADMINISTRATIVE RULES

656.252, 656.254(1), and 656.325, and OAR 436-009 and 436-010, the director may impose one or more of the following sanctions:

- (a) Reprimand by the director;
 - (b) Non-payment, reduction or recovery of fees in part, or whole, for medical services rendered;
 - (c) Referral to the appropriate licensing board; or
 - (d) Civil penalty not to exceed \$1,000 for each occurrence. In determining the amount of penalty to be assessed, the director will consider:
 - (A) The degree of harm inflicted on the worker or the insurer;
 - (B) Whether there have been previous violations; and
 - (C) Whether there is evidence of willful violations.
- (2) A penalty of \$100 for each violation of ORS 656.325(1)(c)(C).
- (2) The director may impose a penalty of forfeiture of fees and a fine not to exceed \$1,000 for each occurrence on any health care practitioner who, under ORS 656.254, and 656.327, has been found to:

- (a) Fail to comply with the medical rules;
- (b) Provide medical services that are excessive, inappropriate or ineffectual; or
- (c) Engage in any conduct demonstrated to be dangerous to the health or safety of a worker.

(3) If the conduct as described in section (2) is found to be repeated and willful, the director may declare the medical service provider ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years.

(4) A medical service provider whose license has been suspended or revoked by the licensing board for violations of professional ethical standards may be declared ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years. A certified copy of the revocation or suspension order will be prima facie justification for the director's order.

(5) If a financial penalty is imposed on the attending physician or authorized nurse practitioner for violation of these rules, no recovery of penalty fees may be sought from the worker.

(6) If an insurer or worker believes sanctions under sections (1) or (2) of this rule are not appropriate, either may submit a complaint in writing to the director.

(7) If the director finds an insurer in violation of the notification provisions of OAR 436-010 limiting medical services, the director may order the insurer to reimburse any affected medical service providers for services rendered until the insurer complies with the notification requirement. Any penalty will be limited to the amounts listed in section (8) of this rule.

(8) If the director finds any insurer in violation of statute, OAR 436-009 or 436-010, or an order of the director, the insurer may be subject to penalties under ORS 656.745 of not more than \$2000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation, or each day a violation continues, will be considered a separate violation.

(9) The director may subject a worker who fails to meet the requirements in OAR 436-010-0265(10) to a \$100 penalty per occurrence under ORS 656.325, to be deducted from future benefits.

Stat. Auth.: ORS 656726(4)

Stats. Implemented: ORS 656.245, 656.254 & 656.745

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90, Renumbered from 436-010-0110(3)(4) & (7); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0130; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-990; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-015-0008

Administrative Review

(1) Any party may request that the director provide voluntary mediation after a request for administrative review or hearing is filed. The request must be in writing. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, administrative review shall continue.

(2) Administrative review before the director: The process for administrative review of such matters shall be as follows:

(a) Any party that disagrees with an action taken by an MCO pursuant to these rules must first use the dispute resolution process of the MCO. If the party does not appeal the MCO's decision, in writing and within 30 days of the mailing date of the decision, the party will lose all rights to further appeal the decision.

(b) The aggrieved party shall file a written request for administrative review with the administrator of the Workers' Compensation Division with-

in 60 days of the date the MCO issues a final decision under the MCO's dispute resolution process. If a party has been denied access to an MCO dispute resolution process because the complaint or dispute was not included in the MCO's dispute resolution process or because the MCO's dispute resolution process was not completed for reasons beyond a party's control, the party may request administrative review within 60 days of the failure of the MCO to issue a decision. The request must specify the grounds upon which the action is contested.

(c) The director shall create a documentary record sufficient for judicial review. The director may require and allow the parties to submit such input and information appropriate to complete the review.

(d) The director shall review the relevant information and issue an order. The order shall specify that it will become final and not subject to further review unless a written request for hearing is filed with the administrator within 30 days of the mailing date of the order.

(3) Hearings before an administrative law judge: Any party who disagrees with an order under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order. OAR 436-001 applies to the hearing. In the review of orders issued pursuant to ORS 656.260(14) and (16), no new medical evidence or issues shall be admitted at hearing. In these reviews, administrative orders may be modified at hearing only if the administrative order is not supported by substantial evidence in the record or reflects an error of law. The dispute may be remanded to the MCO for further evidence taking, correction, or other necessary action if the administrative law judge or director determines the record has been improperly, incompletely, or otherwise insufficiently developed.

(4) Contested case hearings of sanctions and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of civil penalty issued by the director pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(a) The party shall file a written request for a hearing with the administrator of the Workers' Compensation Division within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An administrative law judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

(5) Hearings on the suspension or revocation of an MCO's certification:

(a) At a hearing on a notice of intent to suspend issued pursuant to OAR 436-015-0080(2), the MCO must show cause why it should be permitted to continue to provide services under these rules.

(A) If the director determines that the acts or omissions of the MCO justify suspension of the MCO's certification, the director may issue an order suspending the MCO for a period of time up to a maximum of one year or may initiate revocation proceedings pursuant to OAR 436-015-0080(5). If the director determines that the acts or omissions of the MCO do not justify suspension, the director shall issue an order withdrawing the notice.

(B) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(C) OAR 436-001 applies to the hearing.

(b) A revocation issued pursuant to OAR 436-015-0080(5) shall become effective within 10 days after service of such notice upon the MCO unless within such period of time the MCO corrects the grounds for revocation to the satisfaction of the director or files a written request for hearing with the administrator of the Workers' Compensation Division.

(A) If the MCO appeals, the administrator shall set a date for a hearing and shall give the MCO at least ten days notice of the time and place of the hearing. At hearing, the MCO shall show cause why it should be permitted to continue to provide services under these rules.

(B) Within thirty days after the hearing, the director shall issue an order affirming or withdrawing the revocation.

(C) If the MCO disagrees with the order, it may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(D) OAR 436-001 applies to the hearing.

(c) An emergency revocation issued pursuant to OAR 436-015-0080(7) is effective immediately. The MCO must file a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 183.310 - 183.550 & 656.726(4)

Stats. Implemented: ORS 656.260

ADMINISTRATIVE RULES

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; Administrative correction 6-13-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-015-0030

Applying for Certification

(1) A health care provider or group of medical service providers applying for certification as an MCO must submit to the director, within 120 days of the filing of the Notice of Intent to Form, the following:

(a) Four copies of an application which includes specific information indicating the manner in which the MCO will be able to meet the provisions of these rules;

(b) The MCO certification of incorporation and a copy of the MCO by-laws;

(c) A non-refundable fee of \$1,500 which will be deposited in the Department of Consumer and Business Services Fund; and

(d) The approved MCO plan.

(2) The MCO shall provide a description of the initial GSA. The GSA shall be designated by a listing of the postal zip codes in the service area.

(3) The MCO plan shall provide a description of the times, places, and manner of providing services under the plan adequate to ensure that workers governed by the MCO shall be able to:

(a) Access an MCO provider panel with a minimum of one attending physician within the MCO for every 1,000 workers covered by the plan;

(b) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner within 24 hours of the MCO's knowledge of the need or a request for treatment;

(c) Receive initial treatment by the worker's choice of an attending physician or authorized nurse practitioner in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO;

(d) Receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization;

(e) Receive information on a 24-hour basis regarding medical services available within the MCO which shall include the worker's right to receive emergency or urgent care, and the hours of regular MCO operation if assistance is needed to select an attending physician or answer other questions;

(f) Seek treatment from any category of medical service provider as defined in subsection (6)(a) of this rule and have a choice of at least 3 medical service providers within each category. The worker shall also have at least 3 choices, as needed, of ancillary service providers including, but not limited to, physical therapists and psychologists. Treatment by all medical service providers including attending physicians will be governed by the MCO treatment standards and protocols;

(g) Access medical providers, including attending physicians, within a reasonable distance from the worker's place of employment, considering the normal patterns of travel. For purposes of this rule, 30 miles (one way) in urban areas and 60 miles (one way) in rural areas will be considered a reasonable distance;

(h) Receive treatment by a non-MCO medical service provider when the enrolled worker resides outside the MCO's geographical service area. Such workers may only select non-MCO providers if they practice closer to the worker's residence than an MCO provider of the same category and if they agree to the terms and conditions of the MCO;

(i) Receive services that meet quality, continuity, and other treatment standards which will provide all medical and health care services in a manner that is timely, effective, and convenient for the worker; and

(j) Receive specialized medical services the MCO is not otherwise able to provide. The application must include a description of the times, places, and manner of providing such specialized medical services.

(4) The MCO plan must provide a procedure which allows for workers to receive compensable medical treatment from a primary care physician or authorized nurse practitioner who is not a member of the MCO. The procedure must identify the criteria the MCO will use for approval or disapproval of such treatment, and provide written notice of the MCO physician qualification procedures to the worker.

(5) The MCO shall provide:

(a) Copies of contract agreement(s) or other documents signed by the MCO and each participating medical service provider/health care provider representative which verify membership; and

(b) A list of the names, addresses, and specialties of the individuals who will provide services under the managed care plan together with appropriate evidence of any licensing, registration or certification requirements for that individual to practice. This list shall indicate which medical service providers will act as attending physicians in each GSA within the MCO; and

(c) Copies of all treatment standards and protocols developed or used by the MCO, including those from any companies, if any, from whom the MCO has purchased the use of treatment standards and protocols for the director review and approval under ORS 656.260(4)(a). The MCO must provide these copies at no cost to the director.

(6) The MCO plan shall provide:

(a) An adequate number of medical service providers from each provider category. For purposes of these rules, the categories include acupuncturist, chiropractor, dentist, naturopath, optometrist, osteopath, physician, and podiatrist, as listed in ORS 676.110. The requirements of this section must be met unless the MCO shows evidence that the minimum number is not available within a GSA.

(b) A process that allows workers to select a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010. If the MCO has fewer than three authorized nurse practitioners from which workers can choose within a GSA, the MCO must allow workers to seek treatment outside the MCO from authorized nurse practitioners, consistent with the MCO's treatment and utilization standards. Treatment must also be consistent with ORS 656.245(2)(b)(C), which limits the authorization of treatment of the worker by a nurse practitioner to 90 days and authorization of payment of temporary disability benefits for a period not to exceed 60 days from the date of the first visit on the initial claim. Such authorized nurse practitioners are not themselves bound by the MCO's treatment and utilization standards; however, workers are subject to those standards.

(c) A program which specifies the criteria for selection and de-selection of physicians and the process for peer review. The processes for terminating a physician and peer review shall provide for adequate notice and hearing rights for any physician.

(7) The MCO plan must provide adequate methods for monitoring and reviewing contract matters between its providers and the MCO to ensure appropriate treatment or to prevent inappropriate or excessive treatment including but not limited to:

(a) A program of peer review and utilization review to prevent inappropriate or excessive treatment including, but not limited to, the following:

(A) A pre-admission review program of elective admissions to the hospital and of elective surgeries.

(B) Individual case management programs, which identify ways to provide appropriate care for less money for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care.

(C) Physician profile analysis which may include such information as each physician's total charges, number and costs of related services provided, time loss of claimant, and total number of visits in relation to care provided by other physicians to patients with the same diagnosis. A physician's profile shall not be released to anyone outside the MCO without the physician's specific written consent except that the physician's profile shall be released to the director without the necessity of obtaining such consent.

(D) Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary.

(E) Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate.

(F) Second surgical opinion programs which allow workers to obtain the opinion of a second physician when elective surgery is recommended. Second surgical opinions must be required prior to repeat surgeries.

(b) A quality assurance program which includes, but is not limited to:

(A) A system for resolution and monitoring of problems and complaints which includes, but is not limited to, the problems and complaints of workers and medical service providers;

(B) Physician peer review which shall be conducted by a group designated by the MCO or the director and which must include, but is not limited to, members of the same healing art in which the physician practices;

(C) A standardized claimant medical record keeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance.

(c) A program for monitoring and reviewing other contract matters that meets the requirements of ORS 656.260(4) and which are not covered under peer review, service utilization review, dispute resolution, and quality assurance.

(8) The MCO plan must include a procedure for internal dispute resolution to resolve complaints by enrolled injured workers, medical providers, and insurers in accordance with OAR 436-015-0110. The internal dispute resolution procedure shall include a provision allowing the waiver of the time period to appeal a decision to the MCO upon a showing of good cause.

(9) The MCO plan shall provide other programs that meet the requirements of ORS 656.260(4) including:

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(a) A program involving cooperative efforts by the workers, the employer, the insurer, and the MCO to promote early return to work for enrolled injured workers; and

(b) A program involving cooperative efforts by the workers, the employer, and the MCO to promote workplace safety and health consultative and other services. The program shall include:

(A) Identification of how the MCO will promote such services.

(B) A method by which the MCO will report to the insurer within 30 days of knowledge of occupational injuries and illnesses involving serious physical harm as defined by OAR 437-001, occupational injury and illness trends as observed by the MCO, and any observations that indicate an injury or illness was caused by a lack of diligence of the employer.

(C) A method by which an MCO's knowledge of needed loss control services will be communicated to the insurer for determining the need for services as detailed in OAR 437-001.

(D) A provision that all notifications to the insurer from the MCO shall be considered as a request to the insurer for services as detailed in OAR 437-001.

(E) A provision that the MCO shall maintain complete files of all notifications for a period of 3 years following the date that notification was given by the MCO.

(10) The MCO shall establish one place of business in this state where the organization administers the plan, keeps membership records and other records as required by OAR 436-015-0050.

(11) The MCO plan must include a procedure for timely and accurate reporting to the director necessary information regarding medical and health care service costs and utilization in accordance with OAR 436-015-0040 and 436-009.

(12) The MCO shall designate an in-state communication liaison for the department and the insurers at the MCO's established in-state location. The responsibilities of the liaison shall include, but not be limited to:

(a) Coordinating and channeling all outgoing correspondence and medical bills;

(b) Unless otherwise provided by the MCO contract, providing centralized receipt and distribution of all reimbursements back to the MCO members and primary care physicians; and

(c) Serving as a member on the quality assurance committee.

(13) The MCO must provide satisfactory evidence of ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan.

(14) The MCO plan shall describe the reimbursement procedures for all services provided in accordance with the MCO plan. The members must comply with the following billing and report processing procedures:

(a) Submit all bills in accordance with the MCO contract with the insurer.

(b) Submit all reports and related correspondence to the insurer's authorized claims processing location with copies to the MCO in-state communication liaison or as otherwise provided by the contract.

(15) The MCO plan shall provide a procedure within the MCO plan to provide financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(16) The MCO plan must describe how the MCO will provide insurers with information that will inform workers of all choices of medical service providers within the plan and how workers can access those providers.

(17) Within 45 days of receipt of all information required for certification, the director shall notify the applicant of the effective date of the certification and the initial geographical service area of the MCO. If the certification is denied, the applicant will be provided with the reason therefore.

(18) The application for certification for an MCO shall not be approved if the MCO fails to meet the requirements of these rules.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-015-0040

Reporting Requirements for an MCO

(1) In order to ensure the MCO complies with the requirements of these rules, each MCO shall provide the director with a copy of the entire text of any MCO/insurer contract agreement, signed by the insurer and the MCO, within 30 days of execution of such contracts. Amendments, addendums, and cancellations, together with the entire text of the underlying contracts, shall be submitted to the director within 30 days of execution.

(2) Notwithstanding section (1), when an MCO/insurer contract agreement contains a specific expiration or termination date, the MCO

must provide the director with a copy of a contract extension, signed by the insurer and MCO, no later than the contract's date of expiration or termination, or workers will no longer be subject to the contract after it expires or terminates without renewal pursuant to ORS 656.245(4)(a).

(3) Any amendment to the approved MCO plan must be submitted to the director for approval. The MCO shall not take any action based on the amendment until the amended plan is approved with the following exception:

(a) Within 30 days of implementation, the MCO must provide copies of any new or revised treatment standards and protocols developed or used by the MCO, including those from any companies, if any, from whom the MCO has purchased the use of treatment standards and protocols. The MCO must provide these copies at no cost to the director.

(4) Within 45 days of the end of each calendar quarter, each MCO shall provide the following information, current on the last day of the quarter, in a form and format as prescribed by the director: specify quarter being reported, MCO certification number, membership listings by category of medical service provider (in coded form), including provider names, specialty (in coded form), Tax ID number, Oregon license number, business address and phone number. (All fields are required unless specifically excepted by bulletin.) When a medical provider has multiple offices, only one office location in each geographical service area needs to be reported. In addition, the updated membership listing shall include the names and addresses of all health care providers participating in the MCO.

(5) By April 30 of each year, each MCO shall provide the director with the following information for the previous calendar year:

(a) A summary of any sanctions or punitive actions taken by the MCO against its members;

(b) A summary of actions taken by the MCO's peer review committee; and

(c) An affidavit that the approved MCO plan is consistent with the MCO's business practices, and that any amendments to the plan have been approved by the director.

(6) An MCO must report any new board members or shareholders to the director within 14 days of such changes. These parties must submit affidavits certifying they have no interest in an insurer or other non-qualifying employer as described under OAR 436-015-0009.

(7) Nothing in this rule limits the director's ability to require information from the MCO as necessary to monitor the MCO's compliance with the requirements of these rules.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 13-1992, f. & cert. ef. 9-21-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-015-0070

Primary Care Physicians and Authorized Nurse Practitioners Who Are Not MCO Members

(1) The MCO shall authorize a nurse practitioner or physician who is not a member of the MCO to provide medical services to an enrolled worker if:

(a) The nurse practitioner qualifies as an authorized nurse practitioner under ORS 656.245 and OAR 436-010-0005 or the physician qualifies as a primary care physician under ORS 656.260(4)(g);

(b) The nurse practitioner or physician agrees to comply with all terms and conditions regarding services governed by the MCO. For purposes of this section, the phrase "all terms and conditions regarding services governed by the MCO" means MCO treatment standards, protocols, utilization review, peer review, dispute resolution, billing and reporting procedures, and fees for services in accordance with OAR 436-015-0090. However, the MCO's terms and conditions may not place limits on the length of services unless such limits are stated in ORS chapter 656; and

(c) The nurse practitioner or physician agrees to refer the worker to the MCO for specialized care, including physical therapy, to be furnished by another provider that the worker may require.

(2) The MCO cannot deny authorization of a primary care physician or authorized nurse practitioner based on past practices.

(3) The primary care physician or authorized nurse practitioner who is not a member of the MCO will be deemed to have maintained the worker's medical records and established a documented history of treatment, if the physician's or nurse practitioner's medical records show treatment has been provided to the worker prior to the date of injury. Additionally, if an injured worker has selected a primary care physician or authorized nurse practitioner through a private health plan, prior to the date of injury, that selected provider will be deemed to have maintained the worker's medical

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records and established a documented history of treatment prior to the date of injury.

(4) Notwithstanding section (1), for those workers receiving their medical services from a facility which maintains a single medical record on the worker, but provides treatment by multiple primary care physicians or authorized nurse practitioners who are not MCO members, the requirements of sections (1) and (3) will be deemed to be met. In this situation, the worker shall select one physician or authorized nurse practitioner to treat the compensable injury as the primary care physician or authorized nurse practitioner.

(5) Any questions or disputes relating to the worker's selection of a primary care physician or authorized nurse practitioner who is not an MCO member shall be resolved pursuant to OAR 436-015-0110.

(6) Any disputes relating to a worker's non-MCO primary care physician's, non-MCO authorized nurse practitioner's, or other non-MCO physician's compliance with MCO standards and protocols shall be resolved pursuant to OAR 436-015-0110.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 6-2004, f. 6-14-04, cert. ef. 6-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-015-0080

Suspension; Revocation

(1) Pursuant to ORS 656.260, the certification of a managed care organization issued by the director may be suspended or revoked if:

(a) The director finds a serious danger to the public health or safety;

(b) The MCO is providing services not in accordance with the terms of the certified MCO plan;

(c) There is a change in legal entity of the MCO which does not conform to the requirements of these rules;

(d) The MCO fails to comply with ORS chapter 656, OAR 436-009, 436-010, 436-015, or orders of the director.

(e) The MCO or any of its members commits any violation for which a civil penalty could be assessed under ORS 656.254 or 656.745;

(f) Any false or misleading information is submitted by the MCO or any member of the organization;

(g) The MCO continues to utilize the services of a health care practitioner whose license has been suspended or revoked by the licensing board; or

(h) The director determines that the MCO was or is formed, owned, or operated by an insurer or by an employer other than a health care provider or medical service provider as defined in these rules.

(2) The director shall provide the MCO written notice of an intent to suspend the MCO's certification.

(a) The notice shall:

(A) Describe generally the acts of the MCO and the circumstances that would be grounds for suspension;

(B) Advise the MCO of their right to participate in a show cause hearing and the date, time, and place of the hearing.

(b) The notice shall be served upon the MCO's designated in-state communication liaison and to the registered agent or other officer of the corporation upon whom legal process may be served at least 30 days prior to the scheduled date of the hearing.

(3) The show cause hearing on the suspension shall be conducted as provided in OAR 436-015-0008(5).

(4) An order of suspension shall suspend the MCO's authority to enter into new contracts with insurers for a specified period of time up to a maximum of one year. During the suspension, the MCO may continue to provide services in accordance with the contracts in effect at the time of the suspension.

(a) A suspension may be set aside prior to the end of the suspension period if the director is satisfied of the MCO's current compliance, ability, and commitment to comply with ORS chapter 656, OAR 436-009, 436-010, 436-015, orders of the director, and the certified MCO plan.

(b) Prior to the end of the suspension period the division shall determine if the MCO is in compliance with ORS chapter 656, OAR 436-009, 436-010, 436-015, orders of the director, and the certified MCO plan. If the MCO is in compliance the suspension will terminate on its designated date. If the MCO is not in compliance the suspension may be extended beyond one year without further hearing or revocation proceedings may be initiated.

(5) The process for revocation of a MCO shall be as follows:

(a) The director shall provide the MCO with notice of an order of revocation. The order shall:

(A) Describe generally the acts of the MCO and the circumstances that are grounds for revocation; and

(B) Advise the MCO that the revocation shall become effective within 10 days after service of such notice upon the MCO unless within such period of time the MCO corrects the grounds for the revocation to the satisfaction of the director or files an appeal as provided in OAR 436-015-0008(5).

(b) The order shall be served upon the MCO's designated in-state communication liaison and to the registered agent or other officer of the corporation upon whom legal process may be served.

(c) A show cause hearing on the revocation shall be conducted as provided in OAR 436-015-0008(5).

(d) If revocation is affirmed, the revocation is effective ten days after service of the order upon the MCO unless the MCO appeals.

(6) After revocation of an MCO's authority to provide services under these rules has been in effect for 3 years or longer, it may petition the director to restore its authority by making application as provided in these rules.

(7) Notwithstanding section (5) of this rule, in any case where the director finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the director may immediately revoke the certification of an MCO without providing the MCO a show-cause hearing. Such order shall be final, unless the MCO requests a hearing. The process for review shall be as provided in OAR 436-015-0008(5).

(8) Insurer contractual obligations to allow a managed care organization to provide medical services for injured workers are null and void upon revocation of the MCO certification by the director.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 4-1991, f. & cert. ef. 6-14-91; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-015-0110

Dispute Resolution/Complaints of Rule Violation

(1) Disputes which arise between any party and an MCO shall first be processed through the dispute resolution process of the MCO.

(2) The MCO shall promptly provide a written summary of the MCO's dispute resolution process to anyone who requests it, or to any party or their representative disputing any action of the MCO or affected by a dispute. The written summary shall include at least the following:

(a) The title, address, and telephone number of the contact person at the MCO who is responsible for the dispute resolution process;

(b) The types of issues the MCO will consider in its dispute resolution process;

(c) A description of the procedures and time frames for submission, processing, and decision at each level of the dispute resolution process including the right of an aggrieved party to request administrative review by the director if the party disagrees with the final decision of the MCO; and

(d) Advise that absent a showing of good cause, failure to timely appeal to the MCO shall preclude appeal to the director.

(3) Notification must be provided to the worker and the worker's attorney when the MCO:

(a) Receives any complaint or dispute pursuant to this rule; or

(b) Issues any decision pursuant to this rule.

(4) Whenever an MCO denies a service, or a party otherwise disputes a decision of the MCO, the MCO shall send written notice of its decision to all parties that can appeal the decision. If the MCO provides a dispute resolution process for the issue, the notice shall include the following paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: If you want to appeal this decision, you must notify us in writing within 30 days of the mailing date of this notice. Send a written request for review to: {MCO name and address}. If you have questions, contact {MCO contact person and phone number}. If you do not notify us in writing within 30 days, you will lose all rights to appeal the decision. If you appeal timely, we will review the disputed decision and notify you of our decision within 60 days of your request. Thereafter, if you continue to disagree with our decision, you may appeal to the director of the Department of Consumer and Business Services (DCBS) for further review. If you fail to seek dispute resolution through us, you will lose your right to appeal to the director of DCBS.

(5) If an MCO receives a complaint or dispute which is not included in the MCO dispute resolution process, the MCO shall, within seven days from the date of receiving the complaint, notify the parties in writing of their right to request review by the director pursuant to OAR 436-015-0008. The notice shall include the following paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: The issue you have raised is not a matter which we handle. To pursue this issue, you must request administrative review of the issue by the director of the Department of Consumer and Business Services (DCBS). Send written requests for review to: DCBS, Workers' Compensation Division, Medical Review Unit, 350 Winter Street NE, PO Box 14480, Salem, OR 97309-0405. If you do not notify DCBS in writing within 60 days of your receipt of this notice, you will lose all rights to appeal the decision. For assistance, injured workers may call the Workers' Compensation Division's toll-free hotline at 1-800-452-0288 and ask to speak

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with a Benefit Consultant. All others, or those who are calling from outside Oregon, should call 1-503-947-7585 (TTY 503-947-7993).

(6) The time frame for resolution of the dispute by the MCO shall not exceed 60 days from the date of receipt of the dispute by the MCO until issuance of the final decision by the MCO. After the MCO resolves a dispute pursuant to ORS 656.260(14), the MCO shall notify all parties to the dispute in writing, including the worker's attorney where written notification has been provided by the attorney with an explanation of the reasons for the decision. This notice shall inform the parties of the next step in the process, including the right of an aggrieved party to seek administrative review by the director pursuant to OAR 436-015-0008. The notice shall include the following paragraph, in bold text:

NOTICE TO THE WORKER AND ALL OTHER PARTIES: If you want to appeal this decision, you must notify the director of the Department of Consumer and Business Services (DCBS) in writing within 60 days of your receipt of this notice. Send written requests for review to: Department of Consumer and Business Services, Workers' Compensation Division, Medical Review Unit, 350 Winter Street NE, PO Box 14480, Salem, OR 97309-0405. If you do not notify DCBS in writing within 60 days, you will lose all rights to appeal the decision. If you have questions, call a Workers' Compensation Division Benefit Consultant at (503)947-7585 (TTY 503-947-7993) or (toll-free in Oregon) 1-800-452-0288.

(7) If the MCO fails to issue a decision within 60 days, the MCO's initial decision is automatically deemed affirmed. The parties may immediately proceed as though the MCO had issued an order affirming the MCO decision. The MCO shall notify the parties of the next step in the process, including the right of an aggrieved party to seek administrative review by the director pursuant to OAR 436-015-0008 including the appeal rights provided in (6) above.

(8) The director may assist in resolution of a dispute before the MCO. The director may issue an order to further the dispute resolution process. Any of the parties also may request in writing that the director assist in resolution if the dispute cannot be resolved by the MCO.

(9) Complaints pertaining to violations of these rules shall be directed in writing to the Compliance Section of the division. The division may return the complaint to the originating party for completion if the complaint does not satisfy the requirements of this rule. The complaints must:

- (a) State the grounds for alleging rule violation;
- (b) Include the specific contention of error;
- (c) State the complainant's request for correction and relief; and
- (d) Include sufficient documentation to support the complaint.

(10) The division may investigate the alleged rule violation. The investigation may include, but shall not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the complaint, or consultation with an appropriate committee of the medical provider's peers, chosen in the same manner as provided in OAR 436-010-0330.

(11) If the division determines upon completion of the investigation that there has been a rule violation, the division may issue penalties pursuant to ORS 656.745 and OAR 436-015-0120.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.260
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0003

Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration received by the department on or after the effective date of these rules.

(2) All orders issued by the division to carry out the statute and these rules are considered an order of the director.

(3) These rules take the place of the rules adopted on January 1, 2005, by Workers' Compensation Division Administrative Order 04-062, and carry out ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.277, 656.278, and 656.325.

(a) For claims in which the worker became medically stationary prior to July 2, 1990 OAR 436-030-0020, 436-030-0030, and 436-030-0050 as adopted by WCD Administrative Order 13-1987 effective January 1, 1988 will apply.

(b) OAR 436-030-0055(3)(b), (3)(d) and (4)(a) apply to all claims with dates of injury on or after January 1, 2002.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, 656.268, 656.277, 656.325, 656.726, OL Ch. 332 1995 & Ch. 313 1999, 1999 OL 313, 349, 350, 377, 865, OL 2001
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0003, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1991(Temp), f. 8-20-91, cert. ef. 9-1-91; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95;

WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 12-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 6-29-01; Administrative correction 11-20-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 4-2002, f. 4-5-02, cert. ef. 4-8-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0005

Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrator" means the administrator of the Workers' Compensation Division, Department of Consumer and Business Services, or the administrator's delegate for the matter.

(2) "Authorized Nurse Practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010.

(3) "Day(s)" means calendar day(s) unless otherwise specified (e.g., "working day(s)").

(4) "Director" means the director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Instant Fatality" means a compensable claim for death benefits where the worker dies within 24 hours of the injury.

(7) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, a self-insured employer, or a self-insured employer group.

(8) "Mailed or Mailing Date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or "fax") will be considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(9) "Notice of Closure" means a notice to the worker issued by the insurer to

- (a) Close an accepted disabling claim, including fatal claims;
- (b) Correct, rescind, or rescind and reissue a Notice of Closure previously issued; or
- (c) Reduce permanent total disability to permanent partial disability.

(10) "Notice of Refusal to Reclassify" means the insurer's written response, to a worker's request, which notifies the worker of the insurer's decision regarding the nondisabling status of a claim.

(11) "Reconsideration" means review by the director of an insurer's Notice of Closure.

(12) "Statutory closure date" means the date the claim satisfies the criteria for closure under ORS 656.268(1)(b) and (c).

(13) "Statutory appeal period" means the time frame for appealing a Notice of Closure or Order on Reconsideration.

(14) "Work disability", for purposes of determining permanent disability, means the separate factoring of impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

(15) "Worksheet" means a summary of facts used to derive the awards stated in the Notice of Closure.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.005, 656.268, 656.726 & OL Ch. 332 1995 & Ch. 313 1999
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), 12-30-81, ef. 1-1-82; Renumbered from 436-065-0004, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0007

Administrative Review

(1) The following matters are subject to dispute resolution before the director:

(a) Notices of Closure issued by insurers are appealed to the director and processed in accordance with the reconsideration procedures described in OAR 436-030-0115 through 436-030-0185, except Notices of Closure under section (2)(b) of this rule.

(b) The director may abate, withdraw, or amend the Order on Reconsideration until the Order is final by operation of law.

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(c) Notices of Refusal to Reclassify issued by insurers are appealable by the worker to the director under ORS 656.273 and 656.277 and OAR 436-060-0018.

(2) The following matters are brought before the Hearings Division of the Workers' Compensation Board:

(a) Director's Review orders and Orders on Reconsideration issued under OAR 436-060-0018 and these rules within the timeframes in OAR 436-060-0018 and 436-030-0145, respectively.

(b) Notices of Closure that rescind permanent total disability under ORS 656.206.

(c) Any other action taken under these rules where a worker's right to compensation or the amount thereof is directly an issue under ORS chapter 656.

(3) Contested Case Hearings of Sanctions and Civil Penalties: Under ORS 656.740, any party aggrieved by a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division as follows:

(a) The party must send the request for hearing in writing to the director within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The Workers' Compensation Division will forward the request and other pertinent information to the Hearings Division.

(c) An Administrative Law Judge from the Hearings Division, acting on behalf of the director, will conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

(4) Director's Administrative Review of other actions: Except as covered under sections (1) through (3) of this rule, any party seeking an action or decision by the director or aggrieved by an action taken by any other party under these rules, may request administrative review by the director as follows:

(a) The party must send the request in writing to the director within 90 days of the disputed action and must specify the grounds upon which the action is disputed.

(b) The director may require and allow such evidence as is deemed appropriate to complete the review.

(c) A director's order will be issued and will specify if the order is final or if it may be appealed.

(d) The director may, unless otherwise obligated by statute, at the director's discretion, waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999, (89, Ch. 170, OL 2003)

Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999, 350, OL 2001 Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0009

Appeals of Notices of Closure

(1) Except as provided in section (2) of this rule, a worker or insurer must first request reconsideration of a Notice of Closure when:

(a) The worker was determined medically stationary after July 1, 1990; or

(b) The worker is not determined medically stationary, and the claim is closed under ORS 656.268(1)(b) or (c).

(2) If a worker disagrees with a Notice of Closure rescinding permanent total disability benefits under ORS 656.206, the worker must request a hearing before the Hearings Division.

(3) If a worker was determined medically stationary on or before July 1, 1990, Workers' Compensation Division Administrative Order 13-1987 rules apply.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 & 1999 OL Ch. 313, 429, OL 2003

Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 & 1999 OL Ch. 313, 429, OL 2003 Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; Renumbered from 436-030-0020(3), WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0015

Insurer Responsibility

(1) When an insurer issues a Notice of Closure (Form 440-1644, 1644c, 1644r), the insurer is responsible for:

(a) Providing the director, the parties, and the worker's attorney if the worker is represented, a copy of the Notice of Closure, a copy of the worksheet (Form 440-2807) upon which the Notice is based, a completed "Insurer Notice of Closure Summary" (Form 440-1503) and an Updated

Notice of Acceptance at Closure that specifies which conditions are compensable, as prescribed in OAR 436-030-0020;

(b) Maintaining a copy of the worksheet and records upon which the Notice of Closure is based in its claim file for audit purposes under OAR 436-050; and

(c) Issuing the Updated Notice of Acceptance at Closure on the same date as the Notice of Closure.

(d) The Updated Notice of Acceptance at Closure must contain the following title, information, and language:

(A) Title: "Updated Notice of Acceptance at Closure";

(B) Information: A list of all compensable conditions that have been accepted, even if a condition was denied, ordered accepted by litigation, and is under appeal. Any conditions under appeal and those which were the basis for this claim opening must be specifically identified;

(C) Language, in bold print:

"Notice to Worker: This notice restates and includes all prior acceptances. The conditions that were the basis of this claim opening are the only conditions considered at the time of claim closure. The insurer or self-insured employer is not required to pay any disability compensation for any condition specifically identified as under appeal, unless and until the condition is found to be compensable after all litigation is complete. Appeal of any denied conditions or objections to this notice will not delay claim closure. Any condition found compensable after the Notice of Closure is issued will require the insurer to reopen the claim for processing of that condition. If you believe a condition has been incorrectly omitted from this notice, or this notice is otherwise deficient, you must communicate the specific objection to the insurer in writing.;"

(e) In the case of an instant fatality, the Updated Notice of Acceptance may be combined with the Notice of Closure if the following is included:

(A) Title: "Updated Notice of Acceptance and Closure";

(B) Information: Names of all known beneficiaries, the beneficiaries' right to and the extent of fatal benefits due under ORS 656.204, and the medically stationary date.

(C) Language, in bold print:

"Notice to Worker's Beneficiary or Estate: This notice restates any prior acceptances. The insurer is required to determine the appropriate benefits to be paid to any beneficiaries and begin those payments within 30 days of the mailing date of this notice. If you disagree with the notice of acceptance, you may appeal the decision to the Workers' Compensation Board, (insert current address for Workers' Compensation Board) within 30 days of the mailing date. If you disagree with the claim closure, you may appeal the decision to the Workers' Compensation Division, Appellate Review Unit, (insert current address for Workers' Compensation Division) within 60 days of the mailing date of this notice. If you have questions about this notice, you may contact the Ombudsman for Injured Workers, the Workers' Compensation Division, or consult with an attorney."

(f) The insurer or self-insured employer is not required to pay any disability compensation for any condition under appeal and specifically identified as such, unless and until the condition is found to be compensable after all litigation is complete.

(g) In the event an omission or error requires a corrected Updated Notice of Acceptance at Closure, the word "CORRECTED" must appear in capital letters adjacent to the word "Updated".

(h) In the event that the "Initial Notice of Acceptance" is issued at the same time as the "Updated Notice of Acceptance at Closure," both titles must appear near the top of the document.

(2) Copies of Notices of Refusal to Close must be mailed to the director and the parties, and to the worker's attorney, if the worker is represented.

(3) In claims with a date of injury on or after January 1, 2005 where the worker has not returned to regular work and ORS 656.726(4)(f) does not apply, or in claims with a date of injury on or after January 1, 2006 when the worker has not been released to regular work and ORS 656.726(4)(f) does not apply, the insurer must consider:

(a) The worker's age at the time the notice is issued;

(b) Adaptability to return to employment;

(c) The worker's level of education; and

(d) The worker's work history, including an accurate description of the physical requirements of the worker's job held at the time of injury, for the period from five years before the date of injury to the mailing date of the notice of closure with dates or period of time spent at each position, tasks performed or level of specific vocational preparation (SVP), and physical requirements. If the insurer cannot obtain five years of work history despite all reasonable efforts, the insurer must document its efforts and provide as much work history as it can obtain.

(4) In claims where the date of injury is before January 1, 2005, the worker has not returned or been released to regular work, ORS 656.726(4)(f) does not apply, and the claim involves injury to, or disease of, unscheduled body parts, areas, or systems, the insurer must consider:

(a) The worker's age at time the notice is issued;

(b) Adaptability to return to employment;

(c) The worker's level of education; and

(d) The worker's work history, including an accurate description of the physical requirements of the worker's job held at the time of injury, for

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the period from five years before the date of injury to the mailing date of the notice of closure with dates or period of time spent at each position, tasks performed or level of specific vocational preparation (SVP), and physical requirements.

(5) The insurer must consider any other records or information pertinent to claim determination prior to issuing a notice of closure.

(6) The insurer must notify the worker and the worker's attorney, if the worker is represented, in writing, when the insurer receives information that the worker's claim qualifies for closure under these rules.

(a) The insurer must send the written notice within three working days from the date the insurer receives the information, unless the claim has already been closed.

(b) The notice must advise the worker of his or her impending claim closure and that any time loss disability payments will end soon.

(7) The insurer must, within 14 days of closing the claim, provide the worker's attorney the same documents relied upon for claim closure.

(8) The insurer must not issue a Notice of Closure on an accepted nondisabling claim. Notices of Closure issued by the insurer in violation of this rule are void and without legal effect. Medically stationary status in nondisabling claims may be documented by the attending physician's statement of medically stationary status.

(9) When a condition is accepted after a closure and the claim has been reopened under ORS 656.262, the insurer must issue a Notice of Closure, considering only the newly accepted condition.

(10) Denials issued under ORS 656.262(7)(b), must clearly identify the phrase "major contributing cause" in the text of the denial.

(11) When a claim is closed where a designation of paying agent order (ORS 656.307) has been issued and the responsibility issue is not final by operation of law, the insurer processing the claim at the time of closure must send copies of the closure notice to the worker, the worker's attorney if the worker is represented, the director, and all parties involved in the responsibility issue.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.268, 656.331, 656.726, 656.745, OL Ch. 332 1995, Ch. 313 1999 & OL 2001 Ch. 377
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95, Renumbered from 436-030-0020 & 436-030-0040; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0020 Requirements for Claim Closure

(1) Provided the worker is not enrolled and actively engaged in training, the insurer must issue a Notice of Closure on an accepted disabling claim within 14 days when:

(a) Medical information establishes there is sufficient information to determine the extent of permanent disability under ORS 656.245(2)(b)(B), and indicates the worker's compensable condition is medically stationary;

(b) The accepted injury/condition is no longer the major contributing cause of the worker's combined or consequential condition(s), a major contributing cause denial has been issued, and there is sufficient information to determine the extent of permanent disability;

(c) The worker fails to seek medical treatment for 30 days for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules; or

(d) The worker fails to attend a mandatory closing examination for reasons within the worker's control and the worker has been notified of pending action(s) in accordance with these rules.

(e) A worker receiving permanent total disability benefits has materially improved and is capable of regularly performing work at a gainful and suitable occupation.

(2) For purposes of determining the extent of disability, "sufficient information" requires the following:

(a) An authorized nurse practitioner's or attending physician's written statement that clearly indicates there is no permanent impairment, residuals, or limitations attributable to the accepted condition(s), and there is no reasonable expectation, based on evidence in the record, of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s). If the physician or nurse practitioner indicates there is no impairment, but the record reveals otherwise, a closing examination and reports specified under (b) of this section are required; or

(b) A closing medical examination and report when there is a reasonable expectation of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s) based on evidence in the record or the physician's opinion. The closing medical examination report must describe in detail all measurements and findings regarding any permanent impairment, residuals, or limitations

attributable to the accepted condition(s) under OAR 436-010-0280 and 436-035; and, if there is not clear and convincing evidence that the worker has been released to regular work (for dates of injury on or after January 1, 2006) or returned to regular work at the job held at the time of injury and ORS 656.726(4)(f) does not apply, all of the following:

(A) An accurate description of the physical requirements of the worker's job held at the time of injury, which has been provided by certified mail to the worker and the worker's legal representative, if any, either before closing the claim or at the time the claim is closed;

(B) The worker's wage established consistent with OAR 436-060;

(C) The worker's date of birth;

(D) Except as provided in OAR 436-030-0015(3)(d), the worker's work history for the period beginning five years before the date of injury to the mailing date of the Notice of Closure, including tasks performed or level of SVP, and physical demands; and

(E) The worker's level of formal education.

(3) When determining disability and issuing the Notice of Closure, the insurer must apply all statutes and rules consistent with their provisions, particularly as they relate to major contributing cause denials, worker's failure to seek treatment, worker's failure to attend a mandatory examination, medically stationary status, temporary disability, permanent partial and total disability, review of permanent partial and total disability.

(4) When issuing a Notice of Closure, the insurer must prepare a summary worksheet, "Notice of Closure Worksheet", Form 440-2807 (Form 2807), as described by bulletin of the director.

(5) The "Notice of Closure", Form 440-1644 (Form 1644), is effective the date it is mailed to the worker and to the worker's attorney if the worker is represented, regardless of the date on the Notice itself.

(6) The notice must be in the form and format prescribed by the director in these rules and include only the following:

(a) The worker's name, address, and claim identification information;

(b) The appropriate dollar value of any individual scheduled or unscheduled permanent disability based on the value per degree for injuries occurring before January 1, 2005 or, for injuries occurring on or after January 1, 2005, the appropriate dollar value of any "whole person" permanent disability, including impairment and work disability as determined appropriate under OAR 436-035;

(c) The body part(s) awarded disability, coded to the table of body part codes as prescribed by the director;

(d) The percentage of loss of the specific body part(s), including either the number of degrees that loss represents as appropriate for injuries occurring before January 1, 2005, or the percentage of the whole person the worker's loss represents as appropriate for injuries occurring on or after January 1, 2005;

(e) If there is no permanent disability award for this Notice of Closure, a statement to that effect;

(f) The duration of temporary total and temporary partial disability compensation;

(g) The date the Notice of Closure was mailed;

(h) The medically stationary date or the date the claim statutorily qualifies for closure under OAR 436-030-0035 or 436-030-0034;

(i) The date the worker's aggravation rights end;

(j) The worker's appeal rights;

(k) The right of the worker to consult with the Ombudsman for Injured Workers;

(l) For claims with dates of injury before January 1, 2005, the rate in dollars per degree at which permanent disability, if any, will be paid based on date of injury as identified in Bulletin 111;

(m) For claims with dates of injury on or after January 1, 2005, the state's average weekly wage applicable to the worker's date of injury is to be shown on the Notice of Closure;

(n) The worker's return to work status; and

(o) A general statement that the insurer has the authority to recover an overpayment.

(7) The Notice of Closure (Form 440-1644) must be accompanied by the following:

(a) The brochure "Understanding Claim Closure and Your Rights";

(b) A copy of summary worksheet Form 2807 containing information and findings which result in the data appearing on the Notice of Closure;

(c) An accurate description of the physical requirements of the worker's job held at the time of injury unless it is not required under section (2)(a) of this rule or it was previously provided under section (2)(b)(A) of this rule;

(d) The Updated Notice of Acceptance at Closure which clearly identifies all accepted conditions in the claim and specifies those which have been denied and are on appeal or which were the basis for this opening of the claim; and

(e) A cover letter that:

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(A) Specifically explains why the claim has been closed (e.g., expiration of a period of suspension without the worker resolving the problems identified, an attending physician stating the worker is medically stationary, worker failure to treat without attending physician authorization or establishing good cause for not treating, etc.);

(B) Lists and describes enclosed documents; and

(C) Notifies the worker about the end of temporary disability benefits, if any, and the anticipated start of permanent disability benefits, if any.

(8) A copy of the Notice of Closure must be mailed to each of the following persons at the same time, with each copy clearly identifying the intended recipient:

(a) The worker;

(b) The employer;

(c) The director; and

(d) The worker's attorney, if the worker is represented.

(9) The worker's copy of the Notice of Closure must be mailed by both regular mail and certified mail return receipt requested.

(10) An insurer may use electronically produced Notice of Closure forms if consistent with the form and format prescribed by the director.

(11) Insurers may allow adjustments of benefits awarded to the worker under the documentation requirements of OAR 436-060-0170 for the following purposes:

(a) To recover payments for permanent disability which were made prematurely;

(b) To recover overpayments for temporary disability; and

(c) To recover overpayments for other than temporary disability such as prepaid travel expenses where travel was not completed, prescription reimbursements, or other benefits payable under ORS 656.001 to 656.794.

(12) The insurer may allow overpayments made on a claim with the same insurer to be deducted from compensation to which the worker is entitled but has not yet been paid.

(13) If after claim closure, the worker became enrolled and actively engaged in an approved training program under OAR 436-120, a new Notice of Closure must be issued consistent with the following:

(a) In claims with dates of injury on or after January 1, 2005, the insurer must redetermine work disability when:

(A) The worker has ended training; and either

(B) The worker's condition is medically stationary; or

(C) The claim otherwise qualifies for closure in accordance with these rules.

(b) For claims with dates of injury before January 1, 2005, permanent disability must be redetermined by the insurer when:

(A) The worker has ended training; and either

(B) The worker's condition is medically stationary; or

(C) The claim otherwise qualifies for closure in accordance with these rules., except

(D) When the worker became medically stationary after June 7, 1995 for a scheduled disability. Then the scheduled disability must remain unchanged from the last award of compensation in that claim unless the condition did not remain medically stationary through training.

(c) For claims with dates of injury before January 1, 2005, if the worker has remained medically stationary throughout training and the closing examination is six months old or older, a current medical examination will be required for redetermination unless the worker's attending physician provides a written statement that there has been no change in the worker's accepted condition since the previous closing examination.

(14) When, after a claim is closed, the insurer changes or is ordered to change the worker's weekly wage upon which calculation of the work disability portion of a permanent disability award may be based, the insurer must notify the parties and the division of the change and the effect of the change on any permanent disability award. For purposes of this rule, the insurer must complete Form 440-1502 consistent with the instructions of the director and disperse it within 14 days of the change.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.268 & 656.270, 656.726, 656.745, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0006, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1991, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0023

Correcting and Rescinding Notices of Closure

(1) An insurer may rescind or correct its Notice of Closure prior to the expiration of the appeal period for that Notice and prior to or on the same

day that the director receives a request for reconsideration of the Notice of Closure.

(2) The form, format, and completion of the Correcting and Rescinding Notices of Closure are the same as those of the Notice of Closure except that, to correct a Notice of Closure, a **Form 440-1644c (Form 1644c)** must be used and, to rescind a Notice of Closure, a **Form 440-1644r (Form 1644r)** must be used. An insurer may rescind and reissue a Notice of Closure by using a **Form 440-1644 (Form 1644)** when such actions can be accomplished at the same time, the claim remains closed, and other provisions of these rules are met.

(3) The "Date of closure (mailing date)" on the Correcting or Rescinding Notice of Closure must be the date the correction or rescission is mailed. The mailing date of the Notice of Closure being rescinded or corrected must be identified within the body of the Correcting or Rescinding Notice of Closure.

(4) The worker's copy of the Correcting and Rescinding Notices of Closure must be mailed by both regular mail and certified mail return receipt requested, consistent with OAR 436-030-0020(8) and (9).

(5) Rescinding Notices of Closure, **Form 1644r**, are used to rescind the Notice of Closure and return the claim to open status. Examples of appropriate uses of Rescinding Notices of Closure include, but are not limited to:

(a) The worker was not medically stationary at the time the Notice of Closure was issued;

(b) The closure was otherwise premature;

(c) Grant PPD when the Notice of Closure being rescinded granted TTD only.

(6) The Rescinding Notice of Closure must:

(a) Advise the worker that the claim remains open and no aggravation rights end date has been established, if it is rescinding the first closure of the claim;

(b) Initiate a 60-day appeal period during which any request for reconsideration must be received by the director;

(c) Explain the reason for the action being taken; and

(d) Be distributed and mailed to the parties consistent with these rules.

(7) When a Notice of Closure granting only timeloss has been issued, if the insurer determines the worker's medically stationary status is unchanged and the worker is entitled to an award of permanent disability, the insurer must use a Notice of Closure, **Form 1644**, to rescind and reissue the closure. In such cases, the Notice of Closure must:

(a) Contain all required information consistent with these rules;

(b) Bear the heading "Rescind and Reissue";

(c) Explain the reason the action is being taken;

(d) Identify the permanent disability award being granted consistent with OAR 436-030 and 436-035;

(e) Establish a new 60-day appeal period;

(f) Set a new aggravation rights end date if the Notice of Closure being rescinded is the first closure of the claim; and

(g) Be distributed and mailed to the parties consistent with these rules.

(8) Correcting Notices of Closure, **Form 1644c**, are used to correct errors or omissions and do not change the closure status or the action taken by the Notice of Closure being corrected. Correcting Notices of Closure must not be used to grant permanent disability in claims where the Notice of Closure being corrected did not include an award of permanent disability. Examples of appropriate uses of Correcting Notices of Closure include, but are not limited to:

(a) Permanent disability award computation errors (dollars, degrees, percentages);

(b) An incorrect "mailing date";

(c) Return-to-work status errors or omissions;

(d) Incorrect or incomplete statement of temporary disability.

(9) A Correcting Notice of Closure must:

(a) Be issued when the director has instructed the insurer to do so because the Notice of Closure did not contain the information required by OAR 436-030-0020(4);

(b) Not be used to add a new condition to the claim closure, rate a new condition not considered in the Notice of Closure being corrected, or rescind a Notice of Closure;

(c) State in the body of the correcting notice only the information being corrected on the Notice of Closure and the basis for the correction;

(d) Not change the appeal period for the Notice of Closure being corrected; and

(e) Initiate a new 60-day appeal period during which any request for reconsideration must be received, but only for those items being corrected.

[Forms: Forms referenced are available from the agency.]

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.268 & 656.270, 656.726, 656.745, OL Ch. 332 1995 & Ch. 313 1999

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Hist.: WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0034

Claim Closure When the Worker Is Not Medically Stationary

(1) The insurer must close a claim if a worker fails to seek treatment for more than 30 days without the instruction or approval of the attending physician or authorized nurse practitioner. In order to close a claim under this rule, the insurer must:

(a) After waiting the period of thirty days for the worker to treat, send the worker written notification of the following by certified mail:

(A) It is the worker's responsibility to seek medical treatment in a timely manner,

(B) Informing the worker of the consequences for failing to seek treatment in a timely manner, including but not limited to claim closure and possible loss or reduction of a disability award, if any,

(C) That the claim will be closed unless the worker establishes within 14 days that:

(i) Treatment has resumed by attending an existing appointment or scheduling a new appointment, or

(ii) The reasons for not treating were outside the worker's control.

(b) Wait the 14 day period given in the notification letter to allow the worker to provide evidence that the absence of treatment was either authorized by the physician or beyond the worker's control.

(c) Determine whether claim closure is appropriate based on the information provided by the worker or absence thereof.

(d) Rate any permanent disability apparent in the record (e.g., irreversible findings) at the time claim closure is appropriate, regardless of receiving a response from the worker.

(2) The date the claim qualifies for closure, when a worker fails to seek treatment for a period in excess of 30 days, is the latest (most chronologically recent) of the following which occurs prior to the closure:

(a) 30 days from the last treatment provided or authorized by the attending physician or authorized nurse practitioner;

(b) The date the worker failed to attend a follow-up visit that was recommended by the attending physician or authorized nurse practitioner for reasons within the worker's control;

(c) The date the worker returns to or is released to regular work if it is after the last examination date; or

(d) If the worker responds within the 14 day period established by the notification letter and the worker's response fails to establish that the worker has resumed treatment or that the reasons for not treating were outside the worker's control, the date of the worker's response.

(3) A claim must be closed when the worker is not medically stationary, and the worker fails to attend a mandatory closing examination for reasons within the worker's control, and the insurer has notified the worker, by certified letter, at least 10 days prior to the mandatory examination, that claim closure will result for failure to attend a mandatory closing examination. The notification letter must inform the worker of the worker's responsibility to attend the mandatory closing examination and of the consequences for failing to do so, including but not limited to claim closure and the possible loss or reduction of a disability award.

(a) Workers have 7 days from the date of exam to demonstrate good cause for failing to attend, before any further action is taken by the insurer toward claim closure.

(b) Where the worker fails to attend a mandatory closing examination for reasons within the worker's control, the date the claim qualifies for closure is the date of the failed mandatory closing examination.

(c) Where a closing exam has been scheduled between a worker and attending physician directly, insurers may close under (1) of this section.

(4) A claim may be closed when the worker is not medically stationary and a major contributing cause denial has been issued on an accepted combined condition.

(a) The major contributing cause denial must inform the worker that claim closure may result from the issuance of the denial and provide all other information required by these rules.

(b) When a major contributing cause denial has been issued following the acceptance of a combined condition, the date the claim qualifies for closure is the date the insurer receives sufficient information to determine the extent of any permanent disability under OAR 436-035-0007(5) and 436-030-0020(2) or the date of the denial, whichever is later.

(5) When any two of the above occur concurrently, the earliest date the claim qualifies for closure is used to close the claim and noted on the notice.

(6) The attending physician or authorized nurse practitioner must be copied on all notification and denial letters applicable to this rule.

(7) When the director has issued a suspension order, under OAR 436-060-0095 or 436-060-0105, the date the claim qualifies for closure is the date of the suspension order.

(8) When a worker fails to seek treatment with an authorized attending physician as defined by ORS 656.005 or authorized nurse practitioner as defined in ORS 656.245, the claim must be closed under section (1) of this rule. Section (2) of this rule must be used to determine the effective date of the closure. All notification letters issued under this section of the rule must clearly identify that the reason for the impending closure is because of the worker's failure to treat with an authorized attending physician or nurse practitioner.

Stat. Auth.: ORS 656.262, 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0055

Determining Permanent Total Disability

(1) A worker is permanently and totally disabled if permanently incapacitated from regularly performing work in a suitable and gainful occupation. For the purpose of this rule and OAR 436-030-0065:

(a) "Incapacitated from regularly performing work" means that the worker does not have the necessary physical and mental capacity and the work skills to perform the essential functions of the job. Employment in a sheltered workshop is not considered regular employment unless this was the worker's job at the time of injury.

(b) "Suitable occupation" means those occupations that exist in a theoretically normal labor market, within a reasonable geographic distance, for which a worker has the training or experience, and abilities to realistically perform the job duties, with or without rehabilitation.

(c) "Gainful occupation" means those types of general occupations that provide wages that:

(A) Meet the requirements in ORS 656.206(11)(a) for workers with a date of injury prior to January 1, 2006; or

(B) Meet the requirements in ORS 656.206(11)(b) for workers with a date of injury on or after January 1, 2006.

(d) "Work skills" means those skills acquired through experience or training that are necessary to gain and adequately perform skilled, semi-skilled or unskilled occupations. Unskilled types of general occupations require no specific skills that would be acquired through experience or training to be able to gain and adequately perform the unskilled occupation. Every worker has the necessary work skills to gain and adequately perform unskilled types of general occupations with a reasonable period of orientation.

(e) A "reasonable geographic distance" means either of the following unless the worker is medically precluded from commuting:

(A) The area within a 50-mile radius of the worker's place of residence at the time of:

(i) The original injury;

(ii) The worker's last gainful employment;

(iii) Insurer's determination; or

(iv) Reconsideration by the director.

(B) The area in which a reasonable and prudent uninjured and unemployed person, possessing the same physical capacities, mental capacities, work skills, and financial obligations as the worker does at the time of his rating of disability, would go to seek work.

(f) "Types of general occupations" means groups of jobs which actually exist in a normal labor market, and share similar vocational purpose, skills, duties, physical circumstances, goals, and mental aptitudes. It does not refer to any specific job or place of employment for which a job or job opening may exist in the future.

(g) "Normal labor market" means a labor market that is undistorted by such factors as local business booms and slumps or extremes of the normal cycle of economic activity, or technology trends in the long-term labor market.

(h) "Withdrawn from the workforce" means a worker who is not employed, is not willing to be employed, or although willing to be employed is not making reasonable efforts to find employment, unless such efforts would be futile. The receipt of retirement benefits does not establish a worker has withdrawn from the workforce.

(2) All disability which existed before the injury must be included in determining permanent total disability.

(3) In order for a worker to be determined permanently and totally disabled, a worker must:

(a) Prove permanent and total disability;

(b) Be willing to seek regular and gainful employment;

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(c) Make reasonable effort to find work at a suitable and gainful occupation or actively participate in a vocational assistance program, unless medical or vocational findings, including the residuals of the compensable injury, make such efforts futile; and

(d) Not have withdrawn from the workforce during the period for which benefits are being sought.

(4) A worker retaining some residual functional capacity and not medically permanently and totally disabled must prove:

(a) The worker has not withdrawn from the workforce for the period for which benefits are being sought;

(b) Inability to regularly perform work at a gainful and suitable occupation; and

(c) The futility of seeking work if the worker has not made reasonable work search efforts by competent written vocational testimony. Competent written vocational testimony is that which is available at the time of closure or reconsideration and comes from the opinions of persons fully certified by the State of Oregon to render vocational services.

(5) Notices of Closure and Orders on Reconsideration which grant permanent total disability must notify the worker that:

(a) The claim must be reexamined by the insurer at least once every two years, and may be reviewed more often if the insurer chooses.

(b) The insurer may require the worker to provide a sworn statement of the worker's gross annual income for the preceding year. The worker must make the statement on a form provided by the insurer in accordance with the requirements under section (6) of this rule.

(6) If asked to provide a statement under subsection (5)(b) of this rule, the worker is allowed 30 days to respond. Such statements are subject to the following:

(a) If the worker fails to provide the requested statement, the director may suspend the worker's permanent total disability benefits. Benefits will be resumed when the statement is provided. Benefits not paid for the period the statement was withheld must be recoverable for no more than one year from the date of suspension.

(b) If the worker provides a report which is false, incomplete, or inaccurate, the insurer must investigate. The investigation may result in suspension of permanent total disability benefits.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.206, 656.268, 656.726, OL Ch. 332 1995, Ch. 313 1999
Hist.: WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04, cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0065

Review of Permanent Total Disability Awards

(1) The insurer must reexamine each permanent total disability claim at least once every two years or when requested to do so by the director to determine if the worker has materially improved, either medically or vocationally, and is capable of regularly performing work at a suitable and gainful occupation. The insurer must notify the worker and the worker's attorney if the worker is represented whenever the insurer intends to reexamine the worker's permanent total disability status. Workers who fail to cooperate with the reexamination may have benefits suspended under OAR 436-060-0095.

(2) A worker receiving permanent total disability benefits must submit to a vocational evaluation, if requested by the director, insurer, or self-insured employer under ORS 656.206(8).

(3) Any decision by the insurer to reduce permanent total disability must be communicated in writing to the worker, and to the worker's attorney if the worker is represented, and accompanied by documentation supporting the insurer's decision. That documentation must include: medical reports, including sufficient information necessary to determine the extent of permanent partial disability, vocational and investigation reports (including visual records, if available) which demonstrate the worker's ability to regularly perform a suitable and gainful occupation, and all other applicable evidence.

(4) An award of permanent total disability for scheduled injuries before July 1, 1975, must be considered for reduction only when the insurer has evidence that the medical condition has improved.

(5) Except for section (4) of this rule, an award of permanent total disability may be reduced only when the insurer has a preponderance of evidence that the worker has materially improved, either medically or vocationally, and is regularly performing work at a suitable and gainful occupation or is currently capable of doing so. Preexisting disability must be included in redetermination of the worker's permanent total disability status.

(6) When the insurer reduces a permanent total disability claim, the insurer must, based upon sufficient information to determine the extent of

permanent partial disability, issue a Notice of Closure which reduces the permanent total disability and awards permanent partial disability, if any.

(7) Any party to the claim who does not agree with the Notice of Closure may, within the statutory period, appeal the order under OAR 436-030-0007(1)(a). Appeal is to the Hearings Division for workers that were:

(a) Medically stationary on or before July 1, 1990; or

(b) Receiving permanent total disability benefits and a Notice of Closure dated on or after January 1, 2006 rescinded those benefits.

(8) A worker who incurs a compensable injury while receiving permanent total disability benefits is entitled to additional benefits for the new condition, but benefits are limited to medical and impairment benefits under ORS 656.206(9).

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Stats. Implemented: ORS 656.206, 656.214, 656.268, 656.283, 656.319, 656.325, 656.331, 656.726, OL Ch. 332 1995 & Ch. 313 1999
Hist.: WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04, cert. ef. 2-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0115

Reconsideration of Notices of Closure

(1) A worker or insurer may request reconsideration of a Notice of Closure by mailing or delivering the request to the director within the statutory appeal period as defined in OAR 436-030-0005 and 436-030-0145(1). The reconsideration proceeding begins as described in OAR 436-030-0145(2).

(2) For the purpose of these rules, "reconsideration proceeding" means the procedure established to reconsider a Notice of Closure and does not include personal appearances by any of the parties to the claim or their representatives, unless requested by the director. All information to correct or clarify the record and any medical evidence regarding the worker's condition as of the time of claim closure that should have been but was not submitted by the attending physician or authorized nurse practitioner at the time of claim closure and all supporting documentation must be presented during the reconsideration proceeding. When the reconsideration proceeding is postponed because the worker's condition is not medically stationary under OAR 436-030-0165(10), medical evidence submitted may address the worker's condition after claim closure as long as the evidence satisfies the conditions of OAR 436-030-0145(3).

(3) All parties have an opportunity to submit documents to the record regarding the worker's status at the time of claim closure. Other factual information and written argument may be submitted for incorporation into the record under ORS 656.268(6) within the time frames outlined in OAR 436-030-0145. Such information may include, but is not limited to, responses to the documentation and written arguments, written statements, and sworn affidavits from the parties.

(4) The worker may submit a deposition to the reconsideration record subject to ORS 656.268(6) and the following:

(a) The deposition must be limited to the testimony and cross-examination of a worker about the worker's condition at the time of claim closure.

(b) The deposition must be arranged by the worker and held during the reconsideration proceeding time frame unless a good cause reason is established. If a good cause reason is established, the time frame for holding the deposition may be extended but must not extend beyond 30 days from the date of the Order on Reconsideration. The deposition must be held at a time and place that permits the insurer or self-insured employer the opportunity to cross-examine the worker.

(c) The insurer or self-insured employer must, within 30 days of receiving a bill for the deposition, pay the fee of the court reporter and the costs for the original transcript and its copies. An original transcript of the deposition must be sent to the department and each party must be sent a copy of the transcript.

(d) If the transcript is not completed and presented to the department prior to the deadline for issuing an Order on Reconsideration, the Order on Reconsideration may not be postponed to receive a deposition under this rule and the order will be issued based on the evidence in the record. However, the transcript may be received as evidence at a hearing for an appeal of the Order on Reconsideration.

(5) Only one reconsideration proceeding may be completed on each Notice of Closure and the director will do a complete review of that notice. Once the reconsideration proceeding is initiated, any additional issues must be raised and further evidence submitted within the time frames allowed for processing the reconsideration request. When the director requires additional information to complete the record, the reconsideration proceeding may be postponed under ORS 656.268(6).

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313, Sec. 12 (6)(a)(A), 865, OL 2001
Stats. Implemented: ORS 656.268 & 1999 OL Ch. 313 Sec. 12 (6)(a)(A), 865, OL 2001

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Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0155

Reconsideration Record

(1) The record for the reconsideration proceeding includes all documents and other material relied upon in issuing the Order on Reconsideration as well as any additional material submitted by the parties, but not considered in the reconsideration proceeding.

(a) The record is maintained in the Workers' Compensation Division's claim file and consists of all documents and material received and date stamped by the director prior to the issuance of the Order on Reconsideration, unless the document(s) is an exact duplicate of what is in the file then the director is not required to retain the duplicate document(s).

(b) The insurer or self-insured employer must not send billing information and duplicate documents to the department, unless specifically requested by the director.

(2) Except as noted in this section, the medical record submitted by the director for arbiter review will consist of all medical documents and medical material produced by the claim under reconsideration, provided the information is allowable under ORS 656.268.

(a) The director may not submit non-medical information, nursing notes, or physical therapy treatment notes to the arbiter unless:

(A) A party requests the director to submit those specific materials to the arbiter;

(B) The party identifies and provides the director with specific dates of those materials requested to be submitted; and

(C) The materials otherwise meet the requirements of this rule.

(b) All medical documents and other medical materials not submitted by the director to the medical arbiter will be stamped in the lower right hand corner "not sent to arbiter".

(3) When any surveillance video obtained prior to closure has been submitted to physician(s) involved in the evaluation or treatment of the worker, it must be provided for arbiter review.

(a) Surveillance video provided for arbiter review must have been reviewed prior to claim closure by a physician involved in the evaluation or treatment of the worker.

(b) All written materials previously forwarded to physician(s) along with the surveillance video, such as investigator field notes, summary or narrative reports, and cover letters, must also be submitted.

(c) Surveillance video must be labeled according to the date(s) and total time of the recording(s).

(4) When reconsideration is requested, the insurer is required to provide the director and the other parties with a copy of all documents contained in the record at claim closure. For cases involving a medical service provider who must meet criteria other than those of an attending physician or who practices under contract with a managed care organization, the insurer must provide documentation of the medical service provider's authority to act as an attending physician. Any information the director adds to the record, such as the medical arbiter report, will be copied to all parties. Responses of the parties to the medical arbiter report will be included in the record if received prior to completion of the reconsideration proceeding.

(5) Since all parties will have a complete copy of the record at reconsideration prior to the issuance of a reconsideration order, additional certified copies of the record will be made at a charge to the requesting party.

(6) When a hearing is scheduled following the appeal of a reconsideration order and the parties or the administrative law judge requests the director to provide the record at reconsideration, either the original claim file or a certified copy of the claim file will be delivered to the Hearings Division two days prior to the hearing. The original claim file must be returned to the director within two days after the hearing.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268(6) & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0165

Medical Arbiter Examination Process

(1) When a worker or insurer requests reconsideration and disagrees with the impairment findings used in rating the worker's disability at the time of claim closure, the director will refer the claim to a medical arbiter or panel of arbiters.

(a) When the director determines that sufficient medical information is not available to rate disability the director may refer the claim to a medical arbiter or panel of arbiters.

(b) The director will notify the parties within 18 working days from the date the reconsideration proceeding begins that a medical arbiter review will be scheduled.

(2) The director will select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(7)(d).

(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director prior to the examination of the specific objection. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician. All costs related to the completion of the medical arbiter process in this rule must be paid by the insurer.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(7).

(c) Arbiters or panel members will not include any medical service providers whose examination or treatment is the subject of the review.

(3) When the director has determined a claim qualifies for medical arbiter deselection, a list of appropriate physicians will be faxed or sent by overnight mail to the parties.

(a) Each party may eliminate one physician from the list by crossing out the physician's name.

(b) The parties may agree to one physician from the list by responding in writing. The parties must also deselect one physician from the list in case the agreed upon physician is unavailable.

(c) All responses must be signed and received by the director within three business days. No further opportunity will be given for the parties to provide input regarding the arbiter deselection process once the three business day period has expired. No further attempts at deselection will be made when continuing the arbiter deselection process is not practical.

(4) The director will notify the parties of the time and place of the medical arbiter examination. This notice will also inform the worker that failure to attend the medical arbiter examination or to cooperate with the medical arbiter will result in suspension of all disability benefits effective on the date of the examination unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The appointment letter will instruct the worker to call the director within 24 hours after failing to attend the examination to provide any "good cause" reason for missing the exam.

(a) Notice of the examination will be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(5) If a worker misses the medical arbiter examination, the director will determine whether or not there was a "good cause" reason for missing the examination.

(6) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the director will:

(a) Issue a notice to the worker that disability benefits are suspended and that the reconsideration proceeding is postponed up to an additional 60 days, and

(b) Reschedule an examination for the worker to complete the medical arbiter review within the additional 60-day postponement period.

(7) As addressed in the Order on Reconsideration, the suspension will be lifted if any of the following occurred during the additional 60-day postponement period:

(a) The worker established a "good cause" reason for missing or failing to cooperate with the examination;

(b) The request for reconsideration was withdrawn by the worker; or
(c) The worker attended and cooperated with a rescheduled arbiter examination.

(8) If none of the events which end the suspension under section (7) of this rule occurred prior to the expiration of the 60-day additional postponement, the director will complete the reconsideration proceeding under ORS 656.268(7) and the Order on Reconsideration will order the suspension of benefits to remain in effect.

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(9) The medical arbiter or panel of medical arbiters must perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment. The director will provide notice of the examination of the worker to all parties.

(a) The parties must submit any issues they wish the medical arbiter or panel of medical arbiters to address within 14 days after the date the reconsideration proceeding begins. The parties must not submit issues directly to the medical arbiter or panel of medical arbiters. The director will only submit issues appropriate to the reconsideration proceeding to the medical arbiter or panel of medical arbiters.

(b) The report of the medical arbiter or panel of medical arbiters must address all questions raised by the director.

(c) The director will instruct the medical arbiter to provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer(s) within five working days after completion of the arbiter review. The cost of providing copies of such additional reports must be reimbursed according to OAR 436-009-0070 and must be paid by the insurer.

(10) When the worker's medical condition is not stationary on reconsideration which may result in difficulties in obtaining findings of impairment by the arbiter, the director will, where appropriate, send a letter to the parties requesting consent to defer the reconsideration proceeding.

(a) If the parties agree to the deferral, the reconsideration proceeding will be deferred until the medical record reflects the worker's condition has stabilized sufficiently to allow for examination to obtain the impairment findings. The parties must notify the director when it is appropriate to schedule the medical arbiter examination and provide the necessary medical records when requested. Interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition(s) may be submitted at the time the parties notify the director that the medical arbiter exam can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (7).

(b) If deferral is not appropriate, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

(11) All costs related to record review, examinations, tests, and reports of the medical arbiter must be paid under OAR 436-009-0015, 436-009-0040, and 436-009-0070.

(12) When requested by the Hearings Division, the director may schedule a medical arbiter examination for a worker who has appealed a Notice of Closure rescinding permanent total disability benefits under ORS 656.206.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268 & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0175

Fees and Penalties Within the Reconsideration Proceeding

(1) An insurer failing to provide information or documentation as set forth in OAR 436-030-0135, 436-030-0145, 436-030-0155 and 436-030-0165 may be assessed civil penalties under OAR 436-030-0580. Failure to comply with the requirements set forth in OAR 436-030-0135, 436-030-0145, 436-030-0155, and 436-030-0165 may also be grounds for extending the reconsideration proceeding under ORS 656.268(6).

(2) If upon reconsideration of a Notice of Closure there is an increase of 25 percent or more in the amount of permanent disability compensation from that awarded by the Notice of Closure, and the worker is found to be at least 20 percent permanently disabled, the insurer will be ordered to pay the worker a penalty equal to 25 percent of the increased amount of permanent disability compensation. Penalties will not be assessed if an increase in compensation results from one of the following:

(a) The promulgation of a temporary emergency rule;

(b) New information is obtained through a medical arbiter examination, for claims with medically stationary dates or statutory closure dates on or after June 7, 1995; or

(c) For claims closed on or after January 1, 2006, information that the insurer or self-insured employer demonstrates they could not reasonably have known at the time of claim closure.

(3) For the purpose of section (2) of this rule, a worker who receives a total sum of 64 degrees of scheduled or unscheduled disability or a combination thereof, will be found to be at least 20 percent disabled.

For example: A worker who receives 20 percent disability of a great toe (3.6 degrees) is not considered 20 percent permanently disabled because the great toe is only a por-

tion of the whole person. A worker who is 100 percent permanently disabled is entitled to 320 degrees of disability. A worker who receives 64 degrees (20 percent of 320 degrees), whether scheduled, unscheduled or a combination thereof, will be considered the equivalent of at least 20 percent permanently disabled for the purposes of this rule.

(4) Attorney fees may only be authorized when a Request for Reconsideration is submitted by an attorney representing a worker or the attorney provides documentation of representation, and a valid signed retainer agreement has been filed with the director. The reconsideration order will order the insurer to pay the attorney 10 percent out of any additional compensation awarded but not more than the maximum attorney fee allowed in OAR 438-015-0040(1) and (2) and 438-015-0045, effective February 1, 1999. "Additional compensation" includes an increase in a permanent or temporary disability award.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.268

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 2-1999(Temp), f. 1-14-99, cert. ef. 2-1-99 thru 7-30-99; WCD 8-1999, f. & cert. ef. 4-28-99; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0185

Reconsideration: Settlements and Withdrawals

(1) Contested matters arising out of a claim closure may be resolved by mutual agreement of the parties at any time after the claim has been closed under ORS 656.268 but before that claim closure has become final by operation of law. If the parties have reached such an agreement prior to the completion of the reconsideration proceeding, the parties must submit the stipulation agreement to the director for approval as part of the reconsideration proceeding. The stipulation submitted for review at the reconsideration proceeding must:

(a) Address only issues that pertain to a claim closure and cannot include any issues of compensability;

(b) List the body part(s) for which any award is made and recite all disability awarded in both degrees and percent of loss as appropriate based on date of injury when permanent partial disability is part of the stipulated agreement. In the event there is any inconsistency between the stated degrees and percent of loss awarded in any stipulated agreement for claims with dates of injury prior to January 1, 2005, the stated percent of loss will control.

(2) The director will review the stipulation and issue an order approving or denying the stipulation within 18 working days from the director's receipt of the stipulation. Stipulations approved by the director can not be appealed.

(3) When the stipulated agreement does not expressly resolve all issues relating to the claim closure, the Order on Reconsideration will include the stipulation, as well as a substantial determination of all remaining issues. In these claims, the 18 working day time frame may be postponed in the same manner as any reconsideration proceeding.

(4) If the stipulation is not approved, the reconsideration proceeding will be postponed to allow the parties to:

(a) Address the disapproval; or

(b) Request that the director issue an Order on Reconsideration addressing the substantive issues.

(5) When the parties desire to enter into a stipulated agreement to resolve disputed issues relating to the claim closure but are unable to reach an agreement, the parties may request the assistance of the director to mediate an agreement.

(6) When the parties desire to enter into a stipulated agreement that addresses all matters being reconsidered as well as issues not before the reconsideration proceeding, and the parties do not want a reconsideration on the merits of the claim closure, they may advise the director of their resolution and request the director enter an Order on Reconsideration affirming the Notice of Closure. The request for an affirming order must be made prior to the date an Order on Reconsideration is issued and in accordance with the following procedure.

(a) A written request for an affirming reconsideration order must:

(A) Be made by certified mail;

(B) Be signed by both parties or their representatives;

(C) State that the parties waive their right to an arbiter review and that all matters subject to the mandatory reconsideration process have been resolved; and

(D) Be accompanied by a copy of the proposed stipulated agreement.

(b) After the affirming Order on Reconsideration has been issued, the parties will submit their stipulation to a referee of the Hearings Division, Workers' Compensation Board, for approval in accordance with the provisions of ORS 656.289 and the Board's rules of practice and procedure.

(c) An Order on Reconsideration issued under this rule is final and is subject to review under ORS 656.283.

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(d) This provision does not apply to Claims Disposition Agreements filed under ORS 656.236.

(7) A worker requesting a reconsideration may withdraw the request for reconsideration without agreement of the other parties only if:

- (a) No additional information has been submitted by the other parties;
- (b) No medical arbiter exam has occurred, and
- (c) The insurer has not requested reconsideration under OAR 436-030-0145.

(8) Notwithstanding (7) above, if additional information has been submitted by the other party(ies), a medical arbiter exam has occurred or the insurer has requested reconsideration, the reconsideration request will not be dismissed unless all parties agree to the withdrawal.

(9) If the insurer has requested reconsideration, either the worker or the insurer may initiate the withdrawal request but both must agree to the withdrawal.

(10) The director will issue an order dismissing the reconsideration under section (7), (8), and (9) of this rule, when appropriate.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268(6) & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0575

Audits

(1) Notices of Closure issued by insurers and supporting documentation including, but not limited to, the worksheet upon which the Notice of Closure is based, will be subject to periodic audit by the director. Supporting documentation and records must be maintained in accordance with OAR 436-050.

(2) The director reserves the right to visit the worksite to determine compliance with these rules.

(3) The insurer or self-insured employer is required to provide the director, within seven days of the director's request, any data the director identifies as necessary to determine the impact of legislative changes on permanent partial disability awards.

Stat. Auth.: ORS 656.268, 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268, 656.455, 656.726, 656.750 & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-030-0580

Penalties and Sanctions

(1) Under ORS 656.745, the director or designee may assess a civil penalty against an employer or insurer who fails to comply with the statutes, rules, or orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(2) An insurer or medical service provider failing to meet the requirements set forth in these rules may be assessed a civil penalty.

(3) Under OAR 436-010-0340, the director may impose sanctions for any medical service provider where the insurer can provide sufficient documentation to substantiate lack of cooperation. The medical service provider will be sent a warning letter about the reporting requirements and possible penalties. Failure by the medical service provider to submit the requested information within the specified period may result in civil penalties.

(4) Sufficient documentation to substantiate lack of cooperation by the medical service provider includes:

- (a) Copies of letters to the medical service provider;
- (b) Memos to the claim file of follow-up phone calls or the lack of response;
- (c) Letters from the medical service provider indicating a lack of cooperation; or

(d) Medical reports received by the insurer, after adequate instruction by the insurer or the director, which do not supply the requested information or which supply information that is not consistent with the Disability Rating Standards in OAR 436-035.

(5) In arriving at the amount of penalty, the director or designee may assess a penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations in any three-month period.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999

Stats. Implemented: ORS 656.268, 656.726, 656.745, OL Ch. 332 1995 & Ch. 313 1999

Hist.: WCD 13-1987, f. 12-17-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0005

Definitions

As used in OAR 436-035-0001 through 436-035-0500, unless the context requires otherwise:

(1) "Activities of Daily Living (ADL)" include, but are not limited to, the following personal activities required by an individual for continued well-being: eating/nutrition; self-care and personal hygiene; communication and cognitive functions; and physical activity, e.g., standing, walking, kneeling, hand functions, etc.

(2) "Ankylosis" means a bony fusion, fibrous union or arthrodesis of a joint. Ankylosis does not include pseudarthrosis or articular arthropathies.

(3) "Combined condition" means a preexisting condition and a compensable condition contribute to the worker's overall disability or need for treatment.

(4) "Date of Issuance", for purposes of these rules, means the mailing date of a Notice of Closure, Determination Order or Order on Reconsideration under ORS 656.268 and 656.283(7).

(5) "Dictionary of Occupational Titles" or (DOT) means the publication of the same name by the U.S. Department of Labor, Fourth Edition Revised 1991.

(6) "Direct medical sequela" means a condition which originates or stems from the compensable injury or disease that is clearly established medically. Disability from direct medical sequelae is rated under these rules and ORS 656.268(14). For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to radiculopathy. The weakness is considered a "direct medical sequela" of the herniated disc.

(7) "Earning Capacity" means impairment as modified by age, education and adaptability.

(8) "Impairment" means a compensable, permanent loss of use or function of a body part/system related to the compensable condition, determined under these rules, OAR 436-010-0280 and ORS 656.726(4)(f).

(9) "Irreversible findings" for the purposes of these rules are:

ARM

Arm angulation

Radial head resection

Shortening

EYE

Enucleation

Lens implant

Leisurectomy

GONADAL

Loss of gonads resulting in absence of, or an abnormally high, hormone level

HAND

Carpal bone fusion

Carpal bone removal

KIDNEY

Nephrectomy

LEG

Knee angulation

Length discrepancy

Meniscectomy

Patellectomy

LUNG

Lobectomy

SHOULDER

Acromioclavicular

Clavicle resection

SPINE

Compression fractures

Diskectomy

Laminectomy

SPLEEN

Splenectomy

URINARY TRACT DIVERSION

Cutaneous ureterostomy without intubation

Nephrostomy or intubated ureterostomy

Uretero-Intestinal

OTHER

Amputations/resections

Ankylosed/fused joints

Displaced pelvic fracture ("healed" with displacement)

Loss of opposition

Organ transplants (heart, lung, liver, kidney)

Prosthetic joint replacements

(10) "Medical arbiter" means a physician(s) under ORS 656.005(12)(b)(A) appointed by the Director under OAR 436-010-0330.

(11) "Offset" means to reduce a current permanent partial disability award, or portions thereof, by a prior Oregon workers' compensation permanent partial disability award from a different claim.

(12) "Physician's release" means written notification, provided by the attending physician to the worker and the worker's employer or insurer, releasing the worker to work and describing any limitations the worker has.

(13) "Preponderance of medical evidence" or "opinion" does not necessarily mean the opinion supported by the greater number of documents or greater number of concurrences; rather it means the more probative and

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more reliable medical opinion based upon factors including, but not limited to, one or more of the following:

- (a) The most accurate history,
- (b) The most objective findings,
- (c) Sound medical principles or
- (d) Clear and concise reasoning.

(14) "Redetermination" means a reevaluation of disability under ORS 656.267, 656.268(9), 656.273 and 656.325.

(15) "Regular work" means the job the worker held at the time of injury.

(16) "Scheduled disability" means a compensable permanent loss of use or function which results from injuries to those body parts listed in ORS 656.214(3)(a) through (5).

(17) "Social-vocational factors" means age, education and adaptability factors under ORS 656.726(4)(f).

(18) "Superimposed condition" means a condition that arises after the compensable injury or disease which contributes to the worker's overall disability or need for treatment but is not the result of the original injury or disease. Disability from a superimposed condition is not rated. For example: The accepted condition is a low back strain. Two months after the injury, the worker becomes pregnant (non-work related). The pregnancy is considered a "superimposed condition."

(19) "Unscheduled disability" means a compensable condition that results in a permanent loss of earning capacity as described in these rules and arising from those losses under OAR 436-035-0330 through 436-035-0450.

(20) "Work Disability", for the purposes of determining permanent disability, means the separate factoring of impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0007

General Principles

(1) Except for OAR 436-035-0014, a worker is entitled to a value under these rules only for those findings of impairment that are permanent and were caused by the accepted compensable condition and direct medical sequela. Unrelated or noncompensable impairment findings are excluded and are not valued under these rules. Permanent total disability is determined under OAR 436-030-0055.

(2) Permanent disability is rated on the permanent loss of use or function of a body part, area, or system due to a compensable, consequential or combined condition and any direct medical sequela, and may be modified by the factors of age, education, and adaptability. Except impairment determined under ORS 656.726(4)(f), the losses, as defined and used in these standards, shall be the sole criteria for the rating of permanent disability under these rules.

(3) When newly accepted or omitted conditions have been added to the accepted conditions since the last arrangement of compensation, the extent of permanent disability is to be redetermined. Impairment values for conditions which are not actually worsened, unchanged, or improved are not redetermined and retain the same impairment values established at the last arrangement of compensation.

(4) Where a worker has a prior award of permanent disability under Oregon workers' compensation law, disability is determined under OAR 436-035-0015 (offset), rather than OAR 436-035-0013, for purposes of determining disability only as it pertains to multiple Oregon workers' compensation claims.

(5) Impairment is established based on objective findings of the attending physician under ORS 656.245(2)(b)(B) and OAR 436-010-0280. On reconsideration, where a medical arbiter is used, impairment is established based on objective findings of the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician are more accurate and should be used.

(6) Objective findings made by a consulting physician or other medical providers (e.g. occupational or physical therapists) at the time of closure may be used to determine impairment if the worker's attending physician concurs with the findings as prescribed in OAR 436-010-0280.

(7) If there is no measurable impairment under these rules, no award of permanent partial disability is allowed.

(8) Pain is considered in the impairment values in these rules to the extent that it results in measurable impairment. If there is no measurable

impairment, no award of permanent disability is allowed for pain. To the extent that pain results in disability greater than that evidenced by the measurable impairment, including the disability due to expected waxing and waning of the worker's condition, this loss of earning capacity is considered and valued under OAR 436-035-0012 and is included in the adaptability factor.

(9) When a joint is ankylosed in more than one direction or plane, the largest ankylosis value is used for rating the loss or only one of the values is used if they are identical. This value is granted in lieu of all other range of motion or ankylosis values for that joint.

(10) Except as otherwise required by these rules, methods used by the examiner for making findings of impairment are the methods described in the *AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev. 1990*, and are reported by the physician in the form and format required by these rules.

(11) Range of motion is measured using the goniometer as described in the *AMA Guides to the Evaluation of Permanent Impairment, 3rd Edition (Revised), 1990*, except when measuring spinal range of motion; then an inclinometer must be used.

(12) Validity is established for findings of impairment according to the criteria noted in the *AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed., Rev., 1990*, unless the validity criteria for a particular finding is not addressed in this reference, is not pertinent to these rules, or is determined by physician opinion to be medically inappropriate for a particular worker. Upon examination, findings of impairment which are determined to be ratable under these rules are rated unless the physician determines the findings are invalid and provides a written opinion, based on sound medical principles, explaining why the findings are invalid. When findings are determined invalid, the findings receive a value of zero. If the validity criteria are not met but the physician determines the findings are valid, the physician must provide a written rationale, based on sound medical principles, explaining why the findings are valid. For purposes of this rule, the straight leg raising validity test (SLR) is not the sole criterion used to invalidate lumbar range of motion findings.

(13) Except for contralateral comparison determinations under OAR 436-035-0011(3), loss of opposition determination under OAR 436-035-0040, averaging muscle values under OAR 436-035-0011(8), and impairment determined under ORS 656.726(4)(f), only impairment values listed in these rules are to be used in determining impairment. Prorating or interpolating between the listed values is not allowed. For findings that fall between the listed impairment values, the next higher appropriate value is used for rating.

(14) Values found in these rules consider the loss of use, function, or earning capacity directly associated with the compensable condition. When a worker's impairment findings do not meet the threshold (minimum) findings established in these rules, no value is granted.

(a) Not all surgical procedures result in loss of use, function, or earning capacity. Some surgical procedures improve the use and function of body parts, areas or systems or ultimately may contribute to an increase in earning capacity. Accordingly, not all surgical procedures receive a value under these rules.

(b) Not all medical conditions or diagnoses result in loss of use, function, or earning capacity. Accordingly, not all medical conditions or diagnoses receive a value under these rules.

(15) Waxing and waning of signs or symptoms related to a worker's compensable medical condition is already contemplated in the values provided in these rules. There is no additional value granted for the varying extent of waxing and waning of the condition. Waxing and waning means there is not an actual worsening of the condition under ORS 656.273.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0008

Calculating Disability Benefits (Dates of Injury prior to 1/1/2005)

(1) Scheduled disability is rated on the permanent loss of use or function of a body part due to an accepted compensable, consequential or combined condition, or any direct medical sequelae. Except impairment determined under ORS 656.726(4)(f), the losses, as defined and used in these standards, are the sole criteria for the rating of permanent scheduled

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disability. To calculate the scheduled impairment benefit use the following steps.

(a) Determine the percent of scheduled impairment using the impairment values found in OAR 436-035-0019 through 436-035-0260, and the applicable procedures within these rules.

(b) Multiply the result in (a) by the maximum degrees, under ORS 656.214, for the injured body part.

(c) Multiply the result from (b) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(d) The result from (c) is the scheduled impairment benefit. If there are multiple extremities with impairment then each is determined and awarded separately, including hearing and vision loss. Example: Scheduled Impairment Benefit. [Example not included. See ED. NOTE.]

(2) Unscheduled disability is rated on the permanent loss of use or function of a body part, area, or system and due to an accepted compensable, consequential or combined condition, and any direct medical sequelae, as modified by the factors of age, education, and adaptability. Except for impairment determined under ORS 656.726(4)(f), the losses, as defined and used in these standards, are the sole criteria for the rating of permanent unscheduled disability.

(a) To calculate the unscheduled impairment benefit when the worker returns or is released to regular work according to OAR 436-035-0009(3), use the following steps.

(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Multiply the result in (A) by the maximum degrees for unscheduled impairment.

(C) Multiply the result in (B) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(D) The result in (C) is the unscheduled impairment benefit. Example: Unscheduled Impairment Benefit (worker returns/is released to regular work). [Example not included. See ED. NOTE.]

(b) To calculate the unscheduled disability benefit when the worker does not return or is not released to regular work according to OAR 436-035-0009(3), use the following steps.

(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Determine the social-vocational factor, under OAR 436-035-0012, and add it to (A).

(C) Multiply the result from (B) by the maximum degrees for unscheduled impairment.

(D) Multiply the result from (C) by the statutory dollar rate for unscheduled impairment under ORS 656.214.

(E) The result from (D) is the unscheduled impairment benefit. Example: Unscheduled Impairment Benefit (worker does not return/released to regular work); [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726(3)

Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0009

Calculating Disability Benefits (Date of Injury on or after 1/1/2005)

(1) Permanent impairment is expressed as a percent of the whole person and the impairment value will not exceed 100% of the whole person.

(2) If the impairment results from injury to more than one extremity, area, or system, the whole person values for each are combined (not added) to arrive at a final impairment value.

(3) Only permanent impairment is rated for those workers with a date of injury prior to January 1, 2006 and who:

(a) Return to and are working at their regular work on the date of issuance; or

(b) The attending physician or authorized nurse practitioner releases to regular work and the work is available, but the worker fails or refuses to return to that job; or

(c) The attending physician or authorized nurse practitioner releases to regular work, but the worker's employment is terminated for cause unrelated to the injury.

(4) Only permanent impairment is rated for those workers with a date of injury on or after January 1, 2006, and who have been released or returned to regular work by the attending physician or authorized nurse practitioner.

(5) To calculate the impairment benefit due the worker use the following steps:

(a) Determine the percent of impairment according to these rules.

(b) Multiply the percent of impairment determined in (a) by 100 per ORS 656.214.

(c) Multiply the result from (b) by the state's average weekly wage at the time of injury as defined by ORS 656.005 and illustrated in Bulletin 111.

(d) The result in (c) is the total impairment benefit, which is paid regardless of the worker's return to work status. In the absence of social-vocational factoring as a result of the worker's return to work status, this is also the permanent partial disability award. Example: Impairment Benefit (paid regardless of return to work status) [Example not included. See ED. NOTE.]

(6) If the worker has not met the return or release to regular work criteria in section (3) or (4) of this rule, the worker receives both an impairment and work disability benefit, and the total permanent partial disability award is calculated as follows.

(a) Determine the percent of impairment as a whole person (WP) value according to these rules.

(b) Determine the social-vocational factor, under OAR 436-035-0012, and add it to (a).

(c) Multiply the result from (b) by 150 per ORS 656.214.

(d) Multiply the result from (c) by worker's average weekly wage as calculated under ORS 656.210(2). The worker's average weekly wage can be no less than 50% and no more than 133% of the state's average weekly wage at the time of injury when determining work disability benefits.

(e) Add the result from (d) to the impairment benefit value, which would be calculated using the method in section (4) of this rule.

(f) The result from (e) is the permanent partial disability award that would be due the worker. Example: Work Disability Benefit and PPD Award (no return to work) [Example not included. See ED. NOTE.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0011

Determining Percent of Impairment

(1) The total impairment rating for a body part cannot be more than 100% of the body part.

(2) When rating disability the movement in a joint is measured in active degrees of motion. Impairment findings describing lost ranges of motion are converted to retained ranges of motion by subtracting the measured loss from the normal of full ranges established in these rules.

(a) Range of motion values for each direction in a single joint are first added, then combined with other impairment findings. [Example not included. See ED. NOTE.]

(b) Range of motion values for multiple joints in a single body part (e.g. of a finger) are determined by finding the range of motion values for each joint (e.g. MCP, PIP, DIP) and combining those values for an overall loss of range of motion value for that body part. This value is then combined with other impairment values.

(3) The range of motion or laxity (instability) of an injured joint is compared to and valued proportionately to the contralateral joint except when the contralateral joint has a history of injury or disease or when either joint's range of motion is zero degrees or is ankylosed. The strength of an injured extremity, shoulder, or hip is compared to and valued proportionately to the contralateral body part except when the contralateral body part has a history of injury or disease. [Example not included. See ED. NOTE.]

(a) If the motion of the injured or contralateral joint exceeds the values for ranges of motion established under these rules, the values established under these rules are maximums used to establish impairment.

(b) When the contralateral joint has a history of injury or disease, the findings of the injured joint are valued based upon the values established under these rules.

(4) Specific impairment findings (e.g., weakness, reduced range of motion, etc.) are awarded in whole number increments. This may require rounding non-whole number percentages and contralateral comparison degrees of motion for given impairment findings before combining with any other applicable impairment value.

(a) Except for subsection (b) of this section, before combining, the sum of the impairment values is rounded to the nearest whole number. For the decimal portion of the number, point 5 and above is rounded up, below point 5 is rounded down. [Example not included. See ED. NOTE.]

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(b) When the sum of impairment values is greater than zero and less than 0.5, a value of 1% will be granted. [Example not included. See ED. NOTE.]

(5) If there are impairment findings in two or more body parts in an extremity, the total impairment findings in the distal body part are converted to a value in the most proximal body part under the applicable conversion chart in these rules. This conversion is done prior to combining impairment values for the most proximal body part. [Example not included. See ED. NOTE.]

(6) Except as otherwise noted in these rules, impairment values to a given body part, area, or system are combined according to the method outlined on pages 254-256 by the AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990, as follows:

(a) The combined value is obtained by inserting the values for A and B into the formula $A + B \cdot (1.0 - A)$. The larger of the two numbers is A and the smaller is B. The whole number percentages of impairment are converted to their decimal equivalents (e.g. 12% converts to .12; 3% converts to .03). The resulting percentage is rounded to a whole number as determined in section (1) of this rule. Upon combining the largest two percentages, the resulting percentage is combined with any lesser percentage(s) in descending order using the same formula until all percentages have been combined prior to performing further computations. After the calculations are completed, the decimal result is then converted back to a percentage equivalent. [Example not included. See ED. NOTE.]

(b) Impairment values for a given body part, area, or system must be combined before combining with other impairment values. If the given body part is an upper or lower extremity, ear(s), or eye(s) then the impairment value is to be converted to a whole person value before combining with other impairment values, except when the date of injury for the claim is prior to January 1, 2005. [Example not included. See ED. NOTE.]

(7) To determine impairment due to loss of strength, the 0 to 5 international grading system and 0 to 5 method as noted in the *AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. Revised, 1990* are used. The grade of strength is reported by the physician and assigned a percentage value from the table in subsection (a) of this section. The impairment value of the involved nerve is multiplied by this value. Grades identified as “++” or “--” are considered either a “+” or “-”, respectively.

(a) The grading is valued as follows: [Example not included. See ED. NOTE.]

(b) When a physician reports a loss of strength with muscle action (e.g. flexion, extension, etc.) or when only the affected muscle(s) is identified, current anatomy texts or the *AMA Guides to the Evaluation of Permanent Impairment, 3rd Ed. (Revised), 1990, the 4th Ed., 1993, or the 5th Ed., 2001*, may be referenced to identify the specific muscle(s), peripheral nerve(s) or spinal nerve root(s) involved.

(8) For muscles supplied (innervated) by the same nerve, the loss of strength is determined by averaging the percentages of impairment for each involved muscle to arrive at a single percentage of impairment for the involved nerve. [Example not included. See ED. NOTE.]

(9) When multiple nerves have impairment findings found under these rules, these impairment values are first combined for an overall loss of strength value for the body part before combining with other impairment values.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0012

Social-Vocational Factors (Age/Education/Adaptability)

(1) When a worker does not meet the return/release to regular work requirements under ORS 656.726(4), the factors of age, education, and adaptability are determined under this rule and the final result is the social-vocational factor which is used in the calculation of permanent disability benefits. When the date of injury is prior to January 1, 2005, the worker must have ratable unscheduled impairment under OAR 436-035-0019 or 436-035-0330 through 436-035-0450.

(2) The age factor is based on the worker's age at the date of issuance and has a value of 0 or +1.

(a) Workers age 40 and above receive a value of + 1.

(b) Workers less than 40 years old receive a value of 0.

(3) The education factor is based on the worker's formal education and Specific Vocational Preparation (SVP) time at the date of issuance. These two values are determined by sections (4) and (5) of this rule, and are added to give a value from 0 to +5.

(4) A value of a worker's formal education is given as follows:

(a) Workers who have earned or acquired a high school diploma or general equivalency diploma (GED) are given a neutral value of 0. For pur-

poses of this section, a GED is a certificate issued by any certifying authority or its equivalent.

(b) Workers who have not earned or acquired a high school diploma or a GED certificate are given a value of +1.

(5) A value for a worker's Specific Vocational Preparation (SVP) time is given based on the job(s) successfully performed by the worker in the five (5) years prior to the date of issuance. The SVP value is determined by identifying these jobs and locating their SVP in the Dictionary of Occupational Titles (DOT) or a specific job analysis. The job with the highest SVP the worker has met is used to assign a value according to the following table: [Table not included. See ED. NOTE.]

(a) For the purposes of this rule, SVP is defined as the amount of time required by a typical worker to acquire the knowledge, skills and abilities needed to perform a specific job.

(b) When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT description(s), a specific job analysis which includes the SVP time requirement may be substituted for the DOT description(s) if it more accurately describes the job.

(c) A worker is presumed to have met the SVP training time after completing employment with one or more employers in that job classification for the time period specified in the table.

(d) A worker meets the SVP for a job after successfully completing an authorized training program, on-the-job training, vocational training, or apprentice training for that job classification. College training organized around a specific vocational objective is considered specific vocational training.

(e) For those workers who have not met the specific vocational preparation training time for any job, a value of +4 is granted.

(6) The values obtained in sections (4) and (5) of this rule are added to arrive at a final value for the education factor.

(7) The adaptability factor is a comparison of the worker's Base Functional Capacity (BFC) to their maximum Residual Functional Capacity (RFC). The adaptability factor is determined by subsections (8) to (12) of this section, and has a value from +1 to +7.

(8) For purposes of determining adaptability the following definitions apply:

(a) “Base Functional Capacity” (BFC) means an individual's demonstrated physical capacity before the date of injury or disease.

(b) “Residual Functional Capacity” (RFC) means an individual's remaining ability to perform work-related activities despite medically determinable impairment resulting from the accepted compensable condition.

(c) “Sedentary restricted” means the worker only has the ability to carry or lift dockets, ledgers, small tools and other items weighing less than 10 pounds. A worker is also sedentary restricted if the worker can perform the full range of sedentary activities, but with restrictions.

(d) “Sedentary (S)” means the worker has the ability to occasionally lift or carry dockets, ledgers, small tools and other items weighing 10 pounds.

(e) “Sedentary/Light (S/L)” means the worker has the ability to do more than sedentary activities, but less than the full range of light activities. A worker is also sedentary/light if the worker can perform the full range of light activities, but with restrictions.

(f) “Light (L)” means the worker has the ability to occasionally lift 20 pounds and can frequently lift or carry objects weighing up to 10 pounds.

(g) “Medium/Light (M/L)” means the worker has the ability to do more than light activities, but less than the full range of medium activities. A worker is also medium/light if the worker can perform the full range of medium activities, but with restrictions.

(h) “Medium (M)” means the worker can occasionally lift 50 pounds and can lift or carry objects weighing up to 25 pounds frequently.

(i) “Medium/Heavy (M/H)” means the worker has the ability to do more than medium activities, but less than the full range of heavy activities. A worker is also medium/heavy if the worker can perform the full range of heavy activities, but with restrictions.

(j) “Heavy (H)” means the worker has the ability to occasionally lift 100 pounds and the ability to frequently lift or carry objects weighing 50 pounds.

(k) “Very Heavy (V/H)” means the worker has the ability to occasionally lift in excess of 100 pounds and the ability to frequently lift or carry objects weighing more than 50 pounds.

(l) “Restrictions” means that, by a preponderance of medical opinion, the worker is permanently limited by:

(A) Sitting, standing, or walking less than two hours at a time; or

(B) Precluded from working the same number of hours as were worked at the time of injury or eight hours per day, whichever is less; or

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(C) From frequently performing at least one of the following activities: stooping/bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, or pushing/pulling.

(m) "Occasionally" means the activity or condition exists up to 1/3 of the time.

(n) "Frequently" means the activity or condition exists up to 2/3 of the time.

(o) "Constantly" means the activity or condition exists 2/3 or more of the time.

(9) Base Functional Capacity (BFC) is established by utilizing the following classifications: sedentary (S), light (L), medium (M), heavy (H), and very heavy (VH) as defined in section (8) of this rule. Base Functional Capacity is the most current of:

(a) The highest strength category of the job(s) successfully performed by the worker in the five (5) years prior to the date of injury. The strength categories are found in the Dictionary of Occupational Titles (DOT). When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT descriptions, a specific job analysis which includes the strength requirements may be substituted for the DOT description(s) if it most accurately describes the job. If a job analysis determines that the strength requirements are in between strength categories then use the higher strength category; or

(b) A second-level physical capacity evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed prior to the date of the on-the-job injury; or

(c) For those workers who do not meet the requirements under section (5) of this rule, and who have not had a second-level physical capacity evaluation performed prior to the on-the-job injury or disease, their prior strength is based on the worker's job at the time of injury.

(d) Where a worker's highest prior strength has been reduced as a result of an injury or condition which is not an accepted Oregon workers' compensation claim the Base Functional Capacity is the highest of:

(A) The job at injury; or

(B) A second-level physical capacities evaluation as defined in OAR 436-010-0005 and 436-009-0070(4)(b) performed after the injury or condition which was not an accepted Oregon workers' compensation claim but before the current work related injury.

(10) Residual functional capacity (RFC) is established by utilizing the following classifications: restricted sedentary (RS), sedentary (S), sedentary/light (S/L), light (L), medium/light (M/L), medium (M), medium/heavy (M/H), heavy (H), and very heavy (VH) and restrictions as defined in section (8) of this rule.

(a) Residual functional capacity is evidenced by the attending physician's release unless a preponderance of medical opinion describes a different RFC.

(b) For the purposes of this rule, the other medical opinion must include at least a second-level physical capacity evaluation (PCE) or work capacity evaluation (WCE) as defined in OAR 436-010-0005 and 436-009-0070(4) or a medical evaluation which addresses the worker's capability for lifting, carrying, pushing/pulling, standing, walking, sitting, climbing, balancing, stooping, kneeling, crouching, crawling and reaching. If multiple levels of lifting and carrying are measured, an overall analysis of the worker's lifting and carrying abilities should be provided in order to allow an accurate determination of these abilities. Where a worker fails to cooperate or use maximal effort in the evaluation, the medical opinion of the evaluator may establish the worker's likely RFC had the worker cooperated and used maximal effort.

(11) In comparing the worker's Base Functional Capacity (BFC) to the Residual Functional Capacity (RFC), the values for adaptability to perform a given job are as follows: [Table not included. See ED. NOTE.]

(12) For those workers determined by these rules to have an RFC established between two categories and also have restrictions, the next lower classification is used. (For example, if a worker's RFC is established at S/L but also has restrictions, use S).

(13) When the date of injury is on or after January 1, 2005, adaptability is determined by applying the worker's extent of total impairment to the following adaptability scale and comparing the value from the residual functional capacity scale in section (11) of this rule and using the higher of the two values for adaptability. [Table not included. See ED. NOTE.]

(14) When the date of injury is prior to January 1, 2005, for those workers who have ratable unscheduled impairment found in rules OAR 436-035-0019 or 436-035-0330 through 436-035-0450, adaptability is determined by applying the extent of total unscheduled impairment to the adaptability scale in section (13) of this rule and the residual functional capacity scale in section (11) of this rule and using the higher of the two values for adaptability.

(15) To determine the social-vocational factor value, which represents the total calculation of age, education, and adaptability complete the following steps.

(a) Determine the appropriate value for the age factor using section (2) of this rule.

(b) Determine the appropriate value for the education factor using sections (4) and (5) of this rule.

(c) Add age and education values together.

(d) Determine the appropriate value for the adaptability factor using sections (7) through (14) of this rule.

(e) Multiply the result from step (c) by the value from step (d) for the social-vocational factor value.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0016

Reopened Claim for Aggravation/Worsening

(1) When a claim has been reopened under ORS 656.273 and then closed, the worker's compensable condition at the time of the current claim closure or reconsideration is compared with the worker's compensable condition as it existed at the time of the last award or arrangement of compensation, to determine if there is a change in the worker's overall permanent partial disability award.

(2) There is no redetermination for those compensable conditions which are not included in the accepted aggravation claim. Impairment values for those conditions not actually worsened continue to be the same impairment values that were established at the last arrangement of compensation.

(3) Except as provided by ORS 656.325 and 656.268(9), where a redetermination of permanent disability under ORS 656.273 results in an award that is less than the total of the worker's prior arrangements of compensation in the claim, the award is not reduced.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0017

Authorized Training Program (ATP)

(1) When a worker ceases to be enrolled and actively engaged in training under ORS 656.268(9) and there is no accepted aggravation in the current open period, one of the following applies:

(a) When the date of injury is prior to January 1, 2005, the worker is entitled to have the amount of unscheduled permanent disability for a compensable condition reevaluated under these rules. The reevaluation includes impairment, which may increase, decrease, or affirm the worker's permanent disability award; or

(b) When the date of injury is on or after January 1, 2005, the worker is entitled to have the amount of work disability reevaluated under these rules, which does not include impairment.

(2) When a worker ceases to be enrolled and actively engaged in training under ORS 656.268(9) and there is an accepted aggravation in the same open period, permanent partial disability is redetermined under OAR 436-035-0016.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0019

Chronic Condition

(1) A worker is entitled to a 5% chronic condition impairment value for each applicable body part, when a preponderance of medical opinion establishes that, due to a chronic and permanent medical condition, the worker is significantly limited in the repetitive use of one or more of the following body parts:

(a) Lower leg (below knee/foot/ankle);

(b) Upper leg (knee and above);

(c) Forearm (below elbow/hand/wrist);

(d) Arm (elbow and above);

(e) Cervical;

(f) Thoracic spine;

(g) Shoulder;

(h) Low back; or

(i) Hip.

(2) Chronic condition impairments are to be combined with other impairment values, not added.

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.273 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

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436-035-0110

Other Upper Extremity Findings

(1) Loss of palmar sensation in the hand, finger(s), or thumb is rated according to the location and quality of the loss, and is measured by the two point discrimination method, as noted by the AMA Guides, 3rd Ed. Rev., 1990.

(a) If enough sensitivity remains to distinguish two pin pricks applied at the same time (two point), the following apply: [Rating not included. See ED. NOTE]

(b) In determining sensation findings for a digit which has been resected or amputated, the value is established by comparing the remaining overall length of the digit to the table in subsection (1)(c) of this rule and rating the length equivalency. For Example: Amputation of 1/2 the middle phalanx of the index finger with total sensory loss extending from the level of amputation to the metacarpophalangeal joint, results in a value for 1/2 the digit or 33%.

(c) Loss of sensation in the finger(s) or thumb is rated as follows: [Rating not included. See ED. NOTE]

(d) If the level of the loss is less than 1/2 the distal phalanx or falls between the levels in subsection (c) of this section, rate at the next highest (or more proximal) level.

(e) In determining sensation impairment in a digit in which the sensation loss does not extend to the distal end of the digit, the value is established by determining the value for loss from the distal end of the digit to the proximal location of the loss, and subtracting the value for loss from the distal end of the digit to the distal location of the loss. [Rating not included. See ED. NOTE]

(f) Any portion of palmar sensation loss is rated as follows: [Rating not included. See ED. NOTE]

(g) Loss of sensation on the dorsal side of the hand, fingers or thumb is not considered a loss of function, so no value is allowed.

(h) Sensory loss in the forearm or arm is not considered a loss of function, therefore no value is allowed.

(i) When there are multiple losses of palmar sensation in a single body part (e.g. hand, finger(s), or thumb), the impairment values are first combined for an overall loss of sensation value for the individual digit or hand. This value is then combined with other impairment values for that digit or hand prior to conversion.

(j) Hypersensitivity resulting in a loss of use in the digits or palm, is valued utilizing the above loss of sensation tables. Mild hypersensitivity is valued at the equivalent impairment level as less than normal sensation, moderate hypersensitivity the equivalent of protective sensation loss, and severe hypersensitivity the equivalent of a total loss of sensation.

(2) When surgery or an injury results in arm length discrepancies involving the injured arm, the following values are given on the affected arm for the length discrepancy: [Values not included. See ED. NOTE]

(3) Joint instability in the finger(s), thumb, or hand is rated according to the body part affected: [Rating not included. See ED. NOTE]

(4) Lateral deviation or malalignment of the upper extremity is valued as follows:

(a) Increased lateral deviation at the elbow is determined as follows: [Values not included. See ED. NOTE]

(b) Fracture resulting in angulation or malalignment, other than at the elbow, is determined as follows: [Values not included. See ED. NOTE]

(5) Surgery on the upper extremity is valued as follows:

(a) Finger/Thumb Surgery Finger Impairment Prosthetic joint replacement 1/2 the lowest ankylosis value for the involved joint

(b) Forearm/Hand Surgery Forearm/Hand Impairment Carpometacarpal arthroplasty 1/2 the lowest ankylosis value for the involved joint; [Values not included. See ED. NOTE]

(6) Dermatological conditions, including burns, which are limited to the arm, forearm, hand, fingers, or thumb are rated according to the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g. a Class 1 dermatological condition of the thumb is 3% of the thumb, or a Class 1 dermatological condition of the hand is 3% of the hand, or a Class 1 dermatological condition of the arm is 3% of the arm. Contact dermatitis of an upper extremity is rated in this section unless it is an allergic systemic reaction, which is also rated under OAR 436-035-0450. Contact dermatitis for a body part other than the upper or lower extremities is rated under OAR 436-035-0440. Impairments may or may not show signs or symptoms of skin disorder upon examination but are rated according to the following classes:

(a) Class 1: 3% for the affected body part if treatment results in no more than minimal limitation in the performance of activities of daily living, although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the affected body part if intermittent treatments and prescribed examinations are required, and the worker has some limitations in the performance of activities of daily living.

(c) Class 3: 38% for the affected body part if regularly prescribed examinations and continuous treatments are required, and the worker has many limitations in the performance of activities of daily living.

(d) Class 4: 68% for the affected body part if continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of activities of daily living.

(e) Class 5: 90% for the affected body part if continuous prescribed treatment is required. The treatment necessitates having the worker stay home or being permanently admitted to a care facility, and the worker has severe limitations in the performance of activities of daily living.

(7) Vascular dysfunction of the upper extremity is valued according to the affected body part, using the following classification table:

(a) Class 1: 3% for the affected body part if the worker experiences only transient edema; and on physical examination, the findings are limited to the following: loss of pulses, minimal loss of subcutaneous tissue of fingertips, calcification of arteries as detected by radiographic examination, asymptomatic dilation of arteries or veins (not requiring surgery and not resulting in curtailment of activity), or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs with exposure to temperatures below freezing (0° Centigrade).

(b) Class 2: 15% for the affected body part if the worker experiences intermittent pain with repetitive exertional activity; or there is persistent moderate edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed stump of an amputated digit, with evidence of persistent vascular disease, or a healed ulcer; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 4° Centigrade.

(c) Class 3: 35% for the affected body part if the worker experiences intermittent pain with moderate upper extremity usage; or there is marked edema incompletely controlled by elastic supports; or there are signs of vascular damage such as a healed amputation of two or more digits, with evidence of persistent vascular disease, or superficial ulceration; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 10° Centigrade.

(d) Class 4: 63% for the affected body part if the worker experiences intermittent pain upon mild upper extremity usage; or there is marked edema that cannot be controlled by elastic supports; or there are signs of vascular damage such as an amputation at or above the wrist, with evidence of persistent vascular disease, or persistent widespread or deep ulceration involving one extremity; or cold intolerance (e.g. Raynaud's phenomenon) which results in a loss of use or function that occurs on exposure to temperatures below 15° Centigrade.

(e) Class 5: 88% for the affected body part if the worker experiences constant and severe pain at rest; or there are signs of vascular damage involving more than one extremity such as amputation at or above the wrist, or amputation of all digits involving more than one extremity with evidence of persistent vascular disease, or persistent widespread deep ulceration involving more than one extremity; or cold intolerance such as Raynaud's phenomenon which results in a loss of use or function that occurs on exposure to temperatures below 20° Centigrade.

(f) If partial amputation of the affected body part occurs as a result of vascular disease, the impairment values are rated separately.

(8) Injuries to unilateral spinal nerve roots or brachial plexus with resultant loss of strength in the arm, forearm or hand are determined according to the specific nerve root which supplies (innervates) the weakened muscle(s), as described in the following table and modified under OAR 436-035-0011(7): [Table not included. See ED. NOTE]

(a) SPINAL NERVE ROOT Arm Impairment: [Table not included. See ED. NOTE]

(b) For loss of strength in bilateral extremities, each extremity is rated separately.

(9) When a spinal nerve root or brachial plexus are not injured, valid loss of strength in the arm, forearm or hand, substantiated by clinical findings, is valued based on the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength, as described in the following table and as modified under OAR 436-035-0011(7). [Table not included. See ED. NOTE]

(a) Loss of strength due to an injury in a single finger or thumb receives a value of zero.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

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(d) When loss of strength is present in the shoulder, refer to OAR 436-035-0330 for determination of the impairment.

(10) For motor loss in any part of an arm which is due to brain or spinal cord damage, impairment is valued as follows:

(a) Severity of Motor Loss Arm Impairment: [Value not included. See ED. NOTE]

(b) When a value is granted under subsection (a) of this section, additional impairment values are not allowed for weakness, chronic condition, or reduced range of motion in the same extremity.

(c) For bilateral extremity loss, each extremity is rated separately.

(11) Neurological dysfunction resulting in cold intolerance in the upper extremity is valued according to the affected body part utilizing the same classifications for cold intolerance due to vascular dysfunction in section (7) of this rule.

[ED. NOTE: Ratings and Values referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0530, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-1-9-88; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0220; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0190

Foot

(1) Ankylosis at the tarsometatarsal joints receives a rating of 10% of the foot for each of the tarsometatarsal joints ankylosed.

(2) The following ratings are for loss of subtalar inversion in the foot: [Rating not included. See ED. NOTE]

(3) The following ratings are for subtalar inversion (varus) ankylosis in the foot: [Rating not included. See ED. NOTE]

(4) The following ratings are for loss of subtalar eversion in the foot: [Rating not included. See ED. NOTE]

(5) The following ratings are for subtalar eversion (valgus) ankylosis in the foot: [Rating not included. See ED. NOTE]

(6) The following ratings are for loss of dorsiflexion (extension) in the ankle joint: [Rating not included. See ED. NOTE]

(7) The following ratings are for dorsiflexion (extension) ankylosis in the ankle joint: [Rating not included. See ED. NOTE]

(8) The following ratings are for loss of plantar flexion in the ankle joint: [Rating not included. See ED. NOTE]

(9) The following ratings are for plantar flexion ankylosis in the ankle joint: [Rating not included. See ED. NOTE]

(10) The following applies when determining impairment for loss of motion or ankylosis in the ankle or subtalar joint:

(a) If there is loss of motion only (no ankylosis in either joint) in the subtalar joint or the ankle joint, the following applies:

(A) the values for loss of motion in the subtalar joint are added;

(B) the values for loss of motion in the ankle joint are added;

(C) the value for loss of motion in the subtalar joint is added to the value for loss of motion in the ankle joint.

(b) If there is ankylosis in the ankle or subtalar joint, the following applies:

(A) When there is ankylosis in one joint only with no loss of motion or ankylosis in the other joint, that ankylosis value is granted.

(B) When there is loss of motion in one joint and ankylosis in the other joint, add the ankylosis value to the value for loss of motion in the non-ankylosed joint.

(C) When the ankle joint is ankylosed in plantar flexion and dorsiflexion, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. Under OAR 436-035-0007(9), this ankylosis value is granted in lieu of all other range of motion or ankylosis values for the ankle joint.

(D) When the subtalar joint is ankylosed in inversion and eversion, use only the largest ankylosis value for rating the loss or only one of the values if they are identical. Under OAR 436-035-0007(9), this ankylosis value is granted in lieu of all other range of motion or ankylosis values for the subtalar joint.

(E) When both joints are ankylosed, add the ankle joint value to the subtalar joint value.

[ED. NOTE: Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0524, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0310; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert.

ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0230

Other Lower Extremity Findings

(1) Loss or alteration (e.g. hypersensitivity) of sensation in the leg is not considered disabling except for the plantar surface of the foot and toes, including the great toe, where it is rated as follows: [Table not included. See ED. NOTE]

(2) The following ratings are for length discrepancies of the injured leg. However, loss of length due to flexion/extension deformities are excluded. The rating is the same whether the length change is a result of an injury to the foot or to the upper leg: [Rates not included. See ED. NOTE]

(3) Valid instability in the ankle or knee substantiated by clinical findings is valued based on the ligament demonstrating the laxity, as described in the following table: [Table not included. See ED. NOTE]

(5) The following values are for surgery of the toes, foot, or leg: [Values not included. See ED. NOTE]

(6) Dermatological conditions including burns which are limited to the leg or foot are rated according to the body part affected. The percentages indicated in the classes below are applied to the affected body part(s), e.g. a Class 1 dermatological condition of the foot is 3% of the foot, or a Class 1 dermatological condition of the leg is 3% of the leg. Contact dermatitis is determined under this section unless it is caused by an allergic systemic reaction which is also determined under OAR 436-035-0450. Contact dermatitis for a body part other than the upper or lower extremities is rated under OAR 436-035-0440. Impairments may or may not show signs or symptoms of skin disorder upon examination but are rated according to the following classes:

(a) Class 1: 3% for the leg or foot if treatment results in no more than minimal limitations in the performance of the activities of daily living, although exposure to physical or chemical agents may temporarily increase limitations.

(b) Class 2: 15% for the leg or foot if intermittent treatments and prescribed examinations are required, and the worker has some limitations in the performance of activities of daily living.

(c) Class 3: 38% for the leg or foot if regularly prescribed examinations and continuous treatments are required, and the worker has many limitations in the performance of activities of daily living.

(d) Class 4: 68% for the leg or foot if continuous prescribed treatments are required. The treatment may include periodically having the worker stay home or admitting the worker to a care facility, and the worker has many limitations in the performance of activities of daily living.

(e) Class 5: 90% for the leg or foot if continuous prescribed treatment is required. The treatment necessitates having the worker stay home or permanently admitting the worker to a care facility, and the worker has severe limitations in the performance of activities of daily living.

(f) Full thickness skin loss of the heel is valued at 10% of the foot, even when the area is successfully covered with an appropriate skin graft.

(7) The following ratings are for vascular dysfunction of the leg. The impairment values are determined according to the following classifications:

(a) Class 1: 3% for the leg. Workers belong in Class 1 when any of the following exist:

(A) Loss of pulses in the foot.

(B) Minimal loss of subcutaneous tissue.

(C) Calcification of the arteries (as revealed by x-ray).

(D) Transient edema.

(b) Class 2: 15% for the leg. Workers belong in Class 2 when they suffer from any of the following:

(A) Limping due to intermittent claudication that occurs when walking at least 100 yards.

(B) Vascular damage, as evidenced by a healed painless stump of a single amputated toe, with evidence of chronic vascular dysfunction or a healed ulcer.

(C) Persistent moderate edema which is only partially controlled by support hose.

(c) Class 3: 35% for the leg. Workers belong in Class 3 when they suffer from any of the following:

(A) Limping due to intermittent claudication when walking as little as 25 yards and no more than 100 yards.

(B) Vascular damage, as evidenced by healed amputation stumps of two or more toes on one foot, with evidence of chronic vascular dysfunction or persistent superficial ulcers on one leg.

(C) Obvious severe edema which is only partially controlled by support hose.

(d) Class 4: 63% for the leg. Workers belong in Class 4 when they suffer from any of the following:

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(A) Limping due to intermittent claudication after walking less than 25 yards.

(B) Intermittent Pain in the legs due to intermittent claudication when at rest.

(C) Vascular damage, as evidenced by amputation at or above the ankle on one leg, or amputation of two or more toes on both feet, with evidence of chronic vascular dysfunction or widespread or deep ulcers on one leg.

(D) Obvious severe edema which cannot be controlled with support hose.

(e) Class 5: 88% for the leg. Workers belong in Class 5 when they suffer from either of the following:

(A) Constant severe pain due to claudication at rest.

(B) Vascular damage, as evidenced by amputations at or above the ankles of both legs, or amputation of all toes on both feet, with evidence of persistent vascular dysfunction or of persistent, widespread, or deep ulcerations on both legs.

(f) If partial amputation of the lower extremity occurs as a result of vascular dysfunction, the impairment values are rated separately. The amputation value is then combined with the impairment value for the vascular dysfunction.

(8) Injuries to unilateral spinal nerve roots with resultant loss of strength in the leg or foot is determined according to the specific nerve root supplying (innervating) the weakened muscle(s), as described in the following table and modified under OAR 436-035-0011(7). [Table not included. See ED. NOTE]

(9) When a spinal nerve root or lumbosacral plexus are not injured, valid loss of strength in the leg or foot, substantiated by clinical findings, is valued based on the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength, as described in the following table and as modified under OAR 436-035-0011(7). [Table not included. See ED. NOTE]

(a) Loss of strength due to an injury in a single toe receives a value of zero.

(b) Decreased strength due to an amputation receives no rating for weakness in addition to that given for the amputation.

(c) Decreased strength due to a loss in range of motion receives no rating for weakness in addition to that given for the loss of range of motion.

(10) For motor loss to any part of a leg which is due to brain or spinal cord damage, impairment is valued as follows: [Value not included. See ED. NOTE]

(11) If there is a diagnosis of Grade IV chondromalacia, extensive arthritis or extensive degenerative joint disease and one or more of the following are present: secondary strength loss; chronic effusion; varus or valgus deformity less than that specified in section (4) of this rule, then one or more of the following rating values apply:

(a) 5% of the foot for the ankle joint; or

(b) 5% of the leg for the knee joint.

(12) For a diagnosis of degenerative joint disease, chondromalacia, or arthritis which does not meet the criteria noted in section (11) of this rule, the impairment is determined under the chronic condition rule (OAR 436-035-0019) if the criteria in that rule is met.

(13) Other impairment values, e.g., weakness, chronic condition, reduced range of motion, etc., are combined with the value granted in section (11) of this rule.

(14) When there is an injury to the knee/leg and objective medical evidence establishes the worker cannot walk or stand or both for a total of more than two hours in an 8-hour period, the award is 15% of the knee/leg, except for:

(a) A worker who is entitled to receive an impairment value under section (11) of this rule (degenerative joint disease, arthritis or chondromalacia) is awarded 10% of the knee/leg, in lieu of the 15%.

(b) A worker who is entitled to receive a dermatological or vascular impairment value, Class II or higher, under section (6) or (7) of this rule is not allowed an additional value under this section.

(c) When a worker qualifies to receive a value under section (15) of this rule and a value pursuant to this section, only one of the values is granted for limited standing or walking; the higher monetary value.

(15) Where the objective medical evidence indicates a severe injury to the foot/ankle has occurred (e.g. severe soft tissue crush injuries, trimalleolar fracture, calcaneal fractures, or post-traumatic avascular necrosis), the following applies:

(a) When objective medical evidence establishes the worker cannot walk or stand or both for a total of more than two hours in an 8-hour period, the award is 15% of the foot/ankle, except for (b) of this section.

(b) A worker who has a dermatological or vascular impairment value, Class II or higher, under section (6) or (7) of this rule, is not allowed an additional value under this section.

(c) When a worker qualifies to receive a value under section (14) of this rule, as well as a value under this section, only the one resulting in the higher monetary value is granted.

[ED. NOTE: Ratings & Values referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80.; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82.; Renumbered from 436-065-0532, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0340; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 10-1992(Temp), f. & cert. ef. 6-1-92; WCD 15-1992, f. 11-20-92, cert. ef. 11-27-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0330

Shoulder Joint

(1) The following ratings are for loss of forward elevation (flexion) in the shoulder joint: [Ratings not included. See ED. NOTE.]

(2) The following ratings are for forward elevation (flexion) ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for loss of backward elevation (extension) in the shoulder joint: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for backward elevation (extension) ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for loss of abduction in the shoulder joint: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for abduction ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for loss of adduction in the shoulder joint: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for adduction ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for loss of internal rotation in the shoulder joint: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for internal rotation ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(11) The following ratings are for loss of external rotation in the shoulder joint: [Ratings not included. See ED. NOTE.]

(12) The following ratings are for external rotation ankylosis in the shoulder joint: [Ratings not included. See ED. NOTE.]

(13) Shoulder surgery is rated as follows: [Ratings not included. See ED. NOTE.]

(14) Chronic dislocations of the shoulder joint or diastasis of a sternal joint, are valued at 15% impairment when a preponderance of medical opinion places permanent new restrictions on the worker which necessitate a reduction in the strength lifting category under OAR 436-035-0012.

(15) When two or more ranges of motion are restricted, add the impairment values for decreased range of motion.

(16) When two or more ankylosis positions are documented, select the one direction representing the largest impairment. That will be the impairment value for the shoulder represented by ankylosis.

(17) Valid losses of strength in the shoulder or back, substantiated by clinical findings, are valued based on the peripheral nerve supplying (innervating) the muscle(s) demonstrating the decreased strength, as described in the following table and as modified under OAR 436-035-0011(7): [Ratings not included. See ED. NOTE.]

(18) Multiple or bilateral decreased strength impairment findings are determined by combining the values in section (17) of this rule.

[ED. NOTE: Examples & Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82.; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0480; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 10-1998(Temp), f. & cert. ef. 10-28-98 thru 4-25-99; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0340

Hip

(1) When a preponderance of objective medical evidence supports findings that reduced ranges of motion of the hip do not involve the pelvis or acetabulum, the impairment determination is valued according to OAR 436-035-0220. If the reduced ranges of motion are a residual of pelvic or acetabular involvement, the impairment is determined under this rule.

(2) The following ratings are for loss of forward flexion in the hip joint: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for forward flexion ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

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(4) The following ratings are for loss of backward extension in the hip joint: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for backward extension ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for loss of abduction in the hip joint: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for abduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for loss of adduction in the hip joint: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for adduction ankylosis in the hip joint: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for loss of internal rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(11) The following ratings are for internal rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(12) The following ratings are for loss of external rotation of the hip joint: [Ratings not included. See ED. NOTE.]

(13) The following ratings are for external rotation ankylosis of the hip joint: [Ratings not included. See ED. NOTE.]

(14) When two or more ankylosis positions are documented, select the one direction representing the largest impairment. That will be the impairment value for the hip represented by ankylosis.

(15) A value of 13% is determined for a total hip replacement (both femoral and acetabular components involved). If a total hip replacement surgery occurs following an earlier femoral head replacement surgery under OAR 436-035-0230(5), both impairment values are rated.

(16) A value of 5% is awarded for a repeat total hip replacement surgery.

(17) Total value for loss of range of motion is obtained by adding (not combining) the values for each range of motion.

(18) The final value for the hip is obtained by combining (not adding) the values in sections (15), (16) and (17) of this rule.

(19) Healed displaced fractures in the hip may cause leg length discrepancies. Impairment is determined under OAR 436-035-0230.

[ED. NOTE: Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0481; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0350

General Spinal Findings

(1) The following ratings are for fractured vertebrae:

(a) For a compression fracture of a single vertebral body: [Tables not included. See ED. NOTE.]

(b) A fracture of one or more of the posterior elements of a vertebra (spinous process, pedicles, laminae, articular processes, or transverse processes) is valued per vertebra as follows: [Tables not included. See ED. NOTE.]

(2) For the purposes of this section, the cervical, thoracic, and lumbosacral regions are considered separate body parts. Values determined within one body part are first added, then the total impairment value is obtained by combining the different body part values. The following values are for surgical procedures performed on the spine. [Tables not included. See ED. NOTE.]

(3) For injuries that result in loss of strength in the back, refer to OAR 436-035-0330(17) and (18).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0610, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0490; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91 & cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0360

Spinal Ranges of Motion

(1) For the purpose of determining impairment due to loss of spinal range of motion, sections (2) through (12) of this rule apply when the physician uses an inclinometer to measure impairment.

(2) The following ratings are for loss of flexion in the cervical region: [Ratings not included. See ED. NOTE.]

(3) The following ratings are for loss of extension in the cervical region: [Ratings not included. See ED. NOTE.]

(4) The following ratings are for loss of right or left lateral flexion in the cervical region: [Ratings not included. See ED. NOTE.]

(5) The following ratings are for loss of right or left rotation in the cervical region: [Ratings not included. See ED. NOTE.]

(6) The following ratings are for loss of flexion in the thoracic region: [Ratings not included. See ED. NOTE.]

(7) The following ratings are for loss of right or left rotation in the thoracic region: [Ratings not included. See ED. NOTE.]

(8) The following ratings are for loss of flexion in the lumbosacral region: [Ratings not included. See ED. NOTE.]

(9) The following ratings are for loss of extension in the lumbosacral region: [Ratings not included. See ED. NOTE.]

(10) The following ratings are for loss of right or left lateral flexion of the lumbosacral region: [Ratings not included. See ED. NOTE.]

(11) For a total impairment value due to loss of motion, as measured by inclinometer, in any of the cervical, thoracic or lumbosacral regions, add (do not combine) values for loss of motion for each region.

(12) In order to rate range of motion loss and surgery in one region, combine (do not add) the total range of motion loss in that region with the appropriate total surgical impairment value of the corresponding region. Combine the value from each region to find the total impairment of the spine.

[ED. NOTE: Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0620, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0500; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1991(Temp), f. 9-13-91, cert. ef. 10-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0380

Cardiovascular System

(1) Impairments of the cardiovascular system are determined based on objective findings that result in the following conditions: valvular heart disease, coronary heart disease, hypertensive cardiovascular disease, cardiomyopathies, pericardial disease, or cardiac arrhythmias. Each of these conditions will be described and quantified. In most circumstances, the physician should observe the patient during exercise testing.

(2) VALVULAR HEART DISEASE: Impairment resulting from work related valvular heart disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(3) CORONARY HEART DISEASE: Impairment resulting from work related coronary heart disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(4) HYPERTENSIVE CARDIOVASCULAR DISEASE: Impairment resulting from work related hypertensive cardiovascular disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(5) CARDIOMYOPATHY: Impairment resulting from work related cardiomyopathies is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(6) PERICARDIAL DISEASE: Impairment resulting from work related pericardial disease is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(7) ARRHYTHMIAS: Impairment resulting from work related cardiac arrhythmias* is rated according to the following classes: [Ratings not included. See ED. NOTE.]

(8) For heart transplants an impairment value of 50% is given. This value is combined with any other findings of impairment of the heart. [Ratings not included. See ED. NOTE.]

[ED. NOTE: Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0640, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988, f. 8-22-88, cert. ef. 8-19-88; WCD 5-1988(Temp), f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0520; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0390

Cranial Nerves/Brain

(1) Impairment of the First Cranial Nerve (Olfactory) resulting in either complete inability to detect odors or alteration of the sense of smell is 3% impairment.

(2) Ratings given for impairment of the Second Cranial Nerve (Optic) are figured according to their effects on vision under OAR 436-035-0260.

(3) Ratings given for impairment in the Third Cranial Nerve (Oculomotor), Fourth Cranial Nerve (Trochlear), and Sixth Cranial Nerve

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(Abducens) are determined according to their effects on ocular motility under OAR 436-035-0260.

(4) Ratings given for impairment of the Fifth Cranial Nerve (Trigeminal) are as follows:

(a) For loss or alteration of sensation in the Trigeminal distribution on one side: 10%; on both sides: 35%

(b) The rating given for loss of motor function in one Trigeminal Nerve is 5%.

(c) The rating given for loss of motor function of both Trigeminal Nerves is determined under OAR 436-035-0385 and 436-035-0420.

(5) Ratings given for impairment of the Sixth Cranial Nerve (Abducens) are described in section (3) of this rule.

(6) Ratings given for impairment of the Seventh Cranial Nerve (Facial) are as follows:

(a) No rating is given for loss of sensation from impairment of one or both Facial Nerves.

(b) If impairment of one or both Facial Nerves results in loss or alteration of the sense of taste, the rating is 3%.

(c) Motor loss on one side of the face due to impairment of the Facial Nerve is rated at 15% for a complete loss, or 5% for a partial loss.

(d) Motor loss on both sides of the face due to impairment of the Facial Nerve is rated at 45% for a complete loss, or 20% for a partial loss.

(7) Ratings given for impairment of the Eighth Cranial Nerve (Auditory) are determined according to their effects on hearing under OAR 436-035-0250. Other ratings for loss of function most commonly associated with this nerve include the following:

(a) For permanent disturbances resulting in disequilibrium which limits activities the impairment is rated according to the following:

(A) 8% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living are performed without assistance.

(B) 23% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living can be performed without assistance, and the worker is unable to operate a motor vehicle.

(C) 48% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance.

(D) 80% when signs of disequilibrium are present with supporting objective findings and the usual activities of daily living cannot be performed without assistance, and confinement to the home or other facility is necessary.

(b) Tinnitus which by a preponderance of medical opinion requires job modification is valued at 5%. No additional impairment value is allowed for "bilateral" tinnitus.

(8) Ratings given for impairment of the Ninth Cranial Nerve (Glossopharyngeal), Tenth Cranial Nerve (Vagus), and Eleventh Cranial Nerve (Cranial Accessory) are as follows:

(a) Impairment of swallowing due to damage to the Ninth, Tenth, or Eleventh Cranial Nerves is determined under OAR 436-035-0420.

(b) Speech impairment due to damage to the Ninth, Tenth, or Eleventh Cranial Nerves is rated according to the classifications in OAR 436-035-0385(8).

(9) Ratings given for impairment of the Twelfth Cranial Nerve (Hypoglossal) are as follows:

(a) No rating is allowed for loss on one side.

(b) Bilateral loss is rated as in section (8) of this rule.

(10) Impairment for injuries that have resulted in damage to the brain is determined based upon a preponderance of medical opinion which applies or describes the following criteria.

(a) The existence and severity of the claimed residuals and impairments must be objectively determined by observation or examination or a preponderance of evidence, and must be within the range reasonably considered to be possible, given the nature of the original injury, based upon a preponderance of medical opinion.

(b) The residuals must be a direct result of organic injury to the brain. For example, emotional or behavioral disturbances must result directly from injury to the brain. Emotional disturbances which are reactive to other residuals, but which are not directly organically based, such as frustration or depressed mood about memory deficits or work limitations, are not included under these criteria and must be addressed separately.

(c) The distinctions between Classes are intended to reflect, at their most fundamental level, the impact of the residuals on two domains: impairment of activities of daily living, and impairment of employment capacity.

(d) Where the residuals from the accepted condition and any direct medical sequelae place the worker between one or more classes, the worker is entitled to be placed in the highest class that describes the worker's

impairment. There is no averaging of impairment values when a worker falls between classes.

(e) As used in these rules, Episodic Neurologic Disorder refers to and includes any of the following:

(A) Any type of seizure disorder;

(B) Vestibular disorder, including disturbances of balance or sensorimotor integration;

(C) Neuro-ophthalmologic or oculomotor visual disorder, such as diplopia;

(D) Headaches. [Ratings not included. See ED. NOTE.]

(11) For the purpose of section (10) of this rule, the Rancho Los Amigos-Revised levels are based upon the Eight States Levels of Cognitive Recovery developed at the Rancho Los Amigos Hospital and co-authored by Chris Hagen, PhD, Danese Malkumus, M.A., and Patricia Durham, M.S., in 1972. These levels were revised by Danese Malkumus, M.A., and Kathryn Standenip, O.T.R., in 1974, revised by Chris Hagen, PhD, in 1999 to include ten levels, referred to as Rancho-R.

(12) If a value of impairment is determined under section (10) of this rule, no additional value for speech or psychiatric impairment is allowed.

(13) For brain damage that has resulted in the loss of use or function of any upper or lower extremities, a value may be allowed for the affected body part(s). Refer to the appropriate section of these standards for that determination.

[ED. NOTE: Ratings referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0645, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0530; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0395

Spinal Cord

(1) The spinal cord is concerned with sensory, motor, and visceral functions. Permanent impairment can result from various disorders affecting these functions. Injuries that result in damage to the spinal cord are determined based on a preponderance of objective medical opinion and the following classes: When a value is granted under section (1) of this rule, no additional impairment value is allowed for reduced range of motion in the spine. [Ratings not included. See ED. NOTE.]

(2) For spinal cord damage that has resulted in the loss of use or function of body part(s) other than upper and lower extremities, a value is given for other affected body part(s) or organ system(s). Refer to the appropriate section of these standards for that determination and combine with impairment valued under this rule.

(3) For spinal cord damage that has resulted in the loss of use or function of any upper or lower extremities, a value is given for the affected body part(s). Refer to the appropriate section of these standards for that determination.

(4) Episodic neurological disorders are determined under OAR 436-035-0390(10).

[ED. NOTE: Ratings referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0400

Mental Illness

(1) Accepted mental disorders resulting in impairment must be diagnosed by a psychiatrist or other mental health professional as provided for in a Managed Care Organization certified under OAR chapter 436, Division 015.

(2) Diagnoses of mental disorders for the purposes of these rules follow the guidelines of the Diagnostic and Statistical Manual of Mental Disorders DSM-IV (1994), published by the American Psychiatric Association.

(3) The physician describes permanent changes in mental function in terms of their affect on the worker's activities of daily living (ADLs), as defined in OAR 436-035-0005(1). Additionally, the physician describes the affect on social functioning and deterioration or decompensation in work or work-like settings as outlined in the AMA Guides to Evaluation of Impairment, 3rd Ed., Revised 1990.

(4) Loss of function attributable to permanent worsening of personal-ity disorders may be stated as impairment only if it interferes with the

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worker's long-term ability to adapt to the ordinary activities and stresses of daily living. Personality disorders are rated as two classes with gradations within each class based on severity:

(a) Class 1: minimal (0%), mild (6%), or moderate (11%) A worker belongs in class 1 when:

(A) The worker shows little self-understanding or awareness of the mental illness;

(B) Has some problems with judgment;

(C) Has some problems with controlling personal behavior;

(D) Has some ability to avoid serious problems with social and personal relationships; and

(E) Has some ability to avoid self-harm.

(b) Class 2: minimal (20%), mild (29%), or moderate (38%) A worker belongs in class 2 when:

(A) The worker shows considerable loss of self control;

(B) Has an inability to learn from experience; and

(C) Causes harm to the community or to the self.

(5) Loss of function attributable to permanent symptoms of affective disorders, anxiety disorders, somatoform disorders, and chronic adjustment disorders is rated according to the following classes, with gradations within each class based on the severity of the symptoms/loss of function:

(a) Class 1: (0%) A worker belongs in Class 1 when one or more of the following residual symptoms are noted:

(A) Anxiety symptoms: Require little or no treatment, are in response to a particular stress situation, produce unpleasant tension while the stress lasts, and might limit some activities.

(B) Depressive symptoms: The activities of daily living can be carried out, but the worker might lack ambition, energy, and enthusiasm. There may be such depression-related, mentally-caused physical problems as mild loss of appetite and a general feeling of being unwell.

(C) Phobicsymptoms: Phobias the worker already suffers from may come into play, or new phobias may appear in a mild form.

(D) Psychophysiological symptoms: Are temporary and in reaction to specific stress. Digestive problems are typical. Any treatment is for a short time and is not connected with any ongoing treatment. Any physical pathology is temporary and reversible. Conversion symptoms or hysterical symptoms are brief and do not occur very often. They might include some slight and limited physical problems (such as weakness or hoarseness) that quickly respond to treatment.

(b) Class 2: minimal (6%), mild (23%), or moderate (35%). A worker belongs in Class 2 when one or more of the following residual symptoms/loss of functions are noted:

(A) Anxiety symptoms: May require extended treatment. Specific symptoms may include (but are not limited to) startle reactions, indecision because of fear, fear of being alone, and insomnia. There is no loss of intellect or disturbance in thinking, concentration, or memory.

(B) Depressive symptoms: Last for several weeks. There are disturbances in eating and sleeping patterns, loss of interest in usual activities, and moderate retardation of physical activity. There may be thoughts of suicide. Self-care activities and personal hygiene remain good.

(C) Phobic symptoms: Interfere with normal activities to a mild to moderate degree. Typical reactions include (but are not limited to) a desire to remain at home, a refusal to use elevators, a refusal to go into closed rooms, and an obvious reaction of fear when confronted with a situation that involves a superstition.

(D) Psychophysiological symptoms: Require substantial treatment. Frequent and recurring problems with the organs get in the way of common activities. The problems may include (but are not limited to) diarrhea; chest pains; muscle spasms in the arms, legs, or along the backbone; a feeling of being smothered; and hyperventilation. There is no actual pathology in the organs or tissues. Conversion or hysterical symptoms result in periods of loss of physical function that occur more than twice a year, last for several weeks, and need treatment. Symptoms may include (but are not limited to) temporary hoarseness, temporary blindness, temporary weakness in the arms or the legs. These problems continue to return.

(c) Class 3: Minimal (50%), mild (66%), or moderate (81%) A worker belongs in Class 3 when one or more of the following residual symptoms/loss of functions are noted:

(A) Anxiety symptoms: Fear, tension, and apprehension interfere with work or the activities of daily living. Memory and concentration decrease or become unreliable. Long-lasting periods of anxiety keep returning and interfere with personal relationships. The worker needs constant reassurance and comfort from family, friends, and coworkers.

(B) Depressive symptoms: Include an obvious loss of interest in the usual activities of daily living, including eating and self-care. These problems are long-lasting and result in loss of weight and an unkempt appearance. There may be retardation of physical activity, a preoccupation with

suicide, and actual attempts at suicide. The worker may be extremely agitated on a frequent or constant basis.

(C) Phobic symptoms: Existing phobias are intensified. In addition, new phobias develop. This results in bizarre and disruptive behavior. In the most serious cases, the worker may become home-bound, or even room-bound. Persons in this state often carry out strange rituals which require them to be isolated or protected.

(D) Psychophysiological symptoms: Include tissue changes in one or more body systems or organs. These may not be reversible. Typical reactions include (but are not limited to) changes in the wall of the intestine that results in constant digestive and elimination problems. Conversion or hysterical symptoms include loss of physical function that occurs often and lasts for weeks or longer. Evidence of physical change follows such events. A symptomatic period (18 months or more) is associated with advanced negative changes in the tissues and organs. These include (but are not limited to) atrophy of muscles in the legs and arms. A common symptom is general flabbiness.

(6) Psychotic disorders are rated based on perception, thinking process, social behavior, and emotional control. Variations in these aspects of mental function are rated according to the following classifications with gradations within each class based on severity:

(a) Class 1: minimal (0%), mild (6%), or moderate (11%) A worker belongs in Class 1 when the following is established:

(A) Perception: The worker misinterprets conversations or events. It is common for persons with this problem to think others are talking about them or laughing at them.

(B) Thinking process: The worker is absent-minded, forgetful, daydreams too much, thinks slowly, has unusual thoughts that recur, or suffers from an obsession. The worker is aware of these problems and may also show mild problems with judgment. It is also possible that the worker may have little self-understanding or understanding of the problem.

(C) Social behavior: Small problems appear in general behavior, but do not get in the way of social or living activities. Others are not disturbed by them. The worker may be over-reactive or depressed or may neglect self-care and personal hygiene.

(D) Emotional control: The worker may be depressed and have little interest in work or life. The worker may have an extreme feeling of well-being without reason. Controlled and productive activities are possible, but the worker is likely to be irritable and unpredictable.

(b) Class 2: minimal (20%), mild (29%), or moderate (38%) A worker belongs in Class 2 when the following is established:

(A) Perception: Workers in this state have fairly serious problems in understanding their personal surroundings. They cannot be counted on to understand the difference between daydreams, imagination, and reality. They may have fantasies involving money or power, but they recognize them as fantasies. Because persons in this state are likely to be overly excited or suffering from paranoia, they are also likely to be domineering, peremptory, irritable, or suspicious.

(B) Thinking process: The thinking process is so disturbed that persons in this state might not realize they are having mental problems. The problems might include (but are not limited to) obsessions, blocking, memory loss serious enough to affect work and personal life, confusion, powerful daydreams or long periods of being deeply lost in thought to no set purpose.

(C) Social behavior: Persons in this state can control their social behavior if they are asked to do so. However, if left on their own, their behavior is so bizarre that others may be concerned. Such behavior might include (but is not limited to) over-activity, disarranged clothing, and talk or gestures which neither make sense nor fit the situation.

(D) Emotional control: Persons in this state suffer a serious loss of control over their emotions. They may become extremely angry for little or no reason, they may cry easily, or they may have an extreme feeling of well-being, causing them to talk too much and to little purpose. These behaviors interfere with living and work and cause concern in others.

(c) Class 3: minimal (50%), mild (63%), or moderate (75%) A worker belongs in Class 3 when the following is established:

(A) Perception: Workers in this state suffer from frequent illusions and hallucinations. Following the demands of these illusions and hallucinations leads to bizarre and disruptive behavior.

(B) Thinking process: Workers in this state suffer from disturbances in thought that are obvious even to a casual observer. These include an inability to communicate clearly because of slurred speech, rambling speech, primitive language, and an absence of the ability to understand the self or the nature of the problem. Such workers also show poor judgment and openly talk about delusions without recognizing them as such.

(C) Social behavior: Persons in this state are a nuisance or a danger to others. Actions might include interfering with work and other activities,

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shouting, sudden inappropriate bursts of profanity, carelessness about excretory functions, threatening others, and endangering others.

(D) Emotional control: Workers in this state cannot control their personal behavior. They might be very irritable and overactive or so depressed they become suicidal.

(d) Class 4: (90%) Workers who belong in Class 4 usually need to be placed in a hospital or institution. Medication may help them to a certain extent. A worker belongs in Class 4 when the following is established:

(A) Perception: Workers become so obsessed with hallucinations, illusions, and delusions that normal self-care is not possible. Bursts of violence may occur.

(B) Thinking process: Communication is either very difficult or impossible. The worker is responding almost entirely to delusions, illusions, and hallucinations. Evidence of disturbed mental processes may include (but are not limited to) severe confusion, incoherence, irrelevance, refusal to speak, the creation of new words or using existing words in a new manner.

(C) Social behavior: The worker's personal behavior endangers both the worker and others. Poor perceptions, confused thinking, lack of emotional control, and obsessive reaction to hallucinations, illusions, and delusions produce behavior that can result in the worker being inaccessible, suicidal, openly aggressive and assaultive, or even homicidal.

(D) Emotional control: The worker may have either a severe emotional disturbance in which the worker is delirious and uncontrolled or extreme depression in which the worker is silent, hostile, and self-destructive. In either case, lack of control over anger and rage might result in homicidal behavior.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0555, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-065-0540; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0410

Hematopoietic System

(1) Anemia can be impairing when the cardiovascular system cannot compensate for the effects of the anemia. When a worker becomes anemic as a result of an injury or occupational disease, the following values are given:

(a) 0% when there are no complaints or evidence of disease and the usual activities of daily living can be performed; no blood transfusion is required; and the hemoglobin level is 10-12gm/100ml.

(b) 30% when there are complaints or evidence of disease and the usual activities of daily living can be performed with some difficulty; no blood transfusion is required; and the hemoglobin level is 8-10gm/100ml.

(c) 70% when there are signs and symptoms of disease and the usual activities of daily living can be performed with difficulty and with varying amounts of assistance from others; blood transfusion of 2 to 3 units is required every 4 to 6 weeks; and the hemoglobin level is 5-8gm/100ml before transfusion.

(d) 85% when there are signs and symptoms of disease and the usual activities of daily living cannot be performed without assistance from others; blood transfusion of 2 to 3 units is required every 2 weeks, implying hemolysis of transfused blood; and the hemoglobin level is 5-8gm/100ml before transfusion.

(2) White Blood Cell System impairments resulting from injury or occupational disease are rated according to the following classification system:

(a) Class 1: 5% impairment when there are symptoms or signs of leukocyte abnormality and no or infrequent treatment is needed and all or most of the activities of daily living can be performed.

(b) Class 2: 20% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed but most of the activities of daily living can be performed.

(c) Class 3: 40% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and the activities of daily living can be performed with occasional assistance from others.

(d) Class 4: 73% impairment when there are symptoms and signs of leukocyte abnormality and continuous treatment is needed and continuous care is required for activities of daily living.

(3) Splenectomy is given an impairment value of 5%.

(4) Hemorrhagic Disorders acquired as a result of an injury or occupational disease may result in 5% impairment if many activities must be avoided and constant endocrine therapy is needed, or anticoagulant treatment with a vitamin K antagonist is required. Hemorrhagic disorders that

stem from damage to other organs or body systems are not rated under this section but are rated according to the impairment of the other organ or body system.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0420

Gastrointestinal and Genitourinary Systems

(1) Impairments in mastication (chewing) and deglutition (swallowing) are determined based on the following criteria:

(a) Diet limited to semi-solid or soft foods — 8%

(b) Diet limited to liquid foods — 25%

(c) Eating requires tube feeding or gastrostomy — 50%

(2) Impairment of the upper digestive tract (esophagus, stomach and duodenum, small intestine, pancreas) is valued according to the following classes: [Classes not included. See ED. NOTE.]

(3) Colonic and rectal impairment is rated according to the following classes: [Classes not included. See ED. NOTE.]

(4) Anal impairment is rated according to the following classes: [Classes not included. See ED. NOTE.]

(5) Liver impairment is determined according to the following classes: [Classes not included. See ED. NOTE.]

(6) Biliary tract impairment is determined according to the following classes: [Classes not included. See ED. NOTE.]

(7) Impairment of the Upper Urinary Tract is determined according to the following classes: [Classes not included. See ED. NOTE.]

(8) Impairment of the Bladder: When evaluating permanent impairment of the bladder, the status of the upper urinary tract must also be considered. The appropriate impairment values for both are combined under OAR 436-035-0011(5). Impairment of the bladder is determined according to the following classes: [Classes not included. See ED. NOTE.]

(9) Urethra: When evaluating permanent impairment of the urethra, one must also consider the status of the upper urinary tract and bladder. The values for all parts of the urinary system are combined under OAR 436-035-0011(5). Impairment of the urethra is determined according to the following classes: [Classes not included. See ED. NOTE.]

(10) Penile Sexual Dysfunction: When evaluating permanent impairment due to sexual dysfunction of the penis, one must also consider the status of the urethra upper urinary tract and bladder. The values for all parts of the system are combined under OAR 436-035-0011(6). Loss or alteration of the gonads is valued under OAR 436-035-0430. Impairment due to sexual dysfunction of the penis is determined according to the following classes for men 40 to 65 years of age. [Classes not included. See ED. NOTE.]

(11) Cervix/Uterus: When evaluating permanent impairment of the cervix/uterus, one must also consider the status of the urethra, upper urinary tract and bladder. The values for all parts of the system are combined under OAR 436-035-0011(5). Loss or alteration of the gonads is valued under OAR 436-035-0430. Impairment of the cervix/uterus is determined according to the following classes: [Classes not included. See ED. NOTE.]

[ED. NOTE: Classes referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 5-1988(Temp), f. 8-22-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03, cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0430

Endocrine System

(1) The assessment of permanent impairment from disorders of the hypothalamic-pituitary axis requires evaluation of (1) primary abnormalities related to growth hormone, prolactin, or ADH; secondary abnormalities in other endocrine glands, such as thyroid, adrenal, and gonads, and; structural and functional disorders of the central nervous system caused by anatomic abnormalities of the pituitary. Each disorder must be evaluated separately, using the standards for rating the nervous system, visual system, and mental and behavioral disorders, and the impairments combined. Impairment of the hypothalamic-pituitary axis is determined according to the following classes: [Classes not included. See ED. NOTE.]

(2) Impairment of Thyroid function results in either hyperthyroidism or hypothyroidism. Hyperthyroidism is not considered to be a cause of permanent impairment, because the hypermetabolic state in practically all patients can be corrected permanently by treatment. After remission of hyperthyroidism, there may be permanent impairment of the visual or cardiovascular systems, which should be evaluated using the appropriate standards for those systems. Hypothyroidism in most instances can be satisfac-

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torily controlled by the administration of thyroid medication. Occasionally, because of associated disease in other organ systems, full hormone replacement may not be possible. Impairment of thyroid function is determined according to the following classes: [Classes not included. See ED. NOTE.]

(3) Parathyroid: Impairment of Parathyroid function results in either hyperparathyroidism or hypoparathyroidism. In most cases of hyperparathyroidism, surgical treatment results in correction of the primary abnormality, although secondary symptoms and signs may persist, such as renal calculi or renal failure, which should be evaluated according to the appropriate standards. If surgery fails, or cannot be done, the patient may require long-term therapy, in which case the permanent impairment may be classified according to the following: [Classes not included. See ED. NOTE.]

(4) Adrenal Cortex: Impairment of the Adrenal Cortex results in either hypoadrenalism or hyperadrenocorticism.

(a) Hypoadrenalism is a lifelong condition that requires long-term replacement therapy with glucocorticoids or mineralocorticoids for proven hormonal deficiencies. Impairments are rated as follows: [Classes not included. See ED. NOTE.]

(b) Hyperadrenocorticism due to the chronic side effects of nonphysiologic doses of glucocorticoids (iatrogenic Cushing's syndrome) is related to dosage and duration of treatment and includes osteoporosis, hypertension, diabetes mellitus and the effects involving catabolism that result in protein myopathy, striae, and easy bruising. Permanent impairment ranges from 5% to 78%, depending on the severity and chronicity of the disease process for which the steroids are given. On the other hand, with diseases of the pituitary-adrenal axis, impairment may be classified according to severity: [Classes not included. See ED. NOTE.]

(5) Adrenal Medulla: Impairment of the Adrenal Medulla results from pheochromocytoma and is classified as follows: [Classes not included. See ED. NOTE.]

(6) Pancreas: Impairment of the pancreas results in either diabetes mellitus or in hypoglycemia.

(a) Diabetes mellitus is rated according to the following classes: [Classes not included. See ED. NOTE.]

(b) Hypoglycemia is rated according to the following classes: [Classes not included. See ED. NOTE.]

(7) Gonadal Hormones: A patient with anatomic loss or alteration of the gonads that results in a loss or alteration in the ability to produce and regulate the gonadal hormones receives a value of 3% impairment for unilateral loss or alteration and 5% for bilateral loss or alteration. Loss of the cervix/uterus or penile sexual function is valued under OAR 436-035-0420.

[ED. NOTE: Classes referenced are available from the agency.]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-035-0500

Temporary Rules Promulgated for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases under ORS 656.726(4)(f) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not addressed in the disability standards.

(2) Temporary rules promulgated under ORS 656.726(4)(f) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter under ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & ef. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #164-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #164-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95; WCD 16-1995(Temp), f. & cert. ef. 11-2-95; WCD 19-1995(Temp), f. & cert. ef. 12-7-95; WCD 4-1996(Temp), f. & cert. ef. 2-1-96; WCD 11-1996(Temp), f. & cert. ef. 3-20-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996, f. 8-6-96, cert. ef. 8-7-96; WCD 22-1996(Temp), f. & cert. ef. 10-31-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-1997(Temp), f. & cert. ef. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. ef. 3-13-97; WCD 6-1997(Temp), f. & cert. ef. 5-14-97; WCD 12-1997(Temp), f. & cert. ef. 9-9-97; WCD 4-1998(Temp), f. & cert. ef. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. ef. 7-

15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. ef. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. ef. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. ef. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. ef. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. ef. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. ef. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. ef. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. ef. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. & cert. ef. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. ef. 1-12-01 thru 7-10-01; WCD 3-2001(Temp), f. & cert. ef. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. ef. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. ef. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. ef. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02 cert. ef. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. ef. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. ef. 1-15-03 thru 7-13-03; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 4-2003(Temp), f. 4-14-03, cert. ef. 4-15-03 thru 10-11-03; WCD 7-2003(Temp), f. & cert. ef. 7-15-03 thru 1-10-04; WCD 1-2004(Temp), f. & cert. ef. 1-21-04 thru 7-18-04; WCD 5-2004(Temp), f. & cert. ef. 4-19-04 thru 10-15-04; WCD 7-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2005(Temp), f. & cert. ef. 5-13-05 thru 11-8-05; Administrative correction 11-18-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-050-0003

Applicability of Rules

(1) These rules are effective January 1, 2006, to carry out the provisions of:

(a) ORS 656.017 — Employer required to pay compensation and perform other duties.

(b) ORS 656.029 — Independent contractor status.

(c) ORS 656.126 — Coverage while temporarily in or out of state.

(d) ORS 656.407 — Qualifications of insured employers.

(e) ORS 656.419 — Guaranty contracts.

(f) ORS 656.423 — Cancellation of coverage by employer.

(g) ORS 656.427 — Termination of guaranty contract or surety bond liability by insurer.

(h) ORS 656.430 — Certification of self-insured employer.

(i) ORS 656.434 — Certification effective until canceled or revoked; revocation of certificate.

(j) ORS 656.443 — Procedure upon default by employer.

(k) ORS 656.447 — Sanctions against insurer for failure to comply with contracts, orders or rules.

(l) ORS 656.455 — Records location and inspection.

(m) ORS 656.745 — Civil penalties.

(n) ORS 656.850 and 656.855 — Worker-leasing companies.

(o) ORS 731.475 — Insurer's in-state location.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855 & 731.475

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0003, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-050-0008

Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005, including an Assigned Claims Agent pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS chapter 656.

(2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by sending a written request to the Workers' Compensation Division's administrator within 60 days after the order was mailed.

(3) A hearing will not be granted if the request:

(a) Fails to state the specific grounds for which the party contests the proposed order or assessment; or

(b) Is mailed or delivered to the administrator more than 60 days after the order was mailed.

(4) Under ORS 656.704(2), any party that disagrees with an action or order of the director or division under these rules, other than as described in section (2), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

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(5) Any party described in section (1) aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within 90 days of the contested action unless the director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

(d) The determination by the person conducting the review will specify whether the determination constitutes a final order or whether an aggrieved party may request a hearing under section (4).

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.254, 656.735, 656.740 (Sec. 9, Ch. 170, OL 2003), 656.745 & 656.750

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0998, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-87; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-050-0100

Cancellation of Coverage by Employer; Reinstatement of Guaranty Contract; Carrier Liability

(1) An employer may cancel coverage with an insurer pursuant to ORS 656.423. An employer's cancellation of coverage with an insurer does not terminate a guaranty contract. Liability of an insurer under a guaranty contract under this chapter is terminated by an insurer taking action pursuant to ORS 656.427.

(2) An insurer may terminate liability on its guaranty contract or surety bond by giving the employer and director notice of termination in accordance with ORS 656.427 and this rule.

(3) Notice to the employer for terminating an insurer's guaranty contract filed with the director must be in writing, must include a statement that the filing with the director will terminate, and must state the effective date of termination. The termination is effective:

(a) If terminated for reasons other than in subsection (b) of this section, not less than 30 days after the insurer mails notice to the employer; or

(b) If terminated because the insurer decides not to offer insurance to employers within a specific premium category, not sooner than 90 days after the insurer mails notice to the employer.

(4) The insurer bears the burden of proof establishing that a termination notice was mailed to an employer. The notice and proof of mailing must be made available in Oregon upon request.

(5) Notice to the director of termination of a guaranty contract can be provided separately under OAR 436-160 or under this rule; or in a list if filing by hard copy submission under this rule. The notice under this rule must:

(a) Be in writing;

(b) Clearly identify the insurer;

(c) Include the employer(s) legal name; Federal Employer Identification Number (FEIN) or other tax reporting number; and the effective date of termination; and

(d) Be mailed or delivered to the director within ten calendar days after the effective date of the termination.

(6) Failure to provide timely notice to the director of termination of an insurer's guaranty contract may result in civil penalties pursuant to ORS 656.745.

(7) A guaranty contract termination notice may be rescinded and the guaranty contract reinstated if there will not be a lapse in the employer's coverage. If there is a lapse in the employer's coverage and the insurer reestablishes a policy for the employer, the insurer must file a new guaranty contract which reports the effective date of the new coverage.

(8) Pursuant to ORS 656.427(5), an employer may give notice to the insurer seeking continued coverage. The notice must be given before the effective date of the insurer guaranty contract termination and must be in writing. The notice must at least include a statement that other coverage has not been obtained and that the employer intends to become insured under the plan as established in ORS 656.730. Further application by the employer is not required. Pursuant to ORS 656.427(5), the insurer so notified must

then insure continuing coverage and may take the additional steps to transfer the risk to the plan.

(9) If two or more guaranty contracts are in effect for one employer for the same time period, the insurer filing the employer's most recent arrangement for coverage shall have responsibility for processing claims occurring during the time period.

(10) If a guaranty contract is in effect and an active self insurance certification is on file with the director for the same employer for the same time period, the self insured employer shall have the responsibility of processing claims occurring during the time period as arranged under the self insurance certification.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.423, 656.427 (Secs. 3 & 5, Ch. 170, OL 2003)

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0120; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-050-0110

Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon

(1) Every insurer that is authorized to issue workers' compensation coverage to subject employers as required by ORS Chapter 656 shall give the director notice of the location, mailing address, telephone number, and any other contact information in this state where the insurer processes claims and keeps written records of claims and guaranty contracts as required by ORS 731.475. The insurer must provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director. While the insurer may have more than one location in this state, the information provided to the director must reasonably lead an inquirer to a person who can respond to inquiries as to guaranty contract information and to access an in-state Oregon certified claims examiner who can respond within a reasonable time to specific claims processing inquiries. A response time of forty-eight (48) hours or less not including weekends or legal holidays would satisfy a reasonable expectation.

(2) Notice under section (1) of this rule shall be filed with the director within 30 days after the insurer becomes authorized and starts writing workers' compensation insurance policies for Oregon subject employers.

(3) If an insurer elects to use a service company to satisfy the purposes of ORS 731.475 with respect to all or any portion of its business, the insurer shall, prior to its effective date, file with the division a copy of the agreement between the insurer and each company, and shall give the division notice of the location and mailing address of each service company.

(4) For the purpose of this section, those activities conducted at designated in-state location(s) and by the authorized representative(s) of the insurer shall include, but not be limited to:

(a) Processing claims and responding to specific claims processing inquiries;

(b) Keeping of records in a written form, not necessarily original form, and making those records available upon request;

(c) Accommodating in-state periodic audits of the director; and

(d) Providing copies of guaranty contracts, related information, and responding to inquiries to resolve coverage issues.

(5) If its place of business or that of a service company elected in lieu of an in-state place of business is changed, the insurer shall notify the director of the new location, mailing address, telephone number, and any other contact information of the place of business at least 30 days prior to the effective date of the change.

(6) When an insurer changes claims processing locations, service companies, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor. The insurer must also notify the director of which claims will be transferred. The notice to the director must include:

(a) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(b) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

(7) Records every insurer is required to keep in this state include all the written records of the insurer that show its insured employers have

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complied with ORS 656.017, including the records described by OAR 436-050-0120.

Stat. Auth.: ORS 731.475, 656.704 & 656.726(4)
Stats. Implemented: ORS 731.475
Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 6-1984(Admin), f. & ef. 9-14-84; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0205; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-050-0170

Excess Insurance Requirements

(1) A self-insured employer must have excess workers' compensation insurance coverage appropriate for the employer's potential liability under ORS 656.001 to 656.990 with an insurer authorized to do business in the state. The policy providing such coverage and any endorsements thereto must be filed with the director not later than 30 days after the date the coverage is effective. A self-insured public utility with assets in excess of \$500 million as reflected by the employer's audited financial statement submitted in accordance with OAR 436-050-0160 or 436-050-0175, may obtain the required excess workers' compensation insurance coverage from an eligible surplus lines insurer.

(2) The excess insurance:

(a) Must include a provision for reimbursement to the director of all expenses paid by the director on behalf of the employer pursuant to ORS 656.614 and 656.443 in the same manner as if the director were the insured employer, subject to the policy limitations or amounts and limits of liability to the insured employer; and

(b) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled; and

(c) Coverage must be specific on a per occurrence basis; and

(d) Coverage may include aggregate excess insurance.

(3) When an excess insurance policy is canceled by the excess insurer or the employer, a copy of such notice shall be filed with the director 30 days prior to the effective date of cancellation.

(4) Changes in the self-insured retention level and policy limits of the excess insurance require prior approval of the director. The director may require a reduction in the self-insured retention level or an increase in the policy limits. Those items considered in determining and approving the retention and limitation levels of the excess insurance will be the employer's:

(a) Financial status;

(b) Risk and exposure;

(c) Claim history; and

(d) The amount of the required security deposit.

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with an order of the director to the employer to reduce the self-insured retention level or increase the policy limitation or amounts and limits of liability of the excess insurance.

(6) Excess insurance obtained under this section does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS 656 and these rules. Regardless of the types and amounts of excess coverage a self-insured employer shall not transfer claims to the excess insurer(s) for processing.

(7) If a self-insured employer fails to comply with the requirements of this section, the employer's certification as a self-insured will be revoked. The employer will be given written notice of such revocation which will be effective 30 days from receipt of such notice. If the required excess insurance is obtained within the 30 days, the revocation is canceled and certification remains in effect.

Stat. Auth.: ORS 656.430, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.430

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0315; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-050-0220

Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

(1) The written records self-insured employers are required to keep in this state to ensure compliance with ORS 656.506, 656.612, 656.614, and 656.622 include:

(a) A record of payroll by National Council on Compensation Insurance classification; and

(b) Complete records of all assessments, employer and employee contributions, and all such money due the director.

(2) The self-insured employer must maintain at a place of business in this state, those written records relating to their safety and health program as required by ORS 656.430(10) and in accordance with OAR 437-001.

(3) The records of claims for compensation that each self-insured employer is required to keep in this state include, but are not limited to:

(a) Written records used and relied upon in processing claims; and

(b) A written record of all payments made as a result of any claim including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing.

(c) A summary sheet for each claim showing all payments made, separated into disability, medical, and vocational assistance payments with cumulative totals. The record of disability payments should be limited to statutory benefits and not include any additional employer obligations. Expenses must not be included in any of the three columns required on the summary sheet. "Expenses" are defined in National Council on Compensation Insurance, Workers' Compensation Statistical Plan, Part IV.

(4) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(5) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(6) Notwithstanding sections (4) and (5) of this rule, if administrative or judicial review is requested, the claim records may not be removed from this state or disposed of until after either the review is concluded and the time for an appeal from such review has expired or at least one year after final payment of compensation has been made, whichever is the last to occur.

(7) During administrative or judicial review, if a denied claim is found to be compensable the records of such claim are thereafter subject to section (5) of this rule.

(8) Claim records may be destroyed when all potential for benefits to the injured worker is gone.

(9) Records retained as required by section (1) of this rule may be removed from the state or destroyed at the end of three full calendar years after the calendar year in which the money was remitted.

Stat. Auth.: ORS 656.455, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.455

Hist.: WCD 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0335; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-050-0230

Out-of-State Recordkeeping and Claims Processing by Self-Insured Employer; Conditions and Procedure for Permit; Revocation

(1) Notwithstanding OAR 436-050-0220, if a self-insured employer wishes to keep the claims records and process claims at a location outside this state, the employer may apply to the director for permission to do so. The application shall contain the reasons for the request and the location, mailing address, telephone number, and any other contact information where the records will be kept and the claims processed. The application must provide the director contact information for a designated person or position within the company who will assure payment of penalties and resolution of collections issues resulting from orders issued by the director. Upon receipt, the director will review the application and notify the employer that the request has been denied and the reason therefor; or, that the employer will be allowed to process claims from outside this state.

(2) The director may grant permission to the self-insured employer unless the employer has committed acts or engaged in a course of conduct that would be grounds for revocation of permission or that are contrary to any of the provisions of section (3) of this rule.

(3) A self-insured employer that keeps claims records and processes claims at a location outside this state shall:

(a) Process claims in an accurate and timely manner;

(b) Make reports to the director promptly as required by ORS Chapter 656 and the director's administrative rules;

(c) Pay to the director promptly all assessments and other money as it becomes due;

(d) Increase or decrease its security deposit promptly when directed to do so by the director pursuant to ORS 656.407(2); and

(e) Comply with the rules and orders of the director in processing and paying claims for compensation.

(4) After notice given as required by ORS 656.455(2), permission granted under this section will be revoked by the director if the employer

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has committed acts or engaged in a course of conduct that are in violation of any provisions of section (3) of this rule.

(5) A self-insured employer shall provide written records which have been removed from this state to the director as requested within a reasonable time not to exceed 14 days or as otherwise negotiated.

Stat. Auth.: ORS 656.455, 656.704 & ORS 656.726(4)

Stats. Implemented: ORS 656.455

Hist.: WCD 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0340; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-055-0070

Certification of Claims Examiners

(1) Claims examiners shall be certified by the insurer upon satisfactory completion of an examination which demonstrates the individual's:

- (a) Familiarity with the workers' compensation statutes;
- (b) Ability to navigate the administrative rules found in this chapter;
- (c) Capability to perform claim processing activities; and
- (d) For examinations on or after July 1, 2006, understanding of activities related to interactions with independent medical examination providers.

(2) Any person taking an examination may use a copy of ORS Chapter 656 and the Oregon Administrative Rules during the examination.

(3) A passing score on an examination shall be 80 percent or greater.

(4) Any examination completed through dishonest or fraudulent means shall be considered invalid.

(5) Certification will be for a three-year period. The certification date shall be the date of the examination.

(6) Certification shall be renewed at any time during the certification period by providing verification of completion of 24 hours of training during the current certification period, to include at least:

(a) Four hours of training on the workers' compensation statutes, administrative rules, and case law since the last certification; and

(b) For renewals on or after January 1, 2007, three hours of training related to interactions with independent medical examination providers.

(7) Training may be provided in the form of a seminar, workshop, association meeting, forum, correspondence, video or similar course. It may include any of the following subjects:

(a) Medical case management including, but not be limited to, medical terminology, basic human anatomy and interpreting medical reports.

(b) Communication skills including, but not be limited to, courses in ethics, mediation, negotiation and dealing with angry people.

(c) Instruction dealing specifically with the processing of Oregon workers' compensation claims.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656

Hist.: WCD 28-1990, f. 11-30-90, cert. ef. 1-1-91; WCD 5-1994, f. 7-14-94, cert. ef. 9-1-94; WCD 15-1999, f. 12-21-99, cert. ef. 1-1-00; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-055-0085

Training for Interactions with Independent Medical Examination Providers

(1) Any training provided pursuant to OAR 436-055-0070 or 436-055-0100(4) relating to independent medical examination provider interaction must first be approved by the director.

(2) To be approved, a training curriculum must incorporate the following components:

(a) Appropriate and ethical communication with independent medical examination providers;

(b) Insurers' rights and responsibilities;

(c) Injured workers' rights and responsibilities;

(d) Independent medical examination providers' standards of conduct requirement;

(e) IME complaint process and investigations by WCD; and

(f) Training specific to the requirements of ORS 656.325 and OAR 436-010.

(3) Any person may develop training and receive approval by the director by submitting an application in a format prescribed by the director. The application must describe the training content that meets the criteria in section (2) of this rule, and specify the number of training hours for that topic.

(4) The director's approval will remain in effect until the content or number of hours of training change. At that time, the person will be required to resubmit an application that meets the requirements of sections (2) and (3) of this rule.

(5) The division will review an application and notify the applicant of the results within 30 days of receipt of the application. The division will reject incomplete applications.

(6) If an application is rejected or disapproved, the applicant will be notified of the reasons. The application may be resubmitted when the reasons for the rejection or disapproval have been corrected.

(7) The director will maintain a registry of approved training curricula.

Stat. Auth.: ORS 656.726

Statutes Implemented: ORS 656.780(1), OL Ch. 675, Sec. 3

Hist.: WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-055-0100

Insurer Duties

(1) Insurers shall only employ claims examiners who are certified or that qualify as a claims examiner trainee or a temporary claims examiner.

(a) A claims examiner trainee must work under the direct supervision of a certified claims examiner, and may work for up to 12 months in this status. An individual is limited to one 12-month period as a claims examiner trainee.

(b) A temporary claims examiner must have at least two years prior claims processing experience and work under the direct supervision of a certified claims examiner. An individual may work for up to 90 days in any 12-month period as a temporary claims examiner.

(2) Insurers shall maintain a list of certified claims examiners who are employed by the insurer or who process claims for the insurer, claims examiner trainees and temporary claims examiners, and keep records sufficient to verify their certification and training. The list and records shall be subject to inspection by the director. The director may require submission of such lists and records in lieu of on-site inspection.

(3) Insurers may issue an initial certification or renewal for any individual pursuant to the standards set in OAR 436-055-0070.

(4) Insurers must ensure that training related to interactions with independent medical examination providers is provided for certified claims examiners in their employ.

(5) Insurers shall not misrepresent any information to a worker, employer or the director related to the certifications of its employees.

(6) Within 14 days of the termination of employment or upon receipt of a written request of a certified claims examiner, an insurer shall provide the certified claims examiner a complete copy of all records verifying the most recent acknowledgement of certification and any subsequent training.

(7) Insurers shall retain records verifying the certification and renewal of certified claims examiners who are employed by the insurer or who process claims for the insurer for six years from its most recent acknowledgement of current certification.

Stat. Auth.: ORS 656.780(1) & (2)

Stats. Implemented: ORS 656

Hist.: WCD 28-1990, f. 11-30-90, cert. ef. 1-1-91; WCD 15-1999, f. 12-21-99, cert. ef. 1-1-00; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0002

Purpose

The purpose of these rules is to prescribe uniform standards by which insurers shall process workers' compensation claims under ORS 656.726(4). The director has charged the Workers' Compensation Division with the administration and enforcement of the applicable statutes, these rules, and all bulletins pertaining to claims processing. Failure to process claims in accordance with these rules will subject insurers to civil penalty under ORS 656.745; to penalties payable to the claimant under ORS 656.262(11); and, to sanctions under ORS 656.447.

Stat. Auth.: ORS 656.262(11), 656.447, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.262(11), 656.447, 656.704, 656.726(4) & 656.745

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0008, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 12-1992, f. 6-12-92, cert. ef. 7-1-92; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0008

Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005, including an assigned claims agent as a designated processing agent under ORS 656.054, aggrieved by an action taken under these rules in which a worker's right to compensation or the amount thereof is directly in issue, may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS chapter 656.

(2) Contested case hearings of Sanctions and Civil Penalties: Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director issued under ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings

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Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The aggrieved person must file a hearing request with the Administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request for hearing is mailed or delivered to the administrator within 60 days of the mailing date of the proposed order or assessment.

(3) Hearings before an administrative law judge: Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (2), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

(4) Administrative review by the director or designee: Any party aggrieved by an action taken under these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters will be as follows:

(a) The request for administrative review must be made in writing to the Administrator of the Workers' Compensation Division within 90 days of the action. No administrative review will be granted unless the request specifies the grounds upon which the action is contested and is mailed or delivered to the administrator within 90 days of the contested action unless the director or the director's designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) In the course of the review, the division may request or allow such input or information from the parties deemed to be helpful.

(c) The division's determination will specify whether it is a final order or whether an aggrieved party may request a hearing under section (3).

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.245, 656.260, 656.704, 656.726(4) & 656.740(1)

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78, WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0998, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02, cert. ef. 11-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2004, f. 2-19-04, cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0009

Access to Department of Consumer and Business Services Workers' Compensation Claim File Records

(1) Under ORS 192.430 and OAR 440-005-0015(1) the director, as custodian of public records, promulgates this rule to protect the integrity of claim file records and prevent interference with the regular discharge of the department's duties.

(2) The department rules on Access of Public Records, Fees for Record Search and Copies of Public Records are found in OAR 440-005. Payment of fees for access to records must be made in advance unless the director determines otherwise. Workers and insurers of record, their legal representatives and third-party administrators shall receive a first copy of any document free. Additional copies shall be provided at the rates set forth in OAR 440-005.

(3) Any person has a right to inspect nonexempt public records. The statutory right to "inspect" encompasses a right to examine original records. It does not include a right to request blind searches for records not known to exist. The director will retain or destroy records according to retention schedules published by the Secretary of State, Archives Division.

(4) Under ORS 192.502(19) workers' compensation claims records are exempt from public disclosure. Access to workers' compensation claims records will be granted at the sole discretion of the director in accordance with this rule, under the following circumstances:

(a) When necessary for insurers, self-insured employers and third-party claims administrators and their legal representatives for the sole purpose of processing workers' compensation claims. A request by telephone or facsimile transmission will be accepted, but requires provision of the claimant's social security number and insurer claim number in addition to the information required in section (7).

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim. Such circumstances include when workers' compensation claims file information is required by a public or private research organization in order to contact injured workers in order to conduct its research. The director may

enter into such agreements with such institutions or persons as are necessary to secure the confidentiality of the disclosed records.

(d) When a worker or the worker's representative requests review of the workers' claim record.

(5) The director may release workers' compensation claims records to persons other than those described in section (4) when the director determines such release is in the public interest.

(a) For the purpose of these rules, a "public interest" exists when the conditions set forth in ORS 192.502(19) and subsections (4)(a) through (d) of this rule have been met. The determination whether the request to release workers' compensation claims records meets those conditions shall be at the sole discretion of the director.

(b) The director may enter into written agreements as necessary to ensure that the recipient of workers' compensation claims records under this section uses or provides the information to others only in accordance with these rules and the agreement with the director. The director may terminate such agreements at any time the director determines that one or more of the conditions of the agreement have been violated.

(6) The director may deny or revoke access to workers' compensation claims records at any time the director determines such access is no longer in the public interest or is being used in a manner which violates these rules or any law of the State of Oregon or the United States.

(7) Requests to inspect or obtain copies of workers' compensation claim records must be made in writing or in person and must include:

(a) The name, address and telephone number of the requester;

(b) The reason for requesting the records;

(c) A specific identification of the public record(s) required and the format in which they are required;

(d) The number of copies required;

(e) The account number of the requester, when applicable.

(8) Except as prescribed in subsections (4)(a) through (d), a person must submit to the division an attorney retainer agreement or release signed by the claimant in order to inspect or obtain copies of workers' compensation claims records. The director may refuse to honor any release which the director determines is likely to result in disclosed records being used in a manner contrary to these rules. Upon request, the director will review proposed release forms to determine whether the proposed release is consistent with the law and this rule.

Stat. Auth.: ORS 192.502, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04, cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0010

Reporting Requirements

(1) A subject employer must accept notice of a claim for workers' compensation benefits from an injured worker or the worker's representative. The employer must provide a copy of the "Report of Job Injury or Illness," Form 440-801 (Form 801) to the worker immediately upon request; the form must be readily available for workers to report their injuries. Proper use of this form satisfies ORS 656.265.

(2) A "First Medical Report," Form 440-827 (Form 827), signed by the worker, is written notice of an accident which may involve a compensable injury under ORS 656.265. The signed Form 827 shall start the claim process, but shall not relieve the worker or employer of the responsibility of filing a Form 801. If a worker reports a claim electronically, the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records, under OAR 436-010-0240, necessary to process the claim.

(3) Employers, except self-insured employers, must report the claim to their insurers no later than five days after notice or knowledge of any claim or accident which may result in a compensable injury. The employer's knowledge date is the earliest of the date the employer (any supervisor or manager) first knew of a claim, or of when the employer has enough facts to reasonably conclude that workers' compensation liability is a possibility. The report must provide the information requested on the Form 801, and include, but not be limited to, the worker's name, address, and social security number, the employer's legal name and address, and the data specified by ORS 656.262 and 656.265.

(4) For the purpose of this section, "first aid" means any treatment provided by a person who does not require a license in order to provide the service. If an injured worker requires only first aid, no notice need be given the insurer, unless the worker chooses to file a claim. If a worker signs a Form 801, the claim must be reported to the insurer. If the person must be licensed to legally provide the treatment or if a bill for the service will result, notice must be given to the insurer. When the worker requires only first aid and chooses not to file a claim, the employer must maintain records

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showing the name of the worker, the date, nature of the injury and first aid provided for one year. These records shall be open to inspection by the director, or any party or its representative. If an employer subsequently learns that such an injury has resulted in medical services, disability or death, the date of that knowledge will be considered as the date on which the employer received notice or knowledge of the claim for the purposes of processing under ORS 656.262.

(5) The director may assess a civil penalty against an employer delinquent in reporting claims to its insurer in excess of ten percent of the employer's total claims during any quarter.

(6) An employer intentionally or repeatedly paying compensation in lieu of reporting to its insurer claims or accidents which may result in a compensable injury claim may be assessed a civil penalty by the director.

(7) The insurer must process and file claims and reports required by the director in compliance with ORS chapter 656, WCD administrative rules, and WCD bulletins. Such filings shall not be made by computer-printed forms, facsimile transmission (FAX), electronic data interchange (EDI), or other electronic means, unless specifically authorized by the director.

(8) When a claim is received and the insurer does not provide insurance coverage for the worker's employer on the date of injury, the insurer may check for other coverage or forward it to the director. The insurer must do one or the other within three days of determining they did not provide coverage on the date of injury. If the insurer checks for coverage and coverage exists, the insurer must send the claim to the correct insurer within the same three day period. If the insurer checks for coverage and coverage cannot be found, the insurer must forward the claim to the director within the same three day period.

(9) The insurer or self-insured employer and third party administrator, if any, must be identified on all insurer generated workers' compensation forms, including insurer name, third party administrator name (if applicable), address, and phone number of the location responsible for processing the claim.

(10) The insurer must file all disabling claims with the director within 14 days of the insurer's initial decision either to accept or deny the claim. To meet this filing requirement, the Insurer's Report, Form 440-1502 (Form 1502) accompanied by the Form 801, or its electronic equivalent, is to be submitted to the director. However, when the Form 801 is not available within a time frame that would allow a timely filing, a Form 1502, accompanied by a signed Form 827 when available, will satisfy the initial reporting requirement. If the Form 801 is not submitted at the time of the initial filing of the claim, the Form 801 must be submitted within 30 days from the filing of the Form 1502. A Form 801 prepared by the insurer in place of obtaining the form from the employer/worker does not satisfy the filing requirement of the Form 801, unless the employer/worker cannot be located, or the form cannot be obtained from the employer/worker due to lack of cooperation, or the form is computer-printed based upon information obtained from the employer and worker. The insurer must submit copies of all acceptance or denial notices not previously submitted to the director with the Form 1502. Form 1502 is used to report claim status and activity to the director.

(11) When submitting an initial compensability decision Form 1502, the insurer must report:

- (a) The status of the claim;
- (b) Reason for filing;
- (c) Whether first payment of compensation was timely, if applicable;
- (d) Whether the claim was accepted or denied timely; and
- (e) Any Managed Care Organization (MCO) enrollment, and the date of enrollment, if applicable.

(12) The insurer must file an additional Form 1502 with the director within 14 days of:

- (a) The date of any reopening of the claim;
- (b) Changes in the acceptance or disability status;
- (c) Any litigation order or insurer's decision that causes reopening of the claim or changes the acceptance or disability status;
- (d) MCO enrollment that occurs after the initial Form 1502 has been filed;
- (e) The insurer's knowledge that a previous Form 1502 contained erroneous information; or
- (f) The date of any denial.

(13) A nondisabling claim must only be reported to the director if it is denied, in part or whole. It must be reported to the director within 14 days of the date of denial. A nondisabling claim which becomes disabling must be reported to the director within 14 days of the date of the status change.

(14) If the insurer voluntarily reopens a qualified claim under ORS 656.278, it must file a Form 3501 with the director within 14 days of the date the insurer reopens the claim.

(15) The insurer must report a new medical condition reopening on the Form 1502 if the claim cannot be closed within 14 days of the first to occur: acceptance of the new condition, or the insurer's knowledge that interim temporary disability compensation is due and payable.

(16) New condition claims that are ready to be closed within 14 days must be reported on the "Insurer Notice of Closure Summary," Form 440-1503 (Form 1503) at the time the insurer closes the claim. The Form 1503 must be accompanied by the "Modified Notice of Acceptance" and "Updated Notice of Acceptance at Closure" letter.

(17) If, after receiving a claim from a worker or from someone other than the worker on the worker's behalf, the insurer receives written communication from the worker stating the worker never intended to file a claim and wants the claim "withdrawn," the insurer must submit a Form 1502 with a copy of the worker's communication to the director, if the claim had previously been reported.

(18) The director may issue a civil penalty against any insurer delinquent in reporting or in submitting Forms 801, 1502, 1503 or 1644 with a late or error ratio in excess of twenty percent during any quarter. For the purposes of this section, a claim or form shall be deemed to have been reported or submitted timely according to the provisions of ORS 656.726(4).

(19) Insurers must make an annual report to the director reporting attorney fees, attorney salaries, and all other costs of legal services paid under ORS chapter 656. The report must be submitted on forms furnished by the director for that purpose. Reports for each calendar year must be filed not later than March 1 of the following year.

(20) If an insurer elects to process and pay supplemental disability benefits, under ORS 656.210(5)(a), the insurer does not need to inform the director of their election. The insurer must request reimbursement, under OAR 436-060-0500, by filing Form 3504 "Supplemental Disability Benefits Quarterly Reimbursement Request" with the director for any quarter during which they processed and paid supplemental disability benefits. If an insurer elects not to process and pay supplemental disability benefits, the insurer must submit Form 3530, "Supplemental Disability Election Notification," to the director. The election remains in effect for all supplemental disability claims the insurer receives until the insurer changes its election. The election is made by the insurer and applies to all third party administrators an insurer may use for processing claims.

(21) An insurer may change its election made under section (20):

(a) Annually and

(b) Once after the division completes its first audit of supplemental disability payments made by the insurer.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 656.262, 656.264, 656.265(6), 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.262, 656.264, 656.265, 656.704, 656.726(4) & Sec. 3(5)(a), Ch. 865, OL 2001

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0100, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0015

Required Notice and Information

(1) When an injured worker's attorney has given written notice of representation, prior or simultaneous written notice must be given to the worker's attorney under ORS 656.331:

- (a) When the director or insurer requests the worker to submit to a medical examination;
- (b) When the insurer contacts the worker regarding any matter which may result in denial, reduction or termination of the worker's benefits; or
- (c) When the insurer contacts the worker regarding any matter relating to disposition of a claim under ORS 656.236.

(2) The director shall assess a civil penalty against an insurer who intentionally or repeatedly fails to give notice as required under section (1) of this rule.

(3) The insurer or the third party administrator must provide the pamphlet, "What Happens if I'm Hurt on the Job?," Form 440-1138 (Form 1138), to every injured worker who has a disabling claim with the first time-loss check or earliest written correspondence. For nondisabling claims, the information page, "Understanding workers' compensation claims," Form 440-3283 (Form 3283) may be provided in lieu of Form 1138, unless the worker specifically requests Form 1138.

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(4) The insurer must provide Form 3283 to their insured employers for distribution to workers at the time a worker completes a Form 801, for all claims filed.

(5) The insurer must provide the "Notice to Worker," Form 440-3058 (Form 3058) or its equivalent to the worker with the initial notice of acceptance on the claim under OAR 436-060-0140(6). For the purpose of this rule, an equivalent to the Form 3058 must include all of the statutory and rule requirements.

(6) Additional notices the insurer must send to a worker are contained in OAR 436-060-0018, 436-060-0030, 436-060-0035, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0140, and 436-060-0180.

(7) When an insurer changes claims processing locations, third party administrators, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor.

(8) The insurer must provide the worker an explanation of any change in the wage used that differs from what was initially reported in writing to the insurer. Prior to claim closure on a disabling claim, the insurer must send the worker a notice documenting the wage upon which benefits were based and work disability, if applicable, will be determined when the claim is closed. The notice must also explain how the worker can appeal the insurer's wage calculation if the worker disagrees with the wage. The insurer shall resolve disputes regarding wage calculations under OAR 436-060-0025(4).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 656.331, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.331, 656.704 & 656.726(4)

Hist.: WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0017

Release of Claim Document

(1) For the purpose of this rule:

(a) "Documents" include, but are not limited to, medical records, vocational records, written and automated payment ledgers for both time loss and medical services, payroll records, recorded statements, insurer generated records (insurer generated records exclude a claim examiner's generated file notes, such as documentation or justification concerning setting or adjusting reserves, claims management strategy, or any privileged communications), all forms required to be filed with the director, notices of closure, electronic transmissions, and correspondence between the insurer, service providers, claimant, the division and/or the Workers' Compensation Board.

(b) "Possession" means documents making up, or relating to, the insurer's claim record on the date of mailing the documents to the claimant, claimant's attorney or claimant's beneficiary. Any documents that have been received by the insurer five or more working days prior to the date of mailing shall be considered as part of the insurer's claim record even though the documents may not have yet reached the insurer's claim file.

(2) The insurer must date stamp each document upon receipt with the date it is received. The date stamp must include the month, day, year of receipt, and name of the company, unless the document already contains the date information and name of recipient company, as in faxes, e-mail and other electronically transmitted communications.

(3) A request for copies of claim documents must be submitted to the insurer, self-insured employer, or their respective third party administrator, and copied simultaneously to defense counsel, if known.

(4) The insurer must furnish, without cost, legible copies of documents in its possession relating to a claim, upon request of the claimant, claimant's attorney or claimant's beneficiary, at times other than those provided for under ORS 656.268 and OAR chapter 438, as provided in this rule. Except as provided in OAR 436-060-0180, an initial request by anyone other than the claimant or claimant's beneficiary must be accompanied by a worker signed attorney retention agreement or a medical release signed by the worker. The signed medical release must be in a form or format as the director may provide by bulletin. Information not otherwise available through this release, but relevant to the claim, may only be obtained in compliance with applicable state or federal laws. Upon the request of the claimant's attorney, a request for documents shall be considered an ongoing request for future documents received and generated by the insurer for 90 days after the initial mailing date under section (7) or until a hearing is requested before the Workers' Compensation Board. The insurer must provide such new documents to claimant's attorney every 30 days, unless specific documents are requested sooner by the attorney. Such documents must be provided within the time frame of section (7).

(5) Once a hearing is requested before the Workers' Compensation Board, the release of documents is controlled by OAR chapter 438. This rule applies subsequently if the hearing request is withdrawn or when the hearing record is closed, provided a request for documents is renewed.

(6) Upon request, the entire health information record in the possession of the insurer will be provided to the worker or the worker's representative. This includes records from all healthcare providers, except that the following may be withheld:

(a) Information which was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information,

(b) Psychotherapy notes,

(c) Information compiled for use in a civil, criminal, or administration action or proceeding; and

(d) Other reasons specified by federal regulation.

(7) The insurer must furnish copies of documents within the following time frames:

(a) The documents of open and closed files, and/or microfilmed files must be mailed within 14 days of receipt of a request, and copies of documents of archived files within 30 days of receipt of a request.

(b) If a claim is lost or has been destroyed, the insurer must so notify the requester in writing within 14 days of receiving the request for claim documents. The insurer must reconstruct and mail the file within 30 days from the date of the lost or destroyed file notice.

(c) If no documents are in the insurer's possession at the time the request is received, the 14 days within which to provide copies of documents starts when the insurer does receive some documentation on the claim if that occurs within 90 days of receipt of the request.

(d) Documents are deemed mailed when addressed to the last known address of the claimant, claimant's beneficiary or claimant's attorney and deposited in the U.S. Mail.

(8) The documents must be mailed directly to the claimant's or beneficiary's attorney, when the claimant or beneficiary is represented. If the documents have been requested by the claimant or beneficiary, the insurer must inform the claimant or beneficiary of the mailing of the documents to the attorney. The insurer is not required to furnish copies to both the claimant or beneficiary and the attorney. However, if a claimant or beneficiary changes attorneys, the insurer must furnish the new attorney copies upon request.

(9) The director may assess a civil penalty against an insurer who fails to furnish documents as required under this rule. The matrix attached to these rules in Appendix "A" will be used in assessing penalties.

(10) Rule violation complaints about release of requested claims documents must be in writing, mailed or delivered to the division within 180 days of the request for documents, and must include a copy of the request submitted under section (3). When notified by the director that a complaint has been filed, the insurer must respond in writing to the division. The response must be mailed or delivered to the director within 21 days of the date of the division's inquiry letter. A copy of the response, including any attachments, must be sent simultaneously to the requester of claim documents. If the division does not receive a timely response or the insurer provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), a civil penalty may be assessed under OAR 436-060-0200 against the insurer. Assessment of a penalty does not relieve the insurer of the obligation to provide a response.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.360, 656.362, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 3-1991, f. 4-18-91, cert. ef. 6-1-91; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0020

Payment of Temporary Total Disability Compensation

(1) An employer may pay compensation under ORS 656.262(4) with the approval of the insurer under ORS 656.262(12). Making such payments does not constitute a waiver or transfer of the insurer's duty to determine the worker's entitlement to benefits, or responsibility for the claim to ensure timely benefit payments. The employer must provide adequate payment documentation as the insurer may require to meet its responsibilities.

(2) Under ORS 656.005(30), no temporary disability is due and payable for any period of time in which the person has withdrawn from the workforce. For the purpose of this rule, a person who has withdrawn from the workforce, includes, but is not limited to:

(a) A person who, prior to reopening under ORS 656.267, 656.273 or 656.278, was not working and had not made reasonable efforts to obtain employment, unless such efforts would be futile as a result of the compensable injury.

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(b) A person who was a full time student for at least six months in the 52 weeks prior to injury elects to return to school full time, unless the person can establish a prior customary pattern of working while attending school. For purposes of this subsection, "full time" is defined as twelve or more quarter hours or the equivalent.

(3) No temporary disability is due and payable for any period of time where the insurer has requested from the worker's attending physician or authorized nurse practitioner verification of the worker's inability to work and the physician or authorized nurse practitioner cannot verify it under ORS 656.262(4)(d), unless the worker has been unable to receive treatment for reasons beyond the worker's control. Before withholding temporary disability under this section, the insurer must inquire of the worker whether a reason beyond the worker's control prevented the worker from receiving treatment. If no valid reason is found or the worker refuses to respond or cannot be located, the insurer must document its file regarding those findings. The insurer must provide the division a copy of the documentation within 20 days, if requested. If the attending physician or authorized nurse practitioner is unable to verify the worker's inability to work, the insurer may stop temporary disability payments and, in place of the scheduled payment, must send the worker an explanation for stopping the temporary disability payments. When verification of temporary disability is received from the attending physician or authorized nurse practitioner, the insurer must pay temporary disability within 14 days of receiving the verification of any authorized period of time loss, unless otherwise denied.

(4) Authorization from the attending physician or authorized nurse practitioner may be oral or written. The insurer at claim closure, or the division at reconsideration of the claim closure, may infer authorization from such medical records as a surgery report or hospitalization record that reasonably reflects an inability to work because of the compensable claim, or from a medical report or chart note generated at the time of, and indicating, the worker's inability to work. No compensation is due and payable after the worker's attending physician or authorized nurse practitioner ceases to authorize temporary disability or for any period of time not authorized by the attending physician or authorized nurse practitioner under ORS 656.262(4)(g).

(5) An insurer may suspend temporary disability benefits without authorization from the division under ORS 656.262(4)(e) when all of the following circumstances apply:

(a) The worker has missed a regularly scheduled appointment with the attending physician or authorized nurse practitioner;

(b) The insurer has sent a certified letter to the worker and a letter to the worker's attorney, at least ten days in advance of a rescheduled appointment, stating that the appointment has been rescheduled with the worker's attending physician or authorized nurse practitioner; stating the time and date of the appointment; and giving the following notice, in prominent or bold face type:

"You must attend this appointment. If there is any reason you cannot attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice, as provided by ORS 656.262(4)(e)."

(c) The insurer verifies that the worker has missed the rescheduled appointment;

(d) The insurer sends a letter to the worker, the worker's attorney and the division giving the date of the regularly scheduled appointment that was missed, the date of the rescheduled appointment that was missed, the date of the letter being the day benefits are suspended, and the following notice, in prominent or bold face type:

"Since you missed a regular appointment with your doctor, we arranged a new appointment. We notified you of the new appointment by certified mail and warned you that your benefits would be suspended if you failed to attend. Since you failed to attend the new appointment, your temporary disability benefits have been suspended. In order to resume your benefits, you must schedule and attend an appointment with your doctor who must verify your continued inability to work."

(6) If temporary disability benefits end because the insurer or employer:

(a) Speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and negotiates a verbal release of the worker to return to any type of work as a result, when no return to work was previously authorized; and

(b) The worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work; then

(c) The insurer must:

(A) Document the facts;

(B) Communicate the release to the worker by mail within 7 days; the communication to the worker of the negotiated return to work release may be contained in an offer of modified employment; and

(C) Advise the worker of their reinstatement rights under ORS chapter 659A.

(7) When concurrent temporary disability is due the worker as a result of two or more accepted claims, the insurers may petition the division to make a pro rata distribution of compensation due under ORS 656.210 and 656.212. The insurer must provide a copy of the request to the worker, and the worker's attorney if represented. The division's pro rata order shall not apply to any periods of interim compensation payable under ORS 656.262 and also does not apply to benefits under ORS 656.214 and 656.245. Claims subject to the pro rata order approved by the division must be closed under OAR 436-030 and ORS 656.268, when appropriate. The insurers shall not unilaterally prorate temporary disability without the approval of the division, except as provided in section (8) of this rule. The division may order one of the insurers to pay the entire amount of temporary disability due or make a pro rata distribution between two or more of the insurers. The pro rata distribution ordered by the division shall be effective only for benefits due as of the date all claims involved are in an accepted status. The order pro rating compensation will not apply to periods where any claim involved is in a deferred status.

(8) When concurrent temporary disability is due the worker as a result of two or more accepted claims involving the same worker, the same employer and the same insurer, the insurer may make a pro rata distribution of compensation due under ORS 656.210 and 656.212 without an order by the division. The worker must receive compensation at the highest temporary disability rate of the claims involved.

(9) If a closure under ORS 656.268 has been found to be premature and there was an open ended authorization of temporary disability at the time of closure, the insurer must begin payments under ORS 656.262, including retroactive periods, and pay temporary disability for as long as authorization exists or until there are other lawful bases to terminate temporary disability.

(10) If a denied claim has been determined to be compensable, the insurer must begin temporary disability payments under ORS 656.262, including retroactive periods, if the time loss authorization was open ended at the time of denial, and there are no other lawful bases to terminate temporary disability.

Stat. Auth.: ORS 656.210(2), 656.245, 656.262, 656.307(1)(c), 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210, 656.212, 656.262, 656.307, 656.704, 656.726(4) & Sec. 1(30), Ch. 865, OL 2001

Hist.: WCB 12-1970, f. 9-21-70, ef. 10-25-70; 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0212, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90, Former sec. (6), (7), (8), (9) & (10) Renumbered to 436-060-0025(1) - (10); WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 14-1996(Temp), f. & cert. ef. 5-31-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0025

Rate of Temporary Disability Compensation

(1) The rate of compensation shall be based on the wage of the worker at the time of injury, except in the case of an occupational disease, for which the rate of compensation will be based on the wage as outlined in ORS 656.210(2)(d)(B). Employers shall not continue to pay wages in lieu of statutory temporary total disability payments due. However, under ORS 656.018(6) the employer is not precluded from supplementing the amount of temporary total disability paid the worker. Employers must separately identify workers' compensation benefits from other payments and shall not have payroll deductions withheld from such benefits.

(2) Notwithstanding section (1), under ORS 656.262(4)(b), a self-insured employer may continue the same wage with normal deductions withheld (e.g. taxes, medical, and other voluntary deductions) at the same pay interval that the worker received at the time of injury. If the pay interval or amount of wage changes (excluding wage increases), the worker must be paid temporary disability as otherwise prescribed by the workers' compensation law. The claim shall be classified as disabling. The rate of temporary total disability that would have otherwise been paid had continued wages not occurred and the period of disability will be reported to the division.

(3) The rate of compensation for regularly employed workers shall be computed as outlined in ORS 656.210 and this rule. "Regularly employed" means actual employment or availability for such employment.

(a) Monthly wages shall be divided by 4.35 to determine weekly wages. Seasonal workers paid monthly must have their weekly wages determined under OAR 436-060-0025(5).

(b) For workers employed through union hall call board insurers must compute the rate of compensation on the basis of a five-day work week at

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40 hours a week, regardless of the number of days actually worked per week.

(4) The insurer shall resolve wage disputes by contacting the employer to confirm the correct wage and then contacting the worker with that information. If the worker does not agree, the worker may bring the dispute to the division for resolution.

(5) The rate of compensation for workers regularly employed, but paid on other than a daily or weekly basis, or employed with unscheduled, irregular or no earnings shall be computed on the wages determined by this rule.

(a) For workers employed seasonally, on call, paid hourly, paid by piece work or with varying hours, shifts or wages:

(A) Insurers must use the worker's average weekly earnings with the employer at injury for the 52 weeks prior to the date of injury. For workers with multiple employers at the time of injury who qualify under ORS 656.210(2)(b) and OAR 436-060-0035, insurers shall average all earnings for the 52 weeks prior to the date of injury. For workers employed less than 52 weeks or where extended gaps exist, insurers must use the actual weeks of employment (excluding any extended gaps) with the employer at injury or all earnings, if the worker qualifies under ORS 656.210(2)(b) and OAR 436-060-0035, up to the previous 52 weeks. For the purpose of this rule, gaps shall not be added together and must be considered on a claim-by-claim basis; the determination of whether a gap is extended must be made in light of its length and of the circumstances of the individual employment relationship itself, including whether the parties contemplated that such gaps would occur when they formed the relationship. For workers employed less than four weeks, insurers shall use the intent of the wage earning agreement as confirmed by the employer and the worker. For the purpose of this section, the wage earning agreement may be either oral or in writing.

(B)(i) Where there has been a change in the wage earning agreement due only to a pay increase or decrease during the 52 weeks prior to the date of injury, insurers must use the worker's average weekly hours worked for the 52 week period, or lesser period as required in (5)(a)(A) of this section, multiplied by the wage at injury to determine the worker's current average weekly earnings.

(ii) Where there has been a change in the wage earning agreement due to a change of hours worked, change of job duties, or for other reasons either with or without a pay increase or decrease, during the 52 weeks prior to the date of injury, insurers must average earnings for the weeks worked under the most recent wage earning agreement, calculated by the method described in (5)(a)(A).

(iii) For workers employed less than four weeks under a changed wage earning agreement as described in this subsection, insurers must use the intent of the most recent wage earning agreement as confirmed by the employer and the worker.

(iv) For determining benefits under this rule for occupational disease claims, insurers must use the wage at the date of disability, if the worker was working at the time of medical verification of the inability to work, or the wage at the date of last regular employment, if the worker was not working due to the injury at the time of medical verification of the inability to work in place of "the date of injury."

(b) Workers employed through a temporary service provider on a "temporary basis," or a worker-leasing company as defined in OAR 436-050, must have their weekly wage determined by the method provided in subsection (a) of this section. However, each job assignment shall not be considered a new wage earning agreement.

(c) For workers paid salary plus considerations (e.g. rent, utilities, food, etc.) insurers must compute the rate on salary only if the considerations continue during the period the worker is disabled due to the injury. If the considerations do not continue, the insurer must use salary plus a reasonable value of those considerations. Expenses incurred due to the job and reimbursed by the employer (e.g. meals, lodging, per diem, equipment rental) are not considered part of the wage.

(d) Earnings from a second job will be considered for calculating temporary partial disability only to the extent that the post-injury income from the second job exceeds the pre-injury income from the second job (i.e., increased hours or increased wage).

(e) For workers employed where tips are a part of the worker's earnings insurers must use the wages actually paid, plus the amount of tips required to be reported by the employer under section 6053 of the Internal Revenue Code of 1954, as amended, or the amount of actual tips reported by the worker, whichever amount is greater.

(f) Insurers shall consider overtime hours only when the worker worked overtime on a regular basis. Overtime earnings must be included in the computation at the overtime rate. For example, if the worker worked one day of overtime per month, use 40 hours at regular wage and two hours at the overtime wage to compute the weekly rate. If overtime varies in

hours worked per day or week, use the averaging method described in subsection (a). One-half day or more will be considered a full day when determining the number of days worked per week.

(g) Bonus pay shall be considered only when provided as part of the written or verbal employment contract as a means to increase the worker's wages. End-of-the-year and other one time bonuses paid at the employer's discretion shall not be included in the calculation of compensation.

(h) Incentive pay shall be considered only when regularly earned. If incentive pay earnings vary, use the averaging method described in subsection (a).

(i) Covered workers with no wage earnings such as volunteers, jail inmates, etc., must have their benefits computed on the same assumed wage as that upon which the employer's premium is based.

(j) For workers paid by commission only or commission plus wages insurers must use the worker's average commission earnings for previous 52 weeks, if available. For workers without 52 weeks of earnings, insurers must use the assumed wage on which premium is based. Any regular wage in addition to commission must be included in the wage from which compensation is computed.

(k) For workers who are sole proprietors, partners, officers of corporations, or limited liability company members including managers, insurers must use the assumed wage on which the employer's premium is based.

(l) For school teachers or workers paid in a like manner, insurers must use the worker's annual salary divided by 52 weeks to arrive at weekly wage. Temporary disability benefits shall extend over the calendar year.

(m) For workers with cyclic schedules, insurers must average the hours of the entire cycle to determine the weekly wage. For purposes of temporary disability payments, the cycle shall be considered to have no scheduled days off. For example: A worker who works ten hours for seven days, has seven scheduled days off, then repeats the cycle, is considered to have a 14 day cycle. The weekly wage and payment schedule would be based on 35 hours a week with no scheduled days off.

(6) When a working shift extends into another calendar day, the date of injury shall be the date used for payroll purposes by the employer.

[ED. NOTE: Forms referenced are available from the agency.]
[Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.210(2), 656.704 & 656.726(4)
Stats. Implemented: ORS 656.210, 656.704, 656.726(4) & Sec. 3(2)(a)-(c), Ch. 865, OL 2001
Hist.: WCB 12-1970, f. 9-21-70, ef. 10-25-70; 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0212, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90, Renumbered from 436-060-0020 former sections (6), (7), (8), (9) & (10); WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0030

Payment of Temporary Partial Disability Compensation

(1) The amount of temporary partial disability compensation due a worker shall be determined by:

(a) Subtracting post-injury wage earnings by the worker from any kind of work from

(b) The wage used to compute the rate of compensation at the time of injury; then

(c) Dividing the difference by the wage earnings used in subsection (b) to arrive at the percentage of loss of wages; then

(d) Multiplying the current temporary total disability compensation rate by the percentage of loss of wages in subsection (c).

(2) Notwithstanding section (1), for workers whose rate of compensation is based on an assumed wage, "post-injury wage earnings" will be that proportion of the assumed wage which the hours worked during the period of temporary partial disability represent as a percentage of the hours worked prior to the injury.

(3) An insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) from the date an injured worker begins wage earning employment, prior to claim closure, unless the worker refuses modified work under ORS 656.268(4)(c)(A) through (F). If the worker is with a new employer and upon request of the insurer to provide wage information, it shall be the worker's responsibility to provide documented evidence of the amount of any wages being earned. Failure to do so shall be cause for the insurer to assume that post-injury wages are the same as or higher than the worker's wages at time of injury.

(4) For the purpose of section (5) of this rule:

(a) "Commute" means the lesser of the distance traveled from the worker's residence at the time of injury to the work site or the worker's residence at the time of the modified work offer to the work site;

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(b) "Where the worker was injured" means the location where the worker customarily reported or worked at the time of injury; and

(c) "Temporary employees" has the same meaning as defined in OAR 436-050-0420.

(5) Under ORS 656.325(5)(a), an insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when an injured worker fails to begin wage earning employment, under the following conditions:

(a) The employer or insurer:

(A) Notifies the attending physician or authorized nurse practitioner of the physical tasks to be performed by the injured worker;

(B) Notifies the attending physician or authorized nurse practitioner of the location of the modified work offer; and

(C) Asks the attending physician or authorized nurse practitioner if the worker can, as a result of the compensable injury, physically commute to and perform the job.

(b) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities and the commute is within the physical capacity of the worker; and

(c) The employer or insurer has confirmed the offer of employment in writing to the worker stating:

(A) The beginning time, date and place;

(B) The duration of the job, if known;

(C) The wages;

(D) An accurate description of the physical requirements of the job;

(E) That the attending physician or authorized nurse practitioner has found the job to be within the worker's capabilities and the commute within the worker's physical capacity;

(F) The worker's right to refuse the offer of employment without termination of temporary total disability if any of the following conditions apply:

(i) The offer is at a site more than 50 miles from where the worker was injured, unless the work site is less than 50 miles from the worker's residence, or the intent of the employer and worker at the time of hire or as established by the employment pattern prior to the injury was that the job involved multiple or mobile work sites and the worker could be assigned to any such site. Examples of such sites include, but are not limited to logging, trucking, construction workers, and temporary employees;

(ii) The offer is not with the employer at injury;

(iii) The offer is not at a work site of the employer at injury;

(iv) The offer is not consistent with existing written shift change policy or common practice of the employer at injury or aggravation; or

(v) The offer is not consistent with an existing shift change provision of an applicable union contract; and

(G) The following notice, in prominent or bold face type:

"If you refuse this offer of work for any of the reasons listed in this notice, you should write to the insurer or employer and tell them your reason(s) for refusing the job. If the insurer reduces or stops your temporary total disability and you disagree with that action, you have the right to request a hearing. To request a hearing you must send a letter objecting to the insurer's action(s) to the Worker's Compensation Board, 2601 25th Street SE, Suite 150, Salem, Oregon 97302-1282."

(6) Under ORS 656.325(5)(b), the insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when the attending physician or authorized nurse practitioner approves employment in a modified job that would have been offered to the worker if the worker had not been terminated from employment for violation of work rules or other disciplinary reasons, under the following conditions:

(a) The employer has a written policy of offering modified work to injured workers;

(b) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1);

(c) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks to be performed by the injured worker; and

(d) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(7) Under ORS 656.325(5)(c), the insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when the attending physician or authorized nurse practitioner approves employment in a modified job whether or not such a job is available if the worker is a person present in the United States in violation of federal immigration laws, under the following conditions:

(a) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1);

(b) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks that would have been performed by the injured worker; and

(c) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(8) Temporary partial disability must be paid at the full temporary total disability rate as of the date a modified job no longer exists or the job offer is withdrawn by the employer. This includes, but is not limited to, termination of temporary employment, layoff or plant closure. A worker who has been released to and doing modified work at the same wage as at the time of injury from the onset of the claim shall be included in this section. For the purpose of this rule, when a worker who has been doing modified work quits the job or the employer terminates the worker for violation of work rules or other disciplinary reasons it is not a withdrawal of a job offer by the employer, but shall be considered the same as the worker refusing wage earning employment under ORS 656.325(5)(a). This section does not apply to those situations described in sections (5), (6), and (7) of this rule.

(9) When the worker's disability is partial only and temporary in character, temporary partial disability compensation under ORS 656.212 shall continue until:

(a) The attending physician or authorized nurse practitioner verifies that the worker can no longer perform the modified job and is again temporarily totally disabled;

(b) The compensation is terminated by order of the division or by claim closure by the insurer under ORS 656.268; or

(c) The compensation is lawfully suspended, withheld or terminated for any other reason.

(10) In determining failure on the part of the worker in section (5) and for purposes of subsection (1)(a), "post-injury wages" are the wages the worker could have earned by accepting a job offer, or actual wages earned, whichever is greater, and any unemployment, sick or vacation leave payments received.

(11) If temporary disability benefits end because the insurer or employer:

(a) Speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and negotiates a verbal release of the worker to return to any type of work as a result, when no return to work was previously authorized; and

(b) The worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work; then

(c) The insurer must:

(A) Document the facts;

(B) Communicate the release to the worker by mail within 7 days; the communication to the worker of the negotiated return to work release may be contained in an offer of modified employment; and

(C) Advise the worker of their reinstatement rights under ORS chapter 659A.

(12) The insurer must provide the injured worker and the worker's attorney a written notice of the reasons for changes in the compensation rate, and the method of computation, whenever a change is made.

Stat. Auth.: ORS 656.212, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.212, 656.325(5), 656.704, 656.726(2) & Ch. 865(12) (4)(c) OL 2001

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0222, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 1-1994(Temp), f. & cert. ef. 3-1-94; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0035

Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) For the purpose of this rule:

(a) "Assigned processing administrator" is the company or business whom the director has selected and authorized to process and pay supplemental disability benefits on behalf of the director, when the insurer has elected not to process and pay these benefits.

(b) "Primary job" means the job at which the injury occurred.

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(c) "Secondary job" means any other job(s) held by the worker in Oregon subject employment at the time of injury.

(d) "Temporary disability" means wage loss replacement for the primary job.

(e) "Supplemental disability" means wage loss replacement for the secondary job(s) that exceeds the temporary disability, up to, but not exceeding, the maximum established by ORS 656.210.

(f) "Verifiable documentation" means information which provides:

(A) Identification of the Oregon subject employer(s) and the time period that establishes the worker held the secondary job, in addition to the primary job, at the time of injury; and

(B) Adequate information to calculate the average weekly wage in accordance with OAR 436-060-0025.

(g) "Insurer" includes third party administrator.

(2) The insurer shall establish the temporary disability rate by multiplying the weekly wage, determined under OAR 436-060-0025, from the primary employer by 66 2/3% (.6667). If the result meets or exceeds the maximum temporary disability rate, the worker is not eligible for supplemental disability benefits.

(3) Within five business days of receiving notice or knowledge of employment in addition to the primary job on a claim on which the temporary disability rate for the primary job does not meet or exceed the maximum rate, the insurer must send a worker an initial notice informing the worker what type of information the insurer or the assigned processing administrator must receive to determine the worker's eligibility for supplemental disability. If the insurer has elected not to process and pay these benefits, the insurer must copy the assigned processing administrator with the notice to the worker. The notice must contain the name, address, and telephone number of the assigned processing administrator, and must also clearly advise the worker that the verifiable documentation must be sent to the assigned processing administrator.

(4) The initial notice in section (3) must also inform the worker that if the verifiable documentation is not received, the insurer will determine the worker's temporary disability rate based only on the job at which the injury occurred. If the insurer later receives the documentation, the insurer must determine the worker's eligibility for supplemental disability benefits and, if the worker is found eligible, re-calculate the temporary disability rate. Additional benefits due, but not yet paid because of the worker's prior failure to provide documentation, must be paid retroactively. Any delay in the payment of a higher disability rate because of the worker's failure to provide verifiable documentation under this paragraph will not result in a penalty under ORS 656.262(11).

(5) Within 14 days of receiving the worker's verifiable documentation, the insurer or the assigned processing administrator must determine the worker's eligibility for supplemental disability and must communicate the decision to the worker and the worker's representative, if any, in writing. The letter must also advise the worker why he/she is not eligible when that is the decision and how to appeal the decision, if the worker disagrees with the decision.

(6) A worker is eligible if:

(a) The worker was employed at the secondary job by an Oregon subject employer at the time of the injury,

(b) The worker provides notification of a secondary job to the insurer within 30 days of the insurer's receipt of the initial claim, and

(c) The worker's temporary disability rate from wages at the primary job does not meet or exceed the maximum rate under section (2) of this rule.

(7) The insurer or the assigned processing administrator must calculate supplemental disability for an eligible worker by adding all earnings the worker received from all subject employment, under ORS 656.210(2)(a)(B). In no case shall an eligible worker receive less compensation than would be paid if based solely on wages from the primary employer.

(8) If the temporary disability rate from the primary employer does not meet or exceed the maximum rate, the insurer or the assigned processing administrator must combine the weekly wages, determined under OAR 436-060-0025, for each employer and multiply by 66 2/3% (.6667) to establish the combined disability rate up to the maximum rate. This is the base amount on which the worker's combined benefits will be calculated.

(9) No three-day waiting period applies to supplemental disability benefits.

(10) The worker's scheduled days off for the job at which the injury occurred shall be used to calculate and pay supplemental disability.

(11) To establish the combined partial disability benefits when the worker has post injury wages from either job, the insurer or the assigned processing administrator must use all post injury wages from both primary and all secondary employers. The insurer or the assigned processing administrator must calculate the amount due the worker based on the combined

wages at injury and combined post injury wages using the temporary partial disability calculation in OAR 436-060-0030. The insurer or the assigned processing administrator must then calculate the amount due from the primary job based only on the primary wages at injury and the primary post injury wages. That amount shall be subtracted from the amount due the worker; the remainder is the supplemental disability amount.

(12) If the worker receives post injury wages from the secondary job equal to or greater than the secondary wages at the time of injury, no supplemental disability is due.

(13) If the worker returns to a job not held at the time of the injury, the insurer or the assigned processing administrator must process supplemental disability under the same terms, conditions and limitations as OAR 436-060-0030.

(14) Supplemental disability may be due on a nondisabling claim even if temporary disability is not due from the primary job. The nondisabling claim will not change to disabling status due to payment of supplemental disability. When supplemental disability payments cease on a nondisabling claim, the insurer or the assigned processing administrator must send the worker written notice advising the worker that their supplemental disability payments have stopped and of the worker's right to appeal that action to the Workers' Compensation Board within 60 days of the notice, if the worker disagrees.

(15) If the insurer has elected to process and pay supplemental disability under ORS 656.210(5)(a), the insurer must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability simultaneously with any temporary disability due. Reimbursement for supplemental disability paid will be made under OAR 436-060-0500.

(16) If the insurer has elected not to process and pay supplemental disability, the assigned processing administrator must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability due once each 14 days.

(17) A worker who is eligible for supplemental disability under section (5) of this rule has an on-going responsibility to provide information and documentation to the insurer or the assigned processing administrator, even if temporary disability is not due from the primary job.

(18) If the insurer has elected not to process and pay supplemental disability, the insurer must cooperate and communicate with the assigned processing administrator and both must retain documentation of shared information, as necessary, to coordinate benefits due.

(19) Supplemental disability applies to occupational disease claims the same as injury claims. Supplemental disability benefits for an occupational disease shall be based on the worker's combined primary and secondary wages at the time there is medical verification the worker is unable to work because of the disability.

(20) When an insurer elects to pay supplemental disability under ORS 656.210(5)(a) and OAR 436-060-0010(20) and receive reimbursement under OAR 436-060-0500, the insurer must maintain a record of supplemental disability paid to the worker, separate from temporary disability paid as a result of the job at injury.

(21) If a worker disagrees with the insurer's or the assigned processing administrator's decision about the worker's eligibility for supplemental disability or the rate of supplemental disability, the worker may request a hearing before the Hearings Division of the Workers' Compensation Board. If the worker chooses to request a hearing on the insurer's decision concerning the worker's eligibility for supplemental disability, the worker must submit an appeal of the insurer's or the assigned processing administrator's decision within 60 days of the notice in section (4) of this rule. Disputes that arise about the rate of supplemental disability may be resolved under OAR 436-060-0025(5) and may be submitted at any time. However, the insurer for the primary job is not required to contact the secondary job employer. The worker is responsible to provide any necessary documentation. By requesting resolution of the dispute under OAR 436-060-0025(5), the worker authorizes the Workers' Compensation Division to contact the secondary job employer to verify information provided by the worker to resolve the dispute.

(22) An insurer who elects not to process and pay supplemental disability benefits may be sanctioned upon a worker's complaint if the insurer delays sending necessary information to the assigned processing administrator and that delay causes a delay in the worker receiving supplemental disability benefits.

(23) In the event of a third party recovery, previously reimbursed supplemental disability benefits are a portion of the paying agency's lien.

(24) Remittance on recovered benefits shall be made to the department in the quarter following the recovery in amounts determined in accordance with ORS 656.591 and 656.593.

Stat. Auth.: ORS 656.210, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210, 656.325(5), 656.704, 656.726(4) & Sec. 3(2)(a), Ch. 865, OL 2001

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Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 6-2002(Temp), f. 4-22-02, cert. ef. 5-10-02 thru 11-5-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0040

Payment of Permanent Partial Disability Compensation

(1) Permanent partial disability exceeding \$6,000 may be paid monthly by the insurer. If it is paid monthly, it must be paid at 4.35 times the weekly temporary disability rate at the time of closure.

(2) If a claim is reopened as a result of a new medical condition or an aggravation of the worker's accepted condition(s) and temporary disability is due, any permanent partial disability benefits due must continue to be paid concurrently with temporary disability benefits.

(3) If the worker begins a training program after claim closure, the insurer must suspend the payment of any work disability award, but continue to pay any impairment award.

(4) The insurer must stop temporary disability compensation payments and resume any award payments suspended under ORS 656.268(9) upon the worker's completion or ending of the training, unless the worker is not then medically stationary. If no award payment remains due, temporary disability compensation payments must continue pending a subsequent claim closure.

Stat. Auth.: ORS 656.268(9), 656.704 & 656.726(4)

Stats. Implemented: ORS 656.268(9), 656.704 & 656.726(4)

Hist.: WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0232, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0055

Payment of Medical Services on Nondisabling Claims; Employer/Insurer Responsibility

Under ORS 656.262(5) the costs of medical services for nondisabling claims, in amounts not to exceed \$500 per claim, for dates of injury prior to January 1, 2006, or \$1,500 per claim, for dates of injury on or after January 1, 2006, must first be paid by the insurer. Then the insurer may be reimbursed by the employer if the employer so chooses. Such choice does not relieve the employers of their claim reporting requirements or the insurers of their responsibility to determine entitlement to benefits and process the claims accurately and timely. Also, when paid by the employer, such costs cannot in any way be used to affect the employer's experience rating modification or otherwise be charged against the employer. To enable the director to ensure these conditions are met, insurers and employers must comply with the following process and procedures:

(1) Notwithstanding the choice made by the employer under section

(2) of this rule, the employer and insurer must process the nondisabling claims in accordance with all statutes and rules governing claims processing. The employer, however, may reimburse the medical service costs paid by the insurer if the employer has chosen to make such payments. The method and manner of reimbursement by the employer shall be as prescribed in section (3) of this rule. In no case, however, shall the employer have less than 30 days to reimburse the insurer.

(2) Prior to the commencement of each policy year, the insurer must send a notice to the insured or prospective insured, advising of the employer's right to reimburse medical service costs up to \$500 per claim, for dates of injury prior to January 1, 2006, or \$1,500 per claim, for dates of injury on or after January 1, 2006, on accepted, nondisabling claims. The notice must advise the employer:

(a) Of the procedure for making such payments as outlined in section (3) of this rule;

(b) Of the general impact on the employer if the employer chooses to make such payments;

(c) That the employer is choosing not to participate if the employer does not respond in writing within 30 days of receipt of the insurer's notice;

(d) That the employer's written election to participate in the reimbursement program remains in effect, without further notice from the insurer, until the employer advises otherwise in writing or is no longer insured by the insurer; and

(e) That the employer may participate later in the policy period upon written request to the insurer, however, the earliest reimbursement period shall be the first completed period, established under subsection (3)(a) of this rule, following receipt of the employer's request.

(3) If the employer wishes to make such reimbursement, and so advises the insurer in writing, the procedure for reimbursement shall be:

(a) Within 30 days following each three month period after policy inception or a period mutually agreed upon by the employer and insurer, the insurer must provide the employer with a list of all accepted nondisabling claims for which payments were made during that period and the respective cost of each claim.

(b) The employer, no later than 30 days after receipt of the list, must identify those claims and the dollar amount the employer wishes to pay for that period and reimburse the insurer accordingly.

(c) Failure by the employer to reimburse the insurer within the 30 days allowed by subsection (3)(b) of this rule shall be deemed notice to the insurer that the employer does not wish to make a reimbursement for that period.

(d) Notwithstanding subsection (3)(b) of this rule, the employer and insurer may, by written agreement, establish a period in excess of thirty (30) days for the employer to reimburse the insurer.

(e) The insurer shall continue to bill the employer for any payments made on the claims within 27 months of the inception of the policy period. Any further billing and reimbursement will be made only by mutual agreement between the employer and the insurer.

(4) Insurers must maintain records of amounts reimbursed by employers for medical services on nondisabling claims. Insurers, however, shall not modify an employer's experience rating or otherwise make charges against the employer for any medical services reimbursed by the employer. For employers on retrospective rated plans, medical costs paid by the employer on nondisabling claims must be included in the retrospective premium calculation, but the amount paid by the employer shall be applied as credits against the resulting retrospective premium.

(5) If a claim changes from a nondisabling to a disabling claim and the insurer has recovered reimbursement from the employer for medical costs billed by the insurer prior to the change, the insurer shall exclude those amounts reimbursed from any experience rating, or other individual or group rating plans of the employer. If the employer is on a retrospective rated plan, premium calculation shall be as provided in section (4) of this rule.

(6) Insurers who do not comply with the requirements of this rule or in any way prohibit an employer from reimbursing the insurer under section (3) of this rule, shall be subject to a penalty as provided by OAR 436-060-0200(7).

(7) Self-insured employers must maintain records of all amounts paid for medical services on nondisabling claims in accordance with OAR 436-050-0220. When reporting loss data for experience rating, the self-insured may exclude costs for medical services paid on nondisabling claims in amounts not to exceed \$500 per claim, for dates of injury prior to January 1, 2006, or \$1,500 per claim, for dates of injury on or after January 1, 2006.

Stat. Auth.: ORS 656.262(5), 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.262(5), 656.704 & 656.726(4)

Hist.: WCD 10-1987(Temp), f. 12-18-87, ef. 1-1-88; WCD 4-1988, f. 6-27-88, cert. ef. 7-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0060

Lump Sum Payment of Permanent Partial Disability Awards

(1) Under ORS 656.230, in all cases where an award for permanent partial disability does not exceed \$6,000, the insurer must pay all of the award to the worker in a lump sum. When the award for permanent partial disability exceeds \$6,000, the insurer or director may approve an application of the worker for lump sum payment when the order has become final by operation of law or the worker has waived their right to appeal the adequacy of the award. The lump sum application shall be in the form and format provided by the director.

(2) When an insurer receives a request for a lump sum application from the worker or the worker's representative, the insurer must send the lump sum application form to the requestor within ten business days.

(3) For the purpose of this rule, each opening of the claim is considered a separate claim and any subsequent permanent partial disability award from a claim reopening is a new and separate award. Additional award of permanent partial disability obtained through the appeal process is considered part of the total cumulative award for the open period of that claim.

(4) If the insurer agrees with the worker's request for lump sum payment of a permanent partial disability award in excess of \$6,000, they must make the lump sum payment within 14 days of receipt of the signed application.

(5) If the insurer disagrees with the worker's request for lump sum payment of a permanent partial disability award in excess of \$6,000, the insurer must submit the lump sum application with the reason for disagreement to the director within 14 days of receipt of the signed application. The

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insurer must simultaneously copy the worker and the worker's attorney, if represented, of the disagreement and submission to the division.

(6) For dates of injury prior to January 1, 2005, the insurer or the division may not approve an application for lump sum payment of unscheduled permanent disability when the worker:

(a) Has been found eligible for a vocational training program and will start the program within 30 days of the date of the decision on the lump sum request;

(b) Is actively enrolled and engaged in a vocational training program under OAR 436-120; or

(c) Has temporarily withdrawn from such a program.

(7) For dates of injury on or after January 1, 2005, the insurer or the division may not approve an application for lump sum payment of work disability when the worker:

(a) Has been found eligible for a vocational training program and will start the program within 30 days of the date of the decision on the lump sum request;

(b) Is actively enrolled and engaged in a vocational training program under OAR 436-120; or

(c) Has temporarily withdrawn from such a program.

(8) The insurer or the division shall not approve an application for lump sum payment of permanent disability when the worker is involved in litigation affecting the permanent partial disability award.

(9) When the division approves a disputed application, the insurer must pay the lump sum amount to the worker within 14 days after the mailing of the order.

(10) If any party disagrees with the decision of the division, the party may petition the director to reconsider the decision within 14 days after the mailing of the decision. Appeal of an order approving a lump sum payment stays payment of the lump sum until the director's review is complete and an order on the appeal is issued. The director's decision shall be final and not subject to review.

(11) A lump sum payment ordered in a litigation order or which is a part of a Claim Disposition Agreement under ORS 656.236 does not require further approval by the insurer or the division.

(12) When a partial payment is approved by the insurer or the division, it shall be in addition to the regularly scheduled monthly payment. The remaining balance shall be paid under ORS 656.216. Denial or partial approval of an application does not prevent another application by the worker for a lump sum payment of all or part of any remainder of the award, provided additional information is submitted.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.230, 656.704 & 656.726(4)

Hist.: WCB 6-1966, f. & ef. 6-24-66; WCB 5-1974, f. 2-13-74, ef. 3-11-74; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0250, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0095

Medical Examinations; Suspension of Compensation; and Insurer Medical Examination Notice

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker must have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when the worker refuses or fails to submit to, or otherwise obstructs, an independent medical examination reasonably requested by the insurer or the director under ORS 656.325(1). Compensation will be suspended until the examination has been completed. The conditions of the examination shall be consistent with conditions described in OAR 436-010-0265. Any action of a friend or family member which obstructs the examination shall be considered an obstruction of the examination by the worker for the purpose of this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to attend or obstruction of the examination.

(2) The division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial.

(3) A worker must submit to independent medical examinations reasonably requested by the insurer or the director. No more than three separate independent medical examinations may be requested by the insurer for each open period of a claim, except as provided under OAR 436-010. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(7).

(4) The insurer may contract with a third party to schedule independent medical examinations. If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice is required to be sent on the insurer's stationery and must conform with the requirements of OAR 436-060-0095(5).

(5) If an examination is scheduled by the insurer or by another party at the request of the insurer, the worker and the worker's attorney shall be simultaneously notified in writing of the scheduled medical examination under ORS 656.331. The notice shall be sent at least 10 days prior to the examination. The notice sent for each appointment, including those which have been rescheduled, must contain the following:

(a) The name of the examiner or facility;

(b) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;

(c) The date, time and place of the examination;

(d) The first and last name of the attending physician or authorized nurse practitioner and verification that the attending physician or authorized nurse practitioner was informed of the examination by, at least, a copy of the appointment notice, or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(e) If applicable, confirmation that the director has approved the examination;

(f) That the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that, when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance;

(g) That an amount will be paid equivalent to net lost wages for the period during which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the absence;

(h) That the worker has the right to have an observer present at the examination, but the observer may not be compensated in any way for attending the exam; and

(i) The following notice in prominent or bold face type:

"You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend and do not have a good reason for not attending, or you fail to cooperate with the examination, your workers' compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060. You may be charged a \$100 penalty if you fail to attend without a good reason or if you fail to notify the insurer before the examination. The penalty is taken out of future benefits. If you object to the location of this appointment you must contact the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 or the Ombudsman for Injured Workers at 1-800-927-1271."

(6) The insurer must send a form to request reimbursement and the director's brochure, "Important Information about Independent Medical Exams," to the worker with the appointment notice. The requirement to send the brochure applies when the brochure is available.

(7) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

(8) The request for suspension must be sent to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request must include the following information:

(a) That the insurer requests suspension of benefits under ORS 656.325 and OAR 436-060-0095;

(b) The claim status and any accepted or newly claimed conditions;

(c) What specific actions of the worker prompted the request;

(d) The dates of any prior independent medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;

(e) A copy of any approvals given by the director for more than three independent medical examinations, or a statement that no approval was necessary, whichever is appropriate;

(f) Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(g) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the exam received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;

(h) A copy of the letter required in section (5) and a copy of any written verification received under subsection (8)(g);

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(i) Any other information which supports the request; and

(j) The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized."

(9) If the division consents to suspend compensation, the suspension shall be effective from the date the worker fails to attend an examination or such other date the division deems appropriate until the date the worker undergoes an examination scheduled by the insurer or director. Any delay in requesting consent for suspension may result in authorization being denied or the date of authorization being modified.

(10) The insurer must assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the independent medical examination, the insurer must verify the worker's participation and reinstate compensation effective the date of the worker's compliance.

(11) If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the date of the consent to suspend order, the insurer must close the claim under OAR 436-030-0034(7).

(12) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. Failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(13) The division may also take the following actions in regard to the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(14) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)

Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94, Renumbered from 436-060-0085(1),(2),(4); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0105

Suspension of Compensation for Insanitary or Injurious Practices, Refusal of Treatment or Failure to Participate in Rehabilitation; Reduction of Benefits

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker must have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension under ORS 656.325(2) when the worker commits insanitary or injurious acts which imperil or retard recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or fails or refuses to participate in a physical rehabilitation program.

(2) The insurer must demand in writing the worker either immediately cease actions which imperil or retard recovery or immediately begin to change the inappropriate behavior and participate in activities needed to help the worker recover from the injury. Such actions include insanitary or injurious practices, refusing essential medical or surgical treatment, or failing to participate in a physical rehabilitation program. Each time the insurer sends such a notice to the worker, the written demand must contain the following information, and a copy shall be sent simultaneously to the worker's attorney:

(a) A description of the unacceptable actions;

(b) Why such conduct is inappropriate, including the fact that the conduct is harmful and/or retards the worker's recovery, as appropriate;

(c) The date by which the inappropriate actions must stop, or the date by which compliance is expected, including what the worker must specifically do to comply; and,

(d) The following notice of the consequences should the worker fail to correct the problem, in prominent or bold face type:

"If you continue to do insanitary or injurious acts beyond the date in this letter, or fail to consent to the medical or surgical treatment which is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we will request the suspension of your workers' compensation benefits. In addition, you may also have any permanent disability award reduced in accordance with ORS 656.325 and OAR 436-060."

(3) For the purposes of this rule, failure or refusal to accept medical treatment means the worker fails or refuses to remain under a physician's or authorized nurse practitioner's care or abide by a treatment regimen. A treatment regimen includes, but is not limited to a prescribed diet, exercise program, medication or other activity prescribed by the physician or authorized nurse practitioner which is designed to help the worker reach maximum recovery and become medically stationary.

(4) The insurer must verify whether the worker complied with the request for cooperation on the date specified in subsection (2)(c). If the worker initially agrees to comply, or complies and then refuses or fails to continue doing so, the insurer is not required to send further notice before requesting suspension of compensation.

(5) The request for suspension must be sent to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request must include the following information:

(a) That the request for suspension is made in accordance with ORS 656.325 and OAR 436-060-0105;

(b) A description of the actions of the worker which prompted the request, including whether such actions continue;

(c) Any reasons offered by the worker to explain the behavior, or a statement that the worker has not provided any reasons, whichever is appropriate;

(d) How, when and with whom the worker's failure or refusal was verified;

(e) A copy of the letter required in section (2);

(f) Any other relevant information including, but not limited to; chart notes, surgical or physical therapy recommendations/prescriptions, and all physician or authorized nurse practitioner recommendations; and

(g) The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will close your claim."

(6) Any delay in obtaining confirmation or in requesting consent for suspension of compensation may result in authorization being denied or the date of authorization being modified by the date of actual confirmation or the date the request is received by the division.

(7) If the division concurs with the request, it shall issue an order suspending compensation from a date established under section (5) until the worker complies with the insurer's request for cooperation. Where the worker is suspended for a pattern of noncooperation, the division may require the worker to demonstrate cooperation before restoring compensation.

(8) The insurer must monitor the claim to determine if and when the worker complies with the insurer's requests. When cooperation resumes, payment of compensation must resume effective the date cooperation was resumed.

(9) The insurer must make all reasonable efforts to assist the worker to restore benefits when the worker demonstrates the willingness to make such efforts.

(10) If the worker makes no effort to reinstate benefits within 60 days of the date of the consent order, the insurer must close the claim under OAR 436-030-0034.

(11) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(12) The division may also take the following actions in regard to the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(13) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

(14) The director may reduce any benefits awarded the worker under ORS 656.268 when the worker has unreasonably failed to follow medical advice, or failed to participate in a physical rehabilitation or vocational assistance program prescribed for the worker under ORS chapter 656 and OAR chapter 436. Such benefits shall be reduced by the amount of the increased disability reasonably attributable to the worker's failure to

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cooperate. When an insurer submits a request to reduce benefits under this section, the insurer must:

- (a) Specify the basis for the request;
- (b) Include all supporting documentation;
- (c) Send a copy of the request, including the supporting documentation, to the worker and the worker's representative, if any, by certified mail; and
- (d) Include the following notice in prominent or bold face type:
"Notice to worker: If you think this request to reduce your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits."

(15) The division shall promptly make a decision on a request to reduce benefits and notify the parties of the decision. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the request to reduce benefits.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)
Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94, Renumbered from 436-060-0085(1),(2),(4),(5); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0135

Injured Worker, Worker Representative Responsible to Assist in Investigation; Suspension of Compensation and Notice to Worker

(1) When the worker refuses or fails to cooperate in an investigation of an initial claim for compensation, a claim for a new medical condition, a claim for an omitted medical condition, or an aggravation claim as required by ORS 656.262(13), the division will suspend compensation under ORS 656.262(14) by order under conditions set forth in this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to cooperate with an investigation. The worker must have the opportunity to submit information disputing the insurer's request for suspension of compensation prior to issuance of the order.

(2) A worker must submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques reasonably requested by the insurer. For the purposes of this rule, "personal and telephonic interviews" may be audio or video taped by one or more of the parties if prior written notice is given of the intent to record or tape an interview.

(3) The division will consider requests for suspension of benefits under ORS 656.262(14) only after the insurer has notified the injured worker in writing of the worker's obligation to cooperate as required by section (4) or (5) of this rule and only in claims where there has been no acceptance or denial issued.

(4) For suspension of benefits to be granted under this rule, the insurer must notify the worker in writing that an interview or deposition has been scheduled, or of other investigation requirements, and must give the worker at least 14 days to cooperate. The notice must be sent to the worker and copied to the worker's attorney, if represented, and must advise the worker of the date, time and place of the interview and/or any other reasonable investigation requirements. If the insurer contracts with a third party, such as an investigation firm, to investigate the claim, the notice shall be on the insurer's stationery and must conform with the requirements of this section. The notice must inform the worker that the interview, deposition, and/or any other investigation requirements are related to the worker's compensation claim. The notice must also contain the following statement in prominent or bold face type:

"The workers' compensation law requires injured workers to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers are required to submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. If you fail to reasonably cooperate with the investigation of this claim, payment of your compensation benefits may be suspended and your claim may be denied in accordance with ORS 656.262 and OAR 436-060."

(5) The request for suspension must be sent to the division after the 14 days in section (4) have expired. Any delay in requesting suspension may result in authorization being denied. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service. The request must include the following information sufficient to show the worker's failure to cooperate:

- (a) That the insurer requests suspension of benefits under ORS 656.262(14) and this rule;
- (b) Documentation of the specific actions of the worker or worker's representative that prompted the request;

- (c) Any reasons given by the worker for failure to comply, or a statement that the worker has not given any reasons, whichever is appropriate;
- (d) A copy of the notice required in section (4) of this rule; and
- (e) All other pertinent information, including, but not limited to, a copy of the claim for a new or omitted condition when that is what the insurer is investigating.

(6) After receiving the insurer's request as required in section (5) of this rule, the division will promptly notify all parties that the worker's benefits will be suspended in five working days unless the worker or the worker's attorney contacts the division by telephone or mails a letter documenting that the failure to cooperate was reasonable or unless the insurer notifies the division that the worker is now cooperating. The notice of the division will also advise that the insurer's obligation to accept or deny the claim within 60 days is suspended unless the insurer's request is filed with the division after the 60 days to accept or deny the claim has expired.

(7) If the worker cooperates after the insurer has requested suspension, the insurer must notify the division immediately to withdraw the suspension request. The division will notify all the parties. An order may be issued identifying the dates during which the insurer's obligation to accept or deny the claim was suspended.

(8) If the worker documents the failure to cooperate was reasonable the division will not suspend payment of compensation. However, an order may be issued identifying the dates during which the insurer's obligation to accept or deny the claim was suspended.

(9) If the worker has not documented that the failure to cooperate was reasonable, the division will issue an order suspending all or part of the payment of compensation to the worker. The suspension will be effective the fifth working day after notice is provided by the division as required by section (6) of this rule. The suspension of compensation shall remain in effect until the worker cooperates with the investigation. If the worker makes no effort to reinstate compensation within 30 days of the date of the notice, the insurer may deny the claim under ORS 656.262(14) and OAR 436-060-0140(10).

(10) Under ORS 656.262(13), an insurer who believes that a worker's attorney's unwillingness or unavailability to participate in an interview is unreasonable may notify the director in writing and the division will consider assessment of a civil penalty against the attorney of not more than \$1,000. The worker's attorney must have the opportunity to dispute the allegation prior to the issuance of a penalty. Notice under this section must be sent to the division. A copy of the notice must be sent simultaneously to the worker and the worker's attorney. Notice to the division by the insurer must contain the following information:

- (a) What specific actions of the attorney prompted the request;
- (b) Any reasons given by the attorney for failing to participate in the interview; and
- (c) A copy of the request for interview sent to the attorney.

(11) Failure to comply with the requirements of this rule will be grounds for denial of the insurer's request.

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.262(14)(15), 656.704, 656.726(4) & Sec. 7(6)(a), Ch. 865, OL 2001
Hist.: WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 6-2002(Temp), f. 4-22-02, cert. ef. 5-10-02 thru 11-5-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0137

Vocational Evaluations; and Suspension of Compensation

(1) A worker receiving permanent total disability benefits must attend a vocational evaluation reasonably requested by the insurer or the director. The insurer may request no more than three separate vocational evaluations, except as provided under this rule.

(2) When the insurer has obtained the three vocational evaluations allowed under ORS 656.206 and wishes to require the worker to attend an additional evaluation, the insurer must first request authorization from the director. Insurers that fail to first request authorization from the director may be assessed a civil penalty. The process for requesting authorization is as follows:

- (a) The insurer must submit a request for authorization to the director in a form and format as prescribed by the director, which includes but is not limited to: the reasons for an additional vocational evaluation; the conditions to be evaluated; dates, times, places, and purposes of previous evaluations; copies of previous vocational evaluation notification letters to the worker; and any other information requested by the director; and
- (b) The insurer must provide a copy of the request to the worker and the worker's attorney.

(3) The director will review the request and determine if additional information is needed. Upon receipt of a request for additional information from the director, the parties will have 14 days to respond. If the parties do

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not provide the requested information, the director will approve or disapprove the request for authorization based on available information.

(4) The director's decision approving or denying more than three vocational evaluations may be appealed to the Hearings Division of the Workers' Compensation Board within 60 days of the order.

(5) For purposes of determining the number of insurer required vocational evaluations, any evaluations scheduled but not completed are not counted as a statutory vocational evaluation.

(6) The insurer may contract with a third party to schedule vocational evaluations. If the third party notifies the worker of a scheduled evaluation on behalf of the insurer, the third party must send the notice on the insurer's stationery and the notice must conform with the requirements of OAR 436-060-0137(f).

(7) The notice must be sent to the worker at least 10 days prior to the evaluation. The notice sent for each evaluation, including those which have been rescheduled, must contain the following:

- (a) The name of the vocational assistance provider or facility;
- (b) A statement of the specific purpose for the evaluation;
- (c) The date, time and place of the evaluation;
- (d) The first and last name of the attending physician or authorized nurse practitioner or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(e) If applicable, confirmation that the director has approved the evaluation;

(f) Notice to the worker that the reasonable cost of public transportation or use of a private vehicle will be reimbursed; when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed; a request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request; should an advance of costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance; and

- (g) The following notice in prominent or bold face type:
"You must attend this vocational evaluation. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the evaluation. If you fail to attend or fail to cooperate, or do not have a good reason for not attending, your compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.206 and OAR 436-060. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or the Ombudsman for Injured Workers at 1-800-927-1271."

(8) The insurer must pay the costs of the vocational evaluation and related services reasonably necessary to allow the worker to attend the evaluation. Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

(9) When the worker refuses or fails to attend, or otherwise obstructs, a vocational evaluation reasonably requested by the insurer or the director under ORS 656.206, the division may suspend the worker's compensation.

(10) The insurer must send the request for suspension to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service. The request must include the following information:

(a) That the insurer requests suspension of benefits under ORS 656.206 and OAR 436-060-0137;

- (b) What specific actions of the worker prompted the request;
- (c) The dates of any prior vocational evaluations the worker has attended and the names of the vocational assistance provider or facilities, or a statement that there have been no prior evaluations, whichever is appropriate;

(d) A copy of any approvals given by the director for more than three vocational evaluations, or a statement that no approval was necessary, whichever is appropriate;

(e) Any reasons given by the worker for failing to attend, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(f) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the vocational evaluation received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;

(g) A copy of the letter required in section (5) and a copy of any written verification received under subsection (5)(f);

- (h) Any other information which supports the request; and
- (i) The following notice in prominent or bold face type:
"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits."

(11) If the insurer fails to comply with this rule, the division may deny the request for suspension.

(12) If the division suspends compensation, the suspension will be effective from the date the worker fails to attend a vocational evaluation or

such other date the division deems appropriate until the date the worker attends the evaluation. The worker is not entitled to compensation during or for the period of suspension. Any delay in requesting suspension may result in suspension being denied or the date of suspension being modified.

(13) The insurer must assist the worker to meet requirements necessary for the resumption of compensation payments. When the worker has attended the vocational evaluation, the insurer must verify the worker's participation and resume compensation effective the date of the worker's compliance.

(14) The division may also:

(a) Modify or set aside the suspension order before or after filing of a request for hearing;

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error; or

(c) Reevaluate the necessity of continuing a suspension.

(15) A suspension order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth: ORS 656.726
Stats. Implemented: ORS 656.206, OL Ch. 461, Sec. 1
Hist.: WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0140

Acceptance or Denial of a Claim

(1) The insurer is required to conduct a "reasonable" investigation based on all available information in ascertaining whether to deny a claim. A reasonable investigation is whatever steps a reasonably prudent person with knowledge of the legal standards for determining compensability would take in a good faith effort to ascertain the facts underlying a claim, giving due consideration to the cost of the investigation and the likely value of the claim.

(2) In determining whether an investigation is reasonable, the director will only look at information contained in the insurer's claim record at the time of denial. The insurer may not rely on any fact not documented in the claim record at the time of denial to establish that an investigation was reasonable.

(3) The insurer must give the claimant written notice of acceptance or denial of a claim within:

(a) 90 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of a form 827 signed by the worker or the worker's representative and the worker's attending physician indicating an aggravation claim or written notice of a new medical condition claim for claims with a date of injury prior to January 1, 2002; or

(b) 60 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of a form 827 signed by the worker or the worker's representative and the worker's attending physician indicating an aggravation claim or written notice of a new medical or omitted condition claim for claims with a date of injury on or after January 1, 2002; or

(c) 90 days after the employer's notice or knowledge of the claim if the worker challenges the location of an independent medical examination under OAR 436-010-0265 and the challenge is upheld, regardless of the date of injury.

(4) The director may assess a penalty against any insurer delinquent in accepting or denying a claim beyond the days required in (3) in excess of 10 percent of their total volume of reported disabling claims during any quarter.

(5) A notice of acceptance must comply with ORS 656.262(6)(b) and the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438. It must include a current mailing date, be addressed to the worker, be copied to the worker's representative, if any, and the worker's attending physician, and specify to the worker:

- (a) What conditions are compensable;
- (b) Whether the claim is disabling or nondisabling;

(c) Of the Expedited Claim Service, of hearing and aggravation rights concerning nondisabling injuries including the right to object to a decision that the injury is nondisabling by requesting the insurer review the status;

(d) Of the employment reinstatement rights and responsibilities under ORS chapter 659A;

(e) Of assistance available to employers from the Reemployment Assistance Program under ORS 656.622;

(f) That expenses personally paid for claim related expenses up to a maximum established rate must be reimbursed by the insurer when requested in writing and accompanied by sales slips, receipts, or other reasonable written support, for meals, lodging, transportation, prescriptions and other related expenses;

(g) That if the worker believes a condition has been incorrectly omitted from the notice of acceptance, or the notice is otherwise deficient, the worker must first communicate the objection to the insurer in writing

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specifying either that the worker believes the condition has been incorrectly omitted or why the worker feels the notice is otherwise deficient; and

(h) That if the worker wants the insurer to accept a claim for a new medical condition, the worker must put the request in writing, clearly identify the condition as a new medical condition, and request formal written acceptance of the condition.

(6) On fatal claims, the notice must be addressed "to the estate of" the worker and the requirements in (5)(a) through (h) shall not be included.

(7) The first acceptance issued on the claim must contain the title "Initial Notice of Acceptance" near the top of the notice. Any notice of acceptance must contain all accepted conditions at the time of the notice. When an insurer closes a claim, it must issue an "Updated Notice of Acceptance at Closure" under OAR 436-030-0015. Additionally, when reopening a claim, the notice of acceptance must specify the condition(s) for which the claim is being reopened. Under ORS 656.262(6)(b)(F) the insurer must modify acceptance from time to time as medical or other information changes. An insurer must issue a "Modified Notice of Acceptance" (MNOA) when they:

(a) Accept a new or omitted condition: on a nondisabling claim, while a disabling claim is open or after claim closure;

(b) Accept an aggravation claim;

(c) Change the disabling status of the claim; or

(d) Amend a notice of acceptance, including correcting a clerical error.

(8) Notwithstanding OAR 436-060-0140(7)(d), to correct an omission or error in an "Updated Notice of Acceptance at Closure" (UNOA), under OAR 436-030-0015(1)(e), the insurer must add the word "Corrected" to the UNOA.

(9) When an insurer accepts a new or omitted condition on a closed claim, the insurer must reopen the claim and process it to closure under ORS 656.262 and 656.267.

(10) A notice of denial must comply with the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438, and must:

(a) Specify the factual and legal reasons for the denial, including the worker's right to request a Worker Requested Medical Examination and a specific statement indicating if the denial was based in whole or part on an independent medical examination, under ORS 656.325, and one of the following statements, as appropriate:

(A) "Your attending physician agreed with the independent medical examination report"; or

(B) "Your attending physician did not agree with the independent medical examination report"; or

(C) "Your attending physician has not commented on the independent medical examination report"; and

(b) Inform the worker of the Expedited Claim Service and of the worker's right to a hearing under ORS 656.283.

(c) If the denial is under ORS 656.262(14), it must inform the worker that a hearing may occur sooner if the worker requests an expedited hearing under ORS 656.291.

(d) If paragraph (10)(a)(B) above applies, the denial notice must also include the division's Web site address and toll free Infoline number for the worker's use in obtaining a brochure about the Worker Requested Medical Examination.

(11) The insurer must send notice of the denial to each provider of medical services and health insurance when compensability of any portion of a claim for medical services is denied at the same time the denial is sent to the worker. If the insurer receives any billings from medical providers after claim denial, they must send a copy of the denial to the medical provider and advise the medical provider of the status of the denial. When compensability of the claim has been finally determined or when disposition of the claim has been made, the insurer must notify each affected service provider of the results of the compensability determination or disposition. The notification must include the results of the proceedings under ORS 656.236 or 656.289(4) and the amount of any settlement.

(12) The insurer must pay compensation due under ORS 656.262 and 656.273 until the claim is denied, except where there is an issue concerning the timely filing of a notice of accident as provided in ORS 656.265(4). The employer may elect to pay compensation under this section in lieu of the insurer doing so. The insurer must report to the division payments of compensation made by the employer as if the insurer had made the payment.

(13) Compensation payable to a worker or the worker's beneficiaries while a claim is pending acceptance or denial does not include the costs of medical benefits or burial.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262(6), 656.704, 656.726(4) & Sec. 7(6)(a) & 1(1)(b), Ch. 865, OL 2001

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0305, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 12-1992, f. 6-12-92, cert. ef. 7-1-92; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0147

Worker Requested Medical Examination

(1) The director shall determine the worker's eligibility for a Worker Requested Medical Examination (Exam) under ORS 656.325(1). The worker is eligible for an exam if the worker has made a timely request for a Workers' Compensation Board hearing on a denial of compensability as required by ORS 656.319(1)(a); and the denial was based on one or more Independent Medical Examination reports with which the attending physician or authorized nurse practitioner disagreed.

(2) The worker must submit a request for the exam to the director. A copy of the request must be sent simultaneously to the insurer or self-insured employer. The request must include:

(a) The name, address, and claim identifying information of the injured worker;

(b) A list of physicians, including name(s) and address(es), who have previously provided medical services to the worker on this claim or who have previously provided medical services to the worker related to the claimed condition(s);

(c) The date the worker requested a hearing and a copy of the hearing request;

(d) A copy of the insurer's denial letter; and

(e) Document(s) that demonstrate that the attending physician or authorized nurse practitioner did not concur with the independent medical examination report(s).

(3) The insurer must, upon written notice from the worker, mail to the director no later than the 14th day following the insurer's receipt of the worker's request, the names and addresses of all physicians or nurse practitioners who have:

(a) Acted as attending physician or authorized nurse practitioner;

(b) Provided medical consultations and/or treatment to the worker;

(c) Examined the worker at an independent medical examination; or

(d) Reviewed the worker's medical records on this claim. For the purpose of this rule, "Attending Physician" and "Independent Medical Examination" have the meanings defined in OAR 436-010-0005 and 436-010-0265(1), respectively.

(4) Failure to provide the required documentation described in section (4) in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(5) The director will notify all parties in writing of the physician selected, or will provide the worker or the worker's representative a list of appropriate physicians.

(6) If the director provides a list of physicians, the following applies:

(a) The worker's or the worker's representative's response must be in writing, signed, and received by the director within ten business days of providing the list.

(b) The worker or the worker's representative may eliminate the name of one physician from the list.

(c) If the worker or the worker's representative does not respond as provided in this section, the director will select a physician.

(d) The director will notify the parties in writing of the physician selected.

(7) The worker and/or the worker's legal representative shall schedule the exam with the selected physician and notify the insurer and the Workers' Compensation Board of the scheduled exam date within 14 days of the notification date in (6) of this rule. An unrepresented worker may consult with the Injured Worker Ombudsman for assistance.

(8) The insurer must send the physician the worker's complete medical record on this claim and the original questions asked of the independent medical examination(s) physician(s) no later than 14 days prior to the date of the scheduled exam.

(9) The worker or the worker's representative shall communicate questions related to the compensability denial in writing to be answered by the physician at the exam to the physician at least 14 days prior to the scheduled date of the exam. An unrepresented worker may consult with the Injured Worker Ombudsman for assistance.

(10) Upon completion of the exam the physician must address the original independent medical examination(s) questions and the questions from the worker or the worker's representative under section (9) of this rule

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and send the report to the worker's legal representative, if any, or the worker, and the insurer within 5 working days.

(11) The insurer must pay the physician selected under this rule in accordance with OAR 436-009. Delivery of medical services to injured workers shall be in accordance with OAR 436-010.

(12) If the worker fails to attend the scheduled Worker Requested Medical Exam, the insurer must pay the physician for the missed examination. The insurer is not required to pay for another examination unless the worker did not attend the missed examination for reasons beyond the worker's reasonable control.

(13) The insurer must reimburse the worker for all necessary related services under ORS 656.325(1).

Stat. Auth.: ORS 656.704, 656.726(4) & Sec. 13(1)(b), Ch. 865, OL 2001

Stats. Implemented: ORS 656.325(1), 656.704 & 656.726(4)

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0150

Timely Payment of Compensation

(1) Benefits are deemed paid when addressed to the last known address of the worker or beneficiary and deposited in the U.S. Mail or deposited in the worker's or beneficiary's account by approved electronic equivalent. Payments falling due on a weekend or legal holiday under ORS 187.010 and 187.020 may be paid on the last working day prior to or the first working day following the weekend or legal holiday. Subsequent payments may revert back to the payment schedule prior to the weekend or legal holiday.

(2) For the purpose of this rule, legal holidays in the State of Oregon are:

- (a) Each Sunday;
- (b) New Year's Day on January 1;
- (c) Martin Luther King, Jr.'s Birthday on the third Monday in January;
- (d) Presidents Day, for the purpose of commemorating Presidents Washington and Lincoln, on the third Monday in February;
- (e) Memorial Day on the last Monday in May;
- (f) Independence Day on July 4;
- (g) Labor Day on the first Monday in September;
- (h) Veterans Day on November 11;
- (i) Thanksgiving Day on the fourth Thursday in November; and
- (j) Christmas Day on December 25.

(k) Each time a holiday, other than Sunday, falls on Sunday, the succeeding Monday shall be a legal holiday. Each time a holiday falls on Saturday, the preceding Friday shall be a legal holiday.

(l) Additional legal holidays shall include every day appointed by the Governor as a legal holiday and every day appointed by the President of the United States as a day of mourning, rejoicing or other special observance only when the Governor also appoints that day as a holiday.

(3) First payment of time loss must be timely. An insurer's performance is in compliance when 90 percent of payments are timely. The director may assess a penalty against an insurer falling below these norms during any quarter.

(4) Compensation withheld under ORS 656.268(12) and (13), and 656.596(2), shall not be deemed untimely provided the insurer notifies the worker in writing why benefits are being withheld and the amount that must be offset before any further benefits are payable.

(5) Timely payment of temporary disability benefits means payment has been made no later than the 14th day after:

(a) The date of the employer's notice or knowledge of the claim, provided the attending physician or authorized nurse practitioner has authorized temporary disability. Temporary disability accrued prior to the date of the employer's notice or knowledge of the claim shall be due within 14 days of claim acceptance;

(b) The date the attending physician or authorized nurse practitioner authorizes temporary disability, if the authorization is more than 14 days after the date of the employer's notice or knowledge of the claim;

(c) The start of authorized vocational training under ORS 656.268(9), if the claim has previously been closed;

(d) The date the insurer receives medical evidence supported by objective findings that shows the worker is unable to work due to a worsening of the compensable condition under ORS 656.273;

(e) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of temporary disability. If a reconsideration order has been appealed by the insurer, the appeal stays payment of temporary disability benefits except those which accrue from the date of the order, under ORS 656.313;

(f) The date of a notice of claim closure issued by the insurer which finds the worker entitled to temporary disability;

(g) The date a notice of closure is set aside by a reconsideration order;

(h) The date any litigation authorizing retroactive temporary disability becomes final. Temporary disability accruing from the date of the order must begin no later than the 14th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the signature date and from the courts, it is the date of the appellate judgment;

(i) The date the division refers a claim to the insurer for processing under ORS 656.029;

(j) The date the division refers a noncomplying employer claim to an assigned claims agent under ORS 656.054; or

(k) The date a claim disposition is disapproved by the Board, if temporary disability benefits are otherwise due;

(l) The date the division designates a paying agent under ORS 656.307;

(m) The date a claim is reclassified from nondisabling to disabling, if temporary disability is due and payable; and

(n) The date an insurer voluntarily rescinds a denial of a disabling claim.

(6) Temporary disability must be paid to within seven days of the date of payment at least once each 14 days. When making payments as provided in OAR 436-060-0020(1), the employer may make subsequent payments of temporary disability concurrently with the payroll schedule of the employer, rather than at 14-day intervals.

(7) Permanent disability and fatal benefits must be paid no later than the 30th day after:

(a) The date of a notice of claim closure issued by the insurer;

(b) The date of any litigation order which orders payment of permanent total disability or fatal benefits. Permanent total or fatal benefits accruing from the date of the order must begin no later than the 30th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the signature date and from the courts it is the date of the appellate judgment;

(c) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of compensation for permanent disability;

(d) The date any litigation authorizing permanent partial disability becomes final; or

(e) The date a claim disposition is disapproved by the Board, if permanent disability benefits are otherwise due.

(f) The date authorized training ends if the worker is medically stationary and any previous award remains unpaid, under ORS 656.268(9) and OAR 436-060-0040(2).

(8) Subsequent payments of permanent disability and fatal benefits are made in monthly sequence. The insurer may adjust monthly payment dates, but must inform the beneficiary prior to making the adjustment. No payment period shall exceed one month without the division approval.

(9) The insurer must notify the worker or beneficiary in writing when compensation is paid of the specific purpose of the payment, the time period for which the payment is made, and the reimbursable expenses. The insurer must maintain records of compensation paid for each claim where benefits are due and payable. If the worker submits a request for reimbursement of multiple items and full reimbursement is not made, the insurer must provide specific reasons for non-payment or reduction of each item.

(10) Payment of a Claim Disposition Agreement must be made no later than the 14th day after the Board mails notice of its approval of the agreement to the parties, unless otherwise stated in the agreement.

(11) Under ORS 656.126(6), when Oregon compensation is more than the compensation under another law for the same injury or occupational disease, or compensation paid the worker under another law is recovered from the worker for the same injury or occupational disease, the insurer must pay any unpaid compensation to the worker up to the amount required by the claim under Oregon law within 14 days of receipt of written documentation supporting the underpayment of Oregon compensation.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262(4), 656.268(9), 656.273, 656.278, 656.289, 656.307, 656.313, 656.704 & 656.726(4)

Hist.: WCB 9-1966, f. & ef. 11-14-66; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0310, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0155

Penalty to Worker for Untimely Processing

(1) Under ORS 656.262(11), the director may require the insurer to pay an additional amount to the worker as a penalty when the insurer

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unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim.

(2) Requests for penalties under this section must be in writing, stating what benefits have been delayed or remain unpaid, and mailed or delivered to the division within 180 days of the alleged violation.

(3) For the purpose of this section, "violation" is either:

(a) A late payment or the nonpayment of any single payment due, in which case a request for penalty must be mailed or delivered to the director within 180 days of the date payment was due; or

(b) A continuous nonpayment or underpayment such as with yearly cost of living increases for temporary disability compensation. In these instances, a request for penalty must be mailed or delivered to the director within 180 days of the date of the last underpayment. All prior underpayments will be considered as one violation, regardless of when the first underpayment occurred.

(4) When notified by the director that additional amounts may be due the worker as a penalty under this rule, the insurer must respond in writing to the division. The response must be mailed or delivered to the division within 21 days of the date of the division's inquiry letter, with copies of the response, including any attachments, sent simultaneously to the worker and the worker's attorney (if represented). If an insurer fails to respond or provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), assessment of a civil penalty may occur under OAR 436-060-0200. In addition, failure to provide copies of the response to the worker and/or attorney timely may result in the assessment of a \$50.00 civil penalty under OAR 436-060-0200.

(5) When no written reason for delay is provided by the insurer as required in section (4) and no reason for the delay is evident from the worker's or division's records, the delay shall be considered unreasonable, unless the worker has provided insufficient information to assess a penalty. In such cases, a civil penalty may be assessed under OAR 436-060-0200.

(6) The director will only consider a penalty issue where the assessment and payment of additional amounts described in ORS 656.262(11) is the sole issue of any proceeding between the parties. If a proceeding on any other issue is initiated before the Hearings Division of the Workers' Compensation Board between the same parties prior to the director issuing an order under this section, and the director is made aware of the proceeding, jurisdiction over the penalty proceeding before the director shall immediately rest with the Hearings Division and result in referral of the proceedings to the Hearings Division. If the director has not been made aware of the proceeding before the Hearings Division and issues a penalty order which becomes final, the penalty of the director will stand.

(7) The director will use the matrix attached to these rules in **Appendix "B"** in assessing penalties. When there are no "amounts then due" upon which to assess a penalty, no penalty will be issued under this rule.

(8) Penalties ordered under this rule must be paid to the worker no later than the 30th day after the date of the order, unless the order is appealed. If the order is appealed and later upheld, the penalty will be due within 14 days of the date the order upholding the penalty becomes final. Failure to pay penalties in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(9) Disputes regarding unreasonable delay or unreasonable refusal to pay compensation, or unreasonable delay in acceptance or denial of a claim may be resolved by the parties. In cases where the parties wish to resolve such disputes and the assessment and payment of additional amounts described in ORS 656.262(11) is the sole issue of a proceeding between the parties, and the violation(s) occurred within the last 180 days in accordance with section (3), then a stipulation must be submitted to the division for approval. The stipulation must specify:

(a) The benefits delayed and the amounts;

(b) The time period(s) involved;

(c) If applicable, the name of the medical provider(s) and the date(s) of service(s) relating to medical bills; and

(d) The amount of the penalty not to exceed 25 percent of the amount of compensation delayed.

(10) Payment of the penalty is due within 14 days after the date the division approves the stipulation, unless otherwise stated in the stipulation. Failure to pay penalties in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(11) Any other agreements between the parties to pay a penalty without benefit of a stipulation approved by the division will not be acknowledged as a violation as it applies to the matrix attached to these rules.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.262(11), 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.262(11), 656.704 & 656.726(4)

Hist.: WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02;

WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0180

Designation and Responsibility of a Paying Agent

(1) For the purpose of this rule:

(a) "Compensable injury" means an accidental injury or damage to a prosthetic appliance, or an occupational disease arising out of and in the course of employment with any Oregon employer, and which requires medical services or results in disability or death.

(b) "Exposure" means a specific incident or period during which a compensable injury may have occurred.

(c) "Responsibility" means liability under the law for the acceptance and processing of a compensable claim.

(2) The division will designate by order which insurer must pay a claim if the employers and insurers admit that the claim is otherwise compensable, and where there is an issue regarding:

(a) Which subject employer is the true employer of a worker;

(b) Which of more than one insurer of a certain employer is responsible for payment of compensation to a worker;

(c) Which of two or more employers or their insurers is responsible for paying compensation for one or more on-the-job injuries and/or occupational diseases; or

(d) Which of two or more employers is responsible when there is joint employment.

(3) With the consent of the Workers' Compensation Board, Own Motion claims are subject to the provisions of this rule.

(4) Upon learning of any of the situations described in section (2), the insurer must expedite the processing of the claim by immediately investigating the claim to determine responsibility and whether the claim is otherwise compensable. For the purposes of this rule, insurers identified in a potential responsibility dispute under ORS 656.307 must, upon request, share claim related medical reports and other information without charge pertinent to the injury in order to expedite claim processing. The act of the worker applying for compensation benefits from any employer identified as a party to a responsibility dispute shall constitute authorization for the involved insurers to share the pertinent information in accordance with the criteria and restrictions provided in OAR 436-060-0017 and 436-010-0240. No insurer who shares information in accordance with this rule shall bear any legal liability for disclosure of such information.

(5) Upon learning of any of the situations described in section (2), the insurer must immediately notify any other affected insurers of the situation. Such notice must identify the compensable injury and include a copy of all medical reports and other information pertinent to the injury. The notice must identify each period of exposure which the insurer believes responsible for the compensable injury by the following:

(a) Name of employer;

(b) Name of insurer;

(c) Specific date of injury or period of exposure; and

(d) Claim number, if assigned.

(6) Upon deciding that the responsibility for an otherwise compensable injury cannot be determined, the insurer must request designation of a paying agent by writing to the division and sending a copy of the request to the worker and the worker's representative, if any. The request shall not be contained in or attached to any form or report the insurer is required to submit under OAR 436-060-0010 or in the denial letter to the worker required by OAR 436-060-0140. Such a request, or agreement to designation of a paying agent, is not an admission that the injury is compensably related to that insurer's claim; it is solely an assertion that the injury is compensable against a subject Oregon employer. The insurer's written request to the division must contain the following information:

(a) Identification of the compensable injury(s);

(b) That the insurer is requesting designation of a paying agent under ORS 656.307;

(c) That the insurer acknowledges the injury is otherwise compensable;

(d) That responsibility is the only issue;

(e) Identification of the specific claims or exposures involved by

(A) Employer;

(B) Insurer;

(C) Date of injury or specific period of exposure; and

(D) Claim number, if assigned;

(f) Acknowledgment that medical reports and other material pertinent to the injury have been provided to the other parties; and

(g) Confirmation the worker has been advised of the actions being taken on the worker's claim.

(7) The division will not designate a paying agent where there remains an issue of whether the injury is compensable against a subject

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Oregon employer, or if the 60 day appeal period of a denial has expired without a request for hearing being received by the Board or the division receiving a request for a designation of paying agent order, or if an insurer included in the question of responsibility opposes designation of a paying agent because it has received no claim.

(8) When notified by the division that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurer must provide written clarification to the division, the worker, insurers involved and other interested parties within 21 days of the date of the notification. If an insurer fails to respond timely or provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), a civil penalty will be assessed under OAR 436-060-0200.

(9) Insurers receiving notice from the division of a worker's request for designation of a paying agent must immediately process the request in accordance with sections (4) through (6).

(10) Upon receipt of written acknowledgment from the insurers that the only issue is responsibility for an otherwise compensable injury claim, the division will issue an order designating a paying agent under ORS 656.307. The division will designate the insurer with the lowest compensation considering the following factors:

(a) The claim with the lowest temporary total disability rate.

(b) If the temporary total disability rates and the rates per degree of permanent disability are the same, the earliest claim.

(c) If there is no temporary disability or the temporary total disability rates are the same, but the rates per degree of permanent disability are different, the claim with the lowest rate per degree of permanent disability.

(d) If one or more claims have disposed of benefits in accordance with ORS 656.236(1), the claim providing the lowest compensation not released by the claim disposition agreement.

(e) If one claim is under "Own Motion" jurisdiction, the Own Motion claim even if not the claim with the lowest temporary total disability rate.

(f) If more than one claim is under "Own Motion" jurisdiction, the Own Motion claim with the lowest temporary total disability rate.

(11) By copy of its order, the division will refer the matter to the Workers' Compensation Board to set a proceeding under ORS 656.307 to determine which insurer is responsible for paying benefits to the worker.

(12) The designated paying agent must process the claim as an accepted claim through claim closure under OAR 436-030-0015(9) unless relieved of the responsibility by an order of the Administrative Law Judge or resolution through mediation or arbitration under ORS 656.307(6). The parties to an order under this section shall not settle any part of a claim under ORS 656.236 or 656.289, except to resolve the issue of responsibility, unless prior approval and agreement is obtained from all potential responsible insurers. Resolution of a dispute by mediation or arbitration by a private party cannot obligate the Consumer and Business Services Fund without the prior approval of the director. The Consumer and Business Services Fund shall not be obligated when one party declines to participate in a legitimate settlement conference under an ORS 656.307 order. Compensation paid under the order must include all benefits, including medical services, provided for a compensable injury to a subject worker or the worker's beneficiaries. The payment of temporary disability due must be for periods subsequent to periods of disability already paid by any insurer.

(13) After a paying agent is designated, if any of the insurers determine compensability is or will be an issue at hearing, they must notify the division. Any insurer must notify the division and all parties to the order of any change in claim acceptance status after the designation of a paying agent. When the division receives notification of a change in the acceptance of a claim or notification that compensability is an issue after designation of a paying agent, the division shall order termination of any further benefits due from the original order designating a paying agent.

Stat. Auth.: ORS 656.307, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.307, 656.308, 656.704 & 656.726(4)

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 5-1980(Admin)(Temp), f. & ef. 4-29-80; WCD 7-1980(Admin), f. 9-5-80, ef. 10-1-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0332, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0190

Monetary Adjustments Among Parties and Department of Consumer and Business Services

(1) An order of the director under ORS 656.307 and OAR 436-060-0180 applies only to the period prior to the order of the Administrative Law Judge determining the responsible paying party. Payment of compensation made thereafter shall not be recovered from the Consumer and Business

Services Fund, unless the director concludes payment was made before the Administrative Law Judge's order was received by the paying agent designated under OAR 436-060-0180. Any monetary adjustment necessary after the Administrative Law Judge's order shall be handled under OAR 436-060-0195.

(2) When all litigation on the issue of responsibility is final, the insurer ultimately held to be responsible must, prior to paying any compensation, contact any nonresponsible insurer to learn what compensation has already been paid. When contacted by the responsible insurer, the nonresponsible insurer must provide the requested information necessary for the responsible insurer to make a timely payment to the worker, medical providers or others, but in any case no later than 20 days after the date of the notification. Failure to respond to the responsible insurer's inquiry in a timely manner may result in non-reimbursement otherwise due from the responsible insurer or from the Consumer and Business Services Fund.

(3) The responsible insurer must reimburse any nonresponsible insurers for compensation the nonresponsible insurer paid which the responsible insurer is responsible for, but has not already paid within 30 days of receiving sufficient information to adequately determine the benefits paid and the relationship to the condition(s) involved. Any balance remaining due the worker, medical providers or others must be paid in a timely manner under OAR 436-009 and 436-060-0150. Payment of compensation which results in duplicate payment to the worker, medical providers or others as a result of failing to contact the nonresponsible insurer shall not release the responsible insurer from the requirement to reimburse any nonresponsible insurers for its costs.

(4) The division shall direct any necessary monetary adjustment between the parties involved which is not otherwise ordered by the Administrative Law Judge or voluntarily resolved by the parties, but shall not order an insurer to pay compensation over and beyond that required by law, as it relates to the insurer's claim, except in the situation described in section (3). Failure to make monetary adjustments within 30 days of an order by the division will subject the insurer to civil penalties under OAR 436-060-0200. Only compensation paid as a result of an order by the director under OAR 436-060-0180 and consistent with this rule shall be recoverable from the Consumer and Business Services Fund when such compensation is not reimbursed to the nonresponsible insurer by the responsible insurer.

(5) When the division determines improper or untimely claim processing by the designated paying agent has resulted in unnecessary costs, the division may deny reimbursement from the responsible insurer and the Consumer and Business Services Fund.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.307(3), 656.704 & 656.726(4)

Hist.: WCB 5-1970, f. 6-3-70, ef. 6-25-70; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 5-1980(Admin)(Temp), f. & ef. 4-29-80; WCD 7-1980(Admin), f. 9-5-80, ef. 10-1-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0334, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0200

Assessment of Civil Penalties

(1) The director through the division and under ORS 656.745 shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

(2) A penalty under section (1) will only be assessed after all litigation on the matter has become final by operation of the law. For the purpose of section (1):

(a) "Intentionally" means the employer or insurer acted with a conscious objective to cause any result described in ORS 656.745(1) or to engage in the conduct so described in that section; and

(b) "Repeatedly" means more than once in any twelve month period.

(3) Under ORS 656.745, the director may assess a civil penalty against an employer or insurer who fails to comply with rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(4) An employer or insurer failing to meet the time frame requirements set forth in OAR 436-060-0010, 436-060-0017, 436-060-0018, 436-060-0030, 436-060-0060, 436-060-0147, 436-060-0155 and 436-060-0180 may be assessed a civil penalty up to \$2,000.

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(5) An insurer who willfully violates OAR 436-060-0160 shall be assessed a civil penalty of up to \$2,000.

(6) An insurer that does not accurately report timeliness of first payment information to the division may be assessed a civil penalty of \$500 for reporting inaccurate information plus \$50 for each violation, or \$10,000 in the aggregate for all violations within any three month period. For the purposes of this section, a violation consists of each situation where a first payment was reported to have been made timely, but was found upon audit to have actually been late.

(7) Notwithstanding section (3) of this rule, an employer or insurer who does not comply with the claims processing requirements of ORS chapter 656, and rules and orders of the director relating thereto may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period.

(8) Any employer or insurer which misrepresents themselves in any manner to obtain workers' compensation claims records from the director, or which uses such records in a manner contrary to these rules, is subject to a civil penalty of \$1,000 for each occurrence. In addition, the director may suspend or revoke an employer's or insurer's access to workers' compensation claims records for such time as the director may determine. Any other person determined to have misrepresented themselves or who uses records in a manner contrary to these rules shall have access to these records suspended or revoked for such time as the director may determine.

(9) For the purpose of section (7), statutory claims processing requirements include but are not limited to, ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331, and 656.335.

(10) In arriving at the amount of penalty, the division may consider, but is not limited to:

(a) The ratio of the volume of violations to the volume of claims reported, or

(b) The ratio of the volume of violations to the average volume of violations for all insurers or self-insured employers, and

(c) Prior performance in meeting the requirements outlined in this section.

(11) Insurer performance data is reviewed every quarter based on reports submitted by the insurer during the previous calendar quarter. Civil penalties will be issued for each of the performance areas where the percentages fall below the acceptable standards of performance as set forth in these rules. The standard for reporting claims to the division will allow insurers to report claims by filing a Form 1502 accompanied by a Form 827 where the Form 801 is not available. Penalties will be issued in accordance with the matrix set forth in **Appendix "C."**

(12) Under ORS 656.262(13), an injured worker's attorney that is not willing or available to participate in an interview at a time reasonably chosen by the insurer within 14 days of the request for interview may be assessed a civil penalty not to exceed \$1,000 if the director finds the attorney's actions unreasonable.

[ED. NOTE: Appendices & Forms referenced are available from the agency.]
Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331, 656.335, 656.704, 656.726(4) & 656.745
Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0981, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 3-1991, f. 4-18-91, cert. ef. 6-1-91; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0500

Reimbursement of Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) When an insurer elects to pay supplemental disability due a worker with multiple jobs at the time of injury, reimbursement of the supplemental amount shall be made by the director quarterly, after receipt and approval of documentation of compensation paid by the insurer or the third party administrator. The director will reimburse the insurer, in care of a third party administrator, if applicable.

(2) Requests for reimbursement must be submitted on Form 3504, "Supplemental Disability Benefits Quarterly Reimbursement Request," and must include, but may not be limited to:

(a) Identification and address of the insurer responsible for processing the claim;

(b) The worker's name, WCD file number, date of injury, social security number, and the insurer claim number;

(c) Whether the claim is disabling or nondisabling;

(d) The primary and secondary employer's legal names;

(e) The primary and secondary employer's WCD registration numbers;

(f) The weekly wage of all jobs at the time of the injury separated by employer;

(g) The dates for the period(s) of supplemental disability due and payable to the worker. Dates must be inclusive (e.g., 1-16-02 through 1-26-02);

(h) The amount of supplemental disability paid for the periods in (2)(g);

(i) The quarter and year in which the payment was made;

(j) A signed payment certification statement verifying the payments; and

(k) Any other information required by the director.

(3) In addition to the supplemental disability reimbursement, the division shall calculate and the insurer shall be paid an administrative fee based on the annual claim processing administrative cost factor, as published in Bulletin 316.

(4) Periodically the division will audit the physical file of the insurer responsible for processing the claim to validate the amount reimbursed. Reimbursement will be disallowed and repayment will be required if, upon such audit, it is found:

(a) Payments exceeded statutory amounts due, excluding reasonable overpayments, as determined by the division;

(b) Compensation has been paid as a result of untimely or inaccurate claims processing; or

(c) Payments of compensation have not been documented, as required by OAR 436-050.

(5) Supplemental disability benefits due subject workers of an employer who is in a noncomplying status as defined in ORS 656.052 are not eligible for separate reimbursement under this rule, but remain a cost recoverable from the employer as provided by ORS 656.054(3).

(6) Claim Dispositions or Stipulated Settlements, under ORS 656.236 or 656.289 which include amounts for supplemental disability benefits due to multiple jobs, are not eligible to receive reimbursement from the Workers' Benefit Fund unless made with the prior written approval of the director.

(a) Requests for written approval of proposed dispositions must include:

(A) A copy of the proposed disposition or settlement which specifies the amount of the proposed contribution to be made from the Workers' Benefit Fund;

(B) A statement from the insurer indicating how the amount of the contribution was calculated; and

(C) Any other information required by the director.

(b) The director will not approve the disposition for reimbursement if the proposed contribution exceeds a reasonable projection of that claim's future liability to the Workers' Benefit Fund.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.704, 656.726(4) & Sec. 3(5)(a), Ch. 865, OL 2001

Stats. Implemented: ORS 656.210, 656.704 & 656.726(4)

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-060-0510

Reimbursement of Permanent Total Disability Benefits from the Workers' Benefit Fund

(1) The insurer may request reimbursement of permanent total disability benefits paid after the date of the notice of closure under ORS 656.206(6)(a) (Oregon Laws 2005, chapter 461; section 1).

(2) Requests for reimbursement must be filed within one year of the date of the final order upholding the notice of closure and include:

(a) Sufficient information to identify the insurer and the injured worker;

(b) The net dollar amount of permanent total disability benefits paid ("Net dollar amount" means the total compensation paid less any recoveries, including, but not limited to, third party recovery or amounts reimbursable from the Retroactive Program or Reopened Claims Program.); and

(c) A statement certifying that payment has been made.

(3) If any of the monies are due under the Retroactive Program or Reopened Claims Program, any reimbursement request must be submitted under OAR 436-075 or 436-045, respectively.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.206, 656.605, OL 2005 Ch. 461, Sec. 1

Hist.: WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

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436-105-0500

Insurer Participation in the Employer-At-Injury Program

(1) An insurer shall be an active participant in providing reemployment assistance with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

(2) The insurer shall notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice shall be issued:

(a) Upon acceptance or reopening of a non-disabling or disabling claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance shall contain the following language:

(a) The notice to the worker shall appear in bold type as follows:

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact (insurer name and phone number).

(b) The notice to the employer-at-injury shall appear in bold type as follows:

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call (insurer name and phone number).

(4) The insurer shall administer the Employer-at-Injury Program according to these rules. The insurer shall assist an employer to:

(a) Obtain a qualifying medical release, pursuant to section (6) of this rule, from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer Wage Subsidy requests specified in OAR 436-105-0520(1);

(d) Make Worksite Modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program Purchases as specified in OAR 436-105-0520(3); and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) The insurer may use the Employer-at-Injury Program upon establishing the worker and employer meet the eligibility criteria stated in OAR 436-105-0510(1) and (2).

(6) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must be dated and related to the accepted conditions of the claim. The date the medical release is issued by the worker's medical service provider is considered the effective date if an effective date is not otherwise specified;

(b) Two types of medical release qualify under these rules:

(A) A medical release that states the worker's specific restrictions; or

(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work;

(c) A medical release must cover any period of time for which benefits are requested, except as provided in subsection (e) of this section;

(d) A medical release with no specific end date expires in 30 days, except medical releases that indicate the restrictions are permanent;

(e) A medical release with a specific end date or follow-up medical appointment date expires on the end date, or the follow-up appointment date, unless, within 14 days of the specific end date or missed appointment, the medical service provider provides a new medical release or a signed and dated statement that the previous medical release is still in effect;

(f) If the worker's medical service provider refers the worker to another medical service provider for treatment, restrictions specified in the medical release in effect at the time of the referral will not expire until the worker obtains a continued or updated medical release from the attending physician, authorized nurse practitioner, or primary care physician with a managed care organization, except:

(A) The insurer may accept updated restrictions and releases from the medical service provider to whom the worker is referred except for a release to regular work, and

(B) If the worker does not obtain a continued or updated medical release from the attending physician, authorized nurse practitioner, or primary care physician with a managed care organization within 30 days from the last referral appointment, the medical release will expire on the date of the last treatment with the referral medical service provider.

(g) An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request.

(7) The insurer shall maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program Reimbursement Request. The division may request additional information from the insurer in order to perform and complete an audit. The insurer shall maintain the following information at the authorized claim processing location(s) for future audit by the division:

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the Wage Subsidy period as follows:

(A) Payroll records shall state the payroll period, wage rate(s), and the worker's gross wages for the Wage Subsidy period. The payroll record must also include the dates and hours worked each day if the worker has hourly restrictions;

(B) Insurers and employers may supplement payroll records with documentation of how the worker's earnings were calculated for the Wage Subsidy. Supplemental documentation may be used to determine a worker's work schedule, wages earned on a particular day, dates of paid leave, or to clarify any other necessary information not fully explained by the payroll record;

(C) If neither the payroll record(s) nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:

(i) Divide the gross wages by the number of days in the payroll period for the daily rate; and

(ii) Multiply the daily rate by the number of eligible days; and

(D) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work shall be provided for those days.

(d) A legible copy of invoices, proof of payment, and proof of the delivery date of the item(s) for Worksite Modification purchases and Employer-at-Injury Program Purchases;

(e) Written justification for Worksite Modification as specified in OAR 436-105-0520(2);

(f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties;

(g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services, if applicable;

(h) The written acceptance by the worker when skills building is used as transitional work; and

(i) Documentation, including course title, curriculum and accreditation for skills building used for transitional work when Employer-at Injury Program Purchases are requested.

(8) The insurer may end the Employer-At-Injury Program at any time while the worker's claim is open. The insurer shall end the Employer-At-Injury Program when the worker or employer meet any of the end of eligibility criteria listed in OAR 436-105-0510(3).

Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)

Stats. Implemented: ORS 656.340 & 656.622

Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0002

Purpose of Rules

(1) These rules explain what assistance and reimbursements are available from the Preferred Worker Program, who is qualified, and how to receive assistance and reimbursements.

(2) The Preferred Worker Program encourages the reemployment of workers whose on-the-job injuries result in disability which may be a substantial obstacle to employment by providing assistance from the Workers' Benefit Fund to eligible injured workers and to the employers who employ them.

(3) The Preferred Worker Program is a worker and employer-at-injury-activated program.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0041, 436-110-0042 & 436-110-0045; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0005

Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(3) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(4) "Disability" means permanent physical or mental restriction(s) or limitation(s) caused by an accepted disabling Oregon workers' compensation claim which limits the worker from performing one or more of the worker's regular job duties.

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Division approval" means a Preferred Worker agreement signed by an authorized division representative.

(7) "Employer at injury" means the organization in whose employ the worker sustained the injury or occupational disease.

(8) "Exceptional disability" means a disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury which results in impairment equal to or greater than a Class III as defined in OAR 436-035. The division shall determine whether a worker has an exceptional disability based upon the combined effects of all of the worker's Oregon compensable injuries resulting in permanent disability.

(9) "Fund" means the Workers' Benefit Fund.

(10) "Hire date" means the date the worker started work for the employer in the employment for which benefits are requested if the request for Preferred Worker Program assistance is sent to the division prior to or within 30 calendar days after the start-work date. In calculating the 30-day period under this section, the hire date is not included, and if the 30th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 30-day period. The hire date is 12:01 AM the day following the request if the request is sent to the division more than 30 days after the start-work date.

(11) "Premium" means premium which results from a calculation which takes payroll multiplied by applicable rates of the employer's individual insurer multiplied by the employer's experience rating modification less any discounts, assessments, surcharges, or taxes.

(12) "Regular employment" means the employment the worker held at the time of the injury, claim for aggravation, or own motion opening under ORS 656.278. Regular employment which has been substantially modified as described in OAR 436-110-0380 is not regular employment for purposes of the Preferred Worker Program.

(13) "Reimbursable wages" means the money rate paid a worker for services performed including paid leave, overtime, commission, and reasonable value of board, rent, housing, lodging, and similar advantage received from the employer, as determined by the division in accordance with OAR 436-060. Bonus pay shall be considered reimbursable only when provided as part of the written or verbal employment contract as a means to increase the worker's wages. End-of-the-year and other one-time bonuses paid at the employer's discretion, and safety bonuses, are not reimbursable. Wages do not include tips, discretionary bonuses, paid leave cash-outs, employee insurance or benefits programs, employee discounts, or other forms of remuneration not included as part of the worker's gross wages. Benefits paid as wages or cash, even if reported as part of a worker's gross wages, are not subject to reimbursement.

(14) "Start-work date" means the date the worker started work for the employer in the employment for which benefits are requested.

(15) "Worksite" means a primary work area which is in Oregon, already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's, worker's, or worker leasing company's client's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A worksite may include a worker's personal property or vehicle if required

to perform the job. If the "worksite" is mobile, it must be available in Oregon for inspection and modification.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0010, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0310

Eligibility and End of Eligibility for the Preferred Worker Program

(1) The eligibility requirements for an employer, except as provided in OAR 436-110-0345(1) for Obtained Employment Purchases, are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage;

(b) The employer complies with the Oregon Workers' Compensation Law;

(c) The employer must offer or provide employment to an eligible Preferred Worker who is a subject Oregon worker according to ORS 656.027;

(d) If the employer is a worker leasing company, it must be licensed with the division; and

(e) The employer is not currently ineligible for Preferred Worker benefits under OAR 436-110-0900.

(2) The eligibility requirements for a worker are:

(a) The worker has an accepted disabling Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify;

(b) Because of injury-caused limitations, medical evidence indicates the worker will not be able to return to regular employment as defined in OAR 436-110-0005 under the most recent disabling claim or claim opening. If the worker is not eligible under the most recent disabling claim or claim opening, eligibility may be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from return to regular employment. If the worker was previously found eligible under that claim, the worker will not be eligible again on that claim closure. Subsequent eligibility determination will be based on claim openings that occur after the date that the most recent Preferred Worker Identification Card is issued;

(c) Medical documentation indicates permanent disability exists as a result of the injury or disease, whether or not an order has been issued awarding permanent disability; and

(d) The worker is authorized to work in the United States.

(3) A worker may not use Preferred Worker benefits for self-employment unless the injury which gave rise to the worker's eligibility for the Preferred Worker Program occurred in the course and scope of self-employment. In that case, the worker may use the benefits to return to the same self-employment or for employment other than self-employment.

(4) A worker or employer-at-injury may not use Preferred Worker benefits, except Worksite Modification, for regular employment or substantially similar employment except as specified in OAR 436-110-0380.

(5) Reasons for ending Preferred Worker Program eligibility include, but are not limited to, the following:

(a) Misrepresentation or omission of information by a worker or employer to obtain assistance;

(b) Failure of a worker or employer to provide requested information or cooperate;

(c) Falsification or alteration of a Preferred Worker card or a Preferred Worker Program Agreement;

(d) Conviction of fraud in obtaining workers' compensation benefits;

(e) The worker no longer meets the eligibility requirements under section (2) of this rule;

(f) The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0900;

(g) The employer does not maintain Oregon workers' compensation insurance coverage, except as provided in OAR 436-110-0345(1) for Obtained Employment Purchases;

(h) The current Preferred Worker Identification Card expires without being activated, with the following exception. If the worker's card expired and the worker's job modification is determined to be "substantial" under OAR 436-110-0380, the worker can activate Premium Exemption within 30 calendar days from the date the division determines the modification is "substantial," unless any of subsections (a) through (f) apply; or

(i) The current Preferred Worker Eligibility Card expires, with the following exception. When Premium Exemption has expired and the worker's

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job modification is determined to be “substantial” under OAR 436-110-0380, the worker will be eligible to request Wage Subsidy and Obtained Employment Purchases within 30 calendar days from the date the division determines the modification is “substantial,” unless any of subsections (a) through (f) apply.

(6) If there is an active Preferred Worker Program Agreement, the division will not end Preferred Worker Program eligibility until termination of the agreement if a Disputed Claim Settlement according to ORS 656.289 settles that portion of the claim from which eligibility arose or the claim is subsequently denied according to ORS 656.262. Under an employer-at-injury activated agreement Premium Exemption ends when the job ends, or three years from the effective date of Premium Exemption, whichever occurs first. Under a worker-activated agreement, Premium Exemption ends either at the expiration date shown on the Preferred Worker Eligibility Card or when the job ends, whichever occurs first. When this occurs, the division will issue written notification to the worker if the assistance was worker activated. The worker must notify all affected parties. If the job ends before the expiration date shown on the card, the Preferred Worker card must be surrendered to the division. If the assistance was employer activated, the division will issue written notification to the employer.

(7) The division retains the right to reinstate Preferred Worker Program eligibility if eligibility was ended prematurely or in error, or the employer has reinstated or obtained workers’ compensation insurance coverage.

(8) A worker found ineligible because he/she was not authorized to work in the United States may request a redetermination of eligibility after providing the division with documentation that he/she is authorized to work in the United States.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78, WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0020, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0020; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0280; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0326

Premium Exemption — Employer at Injury Activated

Premium Exemption is activated by the employer at injury as follows:

(1) In order to request Premium Exemption, the employer must send the division a completed and signed Employer at Injury, Premium Exemption and Wage Subsidy Agreement within the timelines allowed in OAR 436-110. The worker’s agreement in writing to accept the new or modified regular job must accompany the agreement or the request will not be accepted.

(2) When approved by the division, the effective date for Premium Exemption is the “hire date” as defined in OAR 436-110-0005.

(3) If Worksite Modification is needed for the worker to perform all the required job duties within the injury-caused restrictions, the employer at injury is not eligible for Premium Exemption until all modifications are in place and verified by a representative of the division. The date of the verification will be considered the date the worker started work for the employer in employment for which benefits are requested.

(a) If the date of the verification done by the division is more than 150 days after the worker’s claim closure, the employer at injury will have 30 days to send the completed and signed agreement to the division; and

(b) If the worker returns to regular or substantially similar employment, the job for which Premium Exemption is requested must meet “substantial modification” criteria as determined by the division in accordance with OAR 436-110-0380.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0327

Premium Exemption — Worker Activated

Premium Exemption is activated by the worker as follows:

(1) When an eligible Preferred Worker issued a Preferred Worker Identification Card accepts employment with Premium Exemption requested, the worker and employer must complete the Preferred Worker Identification Card and send it to the division within three years of the start-work date. Upon approval by the division the effective date will be the hire date as defined in OAR 436-110-0005.

(2) If the worker returns to regular or substantially similar employment, the job for which Premium Exemption is requested must meet “sub-

stantial modification” criteria as determined by the division in accordance with OAR 436-110-0380 before Premium Exemption can be activated.

(3) Upon approval of Premium Exemption, the division will issue the worker a Preferred Worker Eligibility Card that shows the Premium Exemption start and end dates.

(4) The worker may use a Preferred Worker Eligibility Card to obtain new employment and to provide subsequent employers with Premium Exemption for the remainder of the three-year Premium Exemption period.

(5) Employers who subsequently employ a Preferred Worker must photocopy the Preferred Worker Eligibility Card as evidence of Premium Exemption, return the card to the worker, and distribute copies as follows:

(a) Send one copy to its insurer as notice that a Preferred Worker is employed using Premium Exemption; and

(b) Keep one copy on file.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0335

Wage Subsidy General Provisions

Wage Subsidy provides an employer with partial reimbursement of a worker’s gross wages for a specified period. Wage Subsidy benefits are subject to the following conditions:

(1) Premium exemption must be activated to use Wage Subsidy, unless OAR 436-110-0310(5)(i) applies;

(2) A Wage Subsidy is limited to a duration of 183 calendar days and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability as defined in OAR 436-110-0005. For a worker with an exceptional disability, the Wage Subsidy duration is limited to 365 calendar days and a monthly reimbursement rate of 75 percent;

(3) A Wage Subsidy Agreement may be interrupted once for reasonable cause and extended to complete the Wage Subsidy Agreement on a whole workday basis. Reasonable cause includes, but is not limited to, personal or family illness, death in the worker’s family, pregnancy of the worker or worker’s spouse, a compensable injury to the worker, participation in an Employer-at-Injury Program, or layoff. A layoff must be a minimum of 10 consecutive work days. A period of time during which the employer is without workers’ compensation insurance coverage is not “reasonable cause,” and no extension will be granted;

(4) A Preferred Worker’s pay structure must be the same as the pay structure for other workers employed in similar jobs by the employer;

(5) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by the following method:

(a) First, examine the wages paid by the employer for other workers doing the same job;

(b) If no other workers are doing the same job, a labor market survey of the local labor market may be conducted; and

(c) If the labor market survey does not support the wage rate requested, the division will determine the wage subject to reimbursement;

(6) Preferred Worker Program Wage Subsidies may not be combined with subsidies from other sources, and a worker-activated and employer at injury-activated wage subsidy can not be used for the same job with the employer at injury;

(7) If the worker’s employer changes during the Wage Subsidy Agreement period due to a sale of the business, incorporation, or merger, the agreement can be transferred to the new employer by an addendum to the agreement approved by the division as long as the worker’s job remains the same and the new employer is eligible under OAR 436-110-0310;

(8) Upon approval of the Wage Subsidy Agreement, the division will send a copy of the agreement to the worker if it is worker activated, and will always send a copy of the agreement with a Wage Subsidy Reimbursement Request form to the employer;

(9) If the division does not approve the Wage Subsidy Agreement, the division will notify the party who made the request, in writing. Such notice will give the basis for the decision, the applicable rule(s), and the appeal rights as given in OAR 436-110-0007;

(10) The employer may request reimbursement of wages paid to the worker, based on the amount agreed to on the Wage Subsidy Agreement form or the amount paid to the worker, whichever is less. An employer may request reimbursement, interruption, or extension of a Wage Subsidy for a part of a day the worker worked, but the part of the day reimbursed or interrupted will be counted as a whole workday toward the total duration of the Wage Subsidy;

(11) Requests for reimbursement must not be submitted more frequently than once every two weeks. A completed and signed Wage Subsidy Reimbursement Request form must be submitted to the division with a copy of the worker’s payroll records. The payroll record must state the dates (daily or weekly), hours, wage rate, and the worker’s gross wage.

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Payroll records must be a legible copy and compiled in accordance with generally accepted accounting procedures; and

(12) All requests for reimbursement must be made within one year of the Wage Subsidy Agreement termination date.

[ED. NOTE: Forms referenced available from the agency.]

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0337

Wage Subsidy — Worker Activated

A Wage Subsidy may be requested by a worker and employer and the employer reimbursed as follows:

(1) The worker must be eligible for Wage Subsidy on the hire date.

(2) A Wage Subsidy Agreement must be completed and signed by the worker and employer and submitted to the division within three years of the start-work date.

(3) When approved by the division, the effective date for the Wage Subsidy is the "hire date" as defined in OAR 436-110-0005.

(4) Except as otherwise provided in these rules, a Preferred Worker may use Wage Subsidy twice during an eligibility period, once with one employer and once with a different employer. If the employer at injury uses Wage Subsidy for a job, the worker cannot use Wage Subsidy for the same job.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-110-0345

Obtained Employment Purchases — General Provisions

(1) An Obtained Employment Purchase is assistance necessary for a worker to accept a job or to continue employment within three years of the start-work date. If the employer pays for the same assistance for other workers performing the same job, it does not qualify as an Obtained Employment Purchase. These purchases may be provided for a job with a non-subject employer in Oregon, as long as that employer complies with the appropriate workers' compensation law. All purchases become the worker's property upon employment in the job for which they are required.

(2) Obtained Employment Purchases are limited to:

(a) Tuition, books, and fees for instruction provided by an educational entity accredited or licensed by an appropriate body in order to update existing skills or to meet the requirements of an obtained job. Maximum reimbursement is \$1000;

(b) Temporary lodging, meals, and mileage to attend instruction when overnight travel is required. The cost of meals, lodging, public transportation, and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in Bulletin 112. Lodging, meals, and mileage are limited to a combined period of one month, and the total maximum reimbursement is \$500;

(c) Tools and equipment mandatory for employment, such as starter sets. Purchases shall not include items the worker possesses, duplicate Worksite Modification items, or vehicles. Maximum reimbursement is \$2,000;

(d) Clothing required for the job, not including clothing the worker already possesses. Clothing does not include accessories such as jewelry, scarves, wallets, purses, or other items which are not basic clothing. Maximum reimbursement is \$400;

(e) Moving expenses for a job if the new worksite is in Oregon and more than 50 miles from the worker's primary residence. When the worker's permanent disability from the injury precludes the worker from commuting the required distance, moving expenses may be provided to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening. Moving expenses are limited to one use per eligibility. Reimbursement is limited to:

(A) The cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker. The cost of meals, lodging, public transportation, and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in Bulletin 112. Reimbursement

of lodging and meals are limited to a maximum period of two weeks. Reimbursement of mileage for one personal vehicle is limited to a single one-way trip; and

(B) Rental allowance for the worker's primary residence limited to first month's rent as specified in the rental agreement, non-refundable deposit in an amount not to exceed the first month's rent, and a required credit check for that residence;

(f) Initiation fees, or back dues and one month's current dues, required by a labor union; and

(g) Occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job. Maximum reimbursement is \$500.

(3) Upon division approval, the division will send a copy of the agreement and, if applicable, a completed Authorization for Payment form or other instrument of payment.

(4) A worker, employer, vocational assistance provider, or insurer may request reimbursement by submitting to the division a legible copy of an invoice or receipt showing payment has been made for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid.

(5) If the division does not approve the Obtained Employment Purchase, the division will notify the party who requested the assistance in writing. Such notice will give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(6) Costs of Obtained Employment Purchases may be paid by reimbursement, by an Authorization for Payment, or by other instrument of payment approved by the director.

(7) The division will not purchase directly or otherwise assume responsibility for Obtained Employment Purchases.

(8) Reimbursed costs will not be charged by the insurer to the employer as claim costs or by any other means.

(9) All requests for reimbursement must be made within one year of the Obtained Employment Purchase Agreement end date.

(10) Once the division provides an Obtained Employment Purchase item, the division will not replace that item unless the item was stolen, or destroyed by nature or an act of God, or in the case of clothing for new employment, the clothing previously provided is no longer usable. The loss must be uninsured and the division may require a police report to verify the loss.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-120-0003

Applicability of Rules

(1) These rules govern vocational assistance pursuant to the Workers' Compensation Law on or after the effective date of these rules except as OAR 436-120 otherwise provides.

(2) The director's decisions under OAR 436-120-0008 regarding eligibility will be based on the rules in effect on the date the insurer issued the notice. The director's decisions regarding the nature and extent of assistance will be based on the rules in effect at the time the assistance was provided. If the director orders future assistance, such assistance shall be provided in accordance with the rules in effect at the time assistance is provided.

(3) Under these rules a claim for aggravation or reopening a claim to process a newly accepted condition will be considered a new claim for purposes of vocational assistance eligibility and vocational assistance, except as otherwise provided in these rules.

(4) Under ORS 656.206, when a worker receiving permanent total disability, incurs a new compensable injury, the worker is not entitled to vocational assistance.

(5) The requirement for the director's advance approval of services eligible for claims cost reimbursement pursuant to OAR 436-120-0720(7) shall apply to any actions taken after the effective date of these rules.

ADMINISTRATIVE RULES

(6) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive procedural rules as justice so requires.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.283(2) & 656.340
Hist.: WCB 1-1976, f. 3-29-76, ef. 4-1-76; WCD 3-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 1-1978(Admin), f. & ef. 2-1-78; WCD 6-1980(Admin), f. 5-22-80, ef. 6-1-80; WCD 4-1981(Admin), f. 12-4-81, ef. 1-1-82; WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0004, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-120-0008

Administrative Review and Contested Cases

(1) Administrative review of vocational assistance matters: Under ORS 656.283(2) and 656.340(4), a worker wanting review of any vocational assistance matter must apply to the director for administrative review. Also, under ORS 656.340(11) and OAR 436-120-0320(11) when the worker and insurer are unable to agree on a vocational assistance provider, the insurer shall apply to the director for administrative review. Because effective vocational assistance is best realized in a nonadversarial environment, the first objective of the administrative review is to bring the parties to resolution through alternative dispute resolution procedures, including mediation conferences, whenever possible and appropriate. When a dispute is not resolved through mutual agreement or dismissal, the director shall close the record and issue a Director's Review and Order as described in subsections (f) and (g) of this section. A worker need not be represented to request or to participate in the administrative review process, which is as follows:

(a) The worker's request for review must be mailed or otherwise communicated to the department no later than the 60th day after the date the worker received written notice of the insurer's action; or, if the worker was represented at the time of the notice, within 60 days of the date the worker's representative received actual notice. Issues raised by the worker where written notice was not provided may be reviewed at the director's discretion.

(b) The worker, insurer, employer at injury, and vocational assistance provider shall supply needed information, attend conferences and meetings, and participate in the administrative review process as required by the director. Upon the director's request, any party to the dispute shall provide available information within 14 days of the request. The insurer shall promptly schedule, pay for, and submit to the director any medical or vocational tests, consultations, or reports required by the director. The worker, insurer, employer at injury, or vocational assistance provider shall simultaneously send copies to the other parties to the dispute when sending material to the director. If necessary, the director will assist an unrepresented worker in sending copies to the appropriate parties. Failure to comply with this subsection may result in the following:

(A) If the worker fails to comply without reasonable cause, the director may dismiss the administrative review as described in subsection (d); or, the director may decide the issue on the basis of available information.

(B) If the insurer, vocational assistance provider, or employer at injury fails to comply without reasonable cause, the director may decide the issue on the basis of available information.

(c) At the director's discretion, the director may issue an order of deferral to temporarily suspend administrative review. The order of deferral will specify the conditions under which the review will be resumed.

(d) The director may issue an order of dismissal under appropriate conditions.

(e) The director shall issue a letter of agreement when the parties resolve a dispute within the scope of these rules. Any agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney. The agreement will become effective on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may reconsider approval of the agreement upon the director's own motion or upon a motion by a party. The director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) One or both parties fail to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the review.

(f) After the parties have had the opportunity to present evidence, and any meetings or conferences deemed necessary by the director have been held, the director shall issue a final order, including the notice of record contents. The parties will have 60 days from the mailing date of the order to request a hearing.

(g) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request for reconsideration must be mailed before the administrative order becomes final, or if appealed, before the proposed and final order is issued.

(h) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.

(i) Any party requesting reconsideration or responding to a reconsideration request shall simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(j) A request for reconsideration does not stay the 60-day time period within which the parties may request a hearing.

(2) Attorney fees: In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director will award an attorney fee to be paid by the insurer or self-insured employer as provided in ORS 656.385 (§2, ch. 756, OL 2003). The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration will be given to the results achieved and the time devoted to the case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed \$2000, nor fall outside the ranges for fees as provided in the following matrix:

Estimated Benefit Achieved — Professional Hours Devoted

***** — 1-2 hours — 2.1-4 hours — 4.1-6 hours — 6.1-8 hours — over 8 hours
*** \$1-\$2000 — \$100-400 — \$200-700 — \$300-750 — \$600-1000 — \$800-1250
\$2001-\$4000 — \$200-500 — \$400-800 — \$600-900 — \$800-1300 — \$1050-1500
\$4001-\$6000 — \$300-700 — \$600-1000 — \$800-1250 — \$1000-1450 — \$1300-1750
Over \$6000 — \$400-900 — \$800-1300 — \$1050-1600 — \$1350-1800 — \$1550-2000

(a) An attorney must submit the following to the director in order to be awarded an attorney fee:

(A) A current, valid retainer agreement, and

(B) A statement of hours spent on the case if greater than two hours.

In the absence of such a statement, the director will assume the time spent on the case was 1-2 hours.

(b) In determining the value of the results achieved, the director may consider, but is not limited to the following:

(A) Where there is a return-to-work plan that includes the disputed service(s), the assumed value is the cost of the disputed service(s) as projected in the plan;

(B) Where the service(s) have not been incorporated in an existing return-to-work plan, the assumed value is the actual or projected cost of the service(s) up to the amount allowed in the fee schedule provided in OAR 436-120-0720;

(C) For the purposes of applying the matrix, the value of an eligibility determination is assumed to be the maximum allowed in the fee schedule provided in OAR 436-120-0720 for completing an eligibility evaluation; the value of vocational assistance or a training plan, unless determined to be otherwise, is assumed to fall within the highest category provided in the above matrix; or

(D) A written agreement between the parties regarding the value of the benefit to the worker submitted to the director prior to the issuance of an order.

(c) If any party believes extraordinary circumstances exist that justify a fee outside of the ranges provided in the above matrix or above \$2000, they may submit a written or faxed statement of the extraordinary circumstances to the director. Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.

(d) In order to provide parties an opportunity to inform the director of agreements, or submit statements of extraordinary circumstances or professional hours for consideration in determining the attorney fee, the director will provide the parties notice by phone or fax at least 3 business days in advance that an order or other written resolution of the dispute will be issued. Any information or statements provided to the director must simultaneously be provided to all other parties to the dispute.

(e) An assessed attorney fee will be paid within 30 days of the date the order authorizing the fee becomes final.

(3) Hearings before an administrative law judge:

(a) Under ORS 656.283(2) and 656.704(2), any party that disagrees with an order issued under subsection (1)(f) of this rule or a dismissal issued under subsection (1)(d) of this rule may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(b) Under ORS 656.704(2), any party that disagrees with an order of dismissal based on lack of jurisdiction under subsection (1)(d) of this rule

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or department denial of reimbursement for vocational assistance costs under OAR 436-120-0730 may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days after the party received the dismissal or written denial.

(c) Under ORS 656.704(2), an insurer sanctioned pursuant to OAR 436-120-0900, a vocational assistance provider or certified individual sanctioned pursuant to ORS 656.340(9)(b) and OAR 436-120-0915, a vocational assistance provider denied authorization pursuant to ORS 656.340(9)(a) and OAR 436-120-0800, or an individual denied certification pursuant to ORS 656.340(9)(a) and OAR 436-120-0810 may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 no later than 60 days after the party received notification of the action.

(d) OAR 436-001 applies to the hearing.

(4) Contested case hearings of civil penalties: Under ORS 656.740 an insurer or an employer may appeal a proposed order or proposed assessment of civil penalty pursuant to ORS 656.745 and OAR 436-120-0900 as follows:

(a) The insurer or employer must send the request for hearing in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The party must file the request with the division within 60 days after the mailing date of the notice of the proposed order or assessment.

(c) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(d) The Hearings Division shall conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

Stat. Auth.: ORS 656.704(2) & 656.726(4)

Stats. Implemented: ORS 183.310 - 183.555, 656.283(2), 656.340, 656.447, 656.740 & 656.745

Hist.: WCD 9-1982(Admin), f. 5-28-82, ef. 6-1-82; WCD 2-1983(Admin), f. & ef. 6-30-83; Renumbered from 436-061-0970, 5-1-85; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0191, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0210 & 436-120-0260; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-120-0320

Determining Eligibility for Vocational Assistance and Selection of Vocational Assistance Provider

(1) Unless one of the provisions in section (2) or (11) below applies, the insurer shall contact a worker with an accepted disabling claim or claim for aggravation to begin the eligibility determination within five days of any of the following:

(a) The insurer's receipt of a request for vocational assistance from the worker. If the insurer does not know the worker's permanent limitations, the insurer shall contact the attending physician within 14 days of receiving the request for vocational assistance. The insurer shall notify the worker if the eligibility determination is postponed until permanent restrictions are known or can be projected.

(b) The insurer's receipt of a medical or investigative report sufficient to document a need for vocational assistance, including medical verification of projected or actual permanent limitations due to the injury.

(c) The insurer's knowledge that the claim qualifies for closure because the worker is medically stationary. If the claim qualifies for closure under ORS 656.268(1)(b) or (c), the insurer may postpone the determination until the worker is medically stationary or until permanent restrictions are known or can be projected, whichever occurs first.

(d) The worker is granted a permanent disability award.

(2) The insurer is not required to determine eligibility if:

(a) Eligibility has previously been determined under the current opening of the claim and there are no newly accepted conditions;

(b) The worker has returned to regular or other suitable employment with the employer at injury or aggravation; or

(c) The worker's claim was closed with no permanent disability award. The following by themselves do not make a worker ineligible for vocational assistance:

(A) A finding that a worker is not entitled to an additional award of permanent disability on aggravation, or

(B) A finding that a worker is not entitled to a permanent disability award because of an offset of permanent disability from a prior claim, or

(C) The worker disposes of permanent disability through a claim disposition agreement (CDA).

(3) The insurer must defer the determination of vocational assistance eligibility when the employer at injury activates preferred worker benefits under OAR 436-110 and the worker agrees to accept the new or modified regular job in writing.

(a) There must be a written job offer which includes the following information:

(A) The start date;

(B) That the job does not begin until the modifications are in place;

(C) Wage and hours;

(D) Job site location; and

(E) Description of job duties.

(b) The insurer must send the worker a Notice of Deferral of Vocational Assistance Eligibility Determination within 14 days of the worker's signature accepting the job offer.

(c) If preferred worker benefits cannot modify the job to accommodate the worker's restrictions, as verified by the division, or the employer, the worker, or division terminate the agreement, the insurer must complete the eligibility determination process within 30 days from the date of a determination that preferred worker benefits will not be provided.

(4) If the insurer receives a request for vocational assistance from the worker or the worker's representative and the insurer is not required to determine eligibility under section (2), the insurer shall notify the worker in writing, within 14 days of the request and provide:

(a) The reasons the insurer is not required to determine eligibility,

(b) The circumstance which would require the insurer to determine eligibility, and

(c) The appropriate telephone number of the division, with instructions to contact the division with questions about vocational assistance eligibility requirements and procedures.

(5) Nothing in these rules prevents the insurer from finding a worker eligible and providing vocational assistance at any time.

(6) The insurer shall complete the eligibility determination within 30 days of the contact required in section (1) or if the eligibility determination was postponed within 30 days of receipt of verification of projected or actual permanent limitations. An eligibility evaluation may include a vocational evaluation that determines the category of assistance as defined in OAR 436-120-0400. The notice required under OAR 436-120-0004(2)(a)(A) must inform the worker which category of assistance will be provided.

(7) A vocational counselor certified under OAR 436-120 shall determine if a worker meets eligibility criteria.

(8) The insurer shall provide the vocational counselor with all existing relevant medical information regarding the worker's physical capacities and limitations.

(9) After the worker's permanent limitations are known or can be projected, the worker shall, upon written request from the insurer, provide vocationally relevant information needed to determine eligibility within a reasonable time set by the insurer.

(10) A worker entitled to an eligibility evaluation is eligible for vocational services if all the following additional conditions are met:

(a) The worker is authorized to work in the United States.

(b) The worker is available in Oregon for vocational assistance. The insurer shall consider the worker available in Oregon if the worker lives within commuting distance of Oregon or documents, in writing, willingness to relocate to or within commuting distance of Oregon within 30 days of being found eligible. The worker is responsible for costs associated with being available in Oregon. The requirement that the worker be available in Oregon for vocational assistance does not apply if the Oregon subject worker did not work and live in Oregon at the time of the injury.

(c) As a result of the limitations caused by the injury or aggravation, the worker:

(A) Is not able to return to regular employment;

(B) Is not able to return to any other suitable and available work with the employer at injury or aggravation; and

(C) Has a substantial handicap to employment and requires assistance to overcome that handicap.

(d) None of the reasons for ineligibility under OAR 436-120-0350 applies under the current opening of the claim.

(11) A worker whose permanent total disability benefits have been terminated by an order that becomes final is eligible for vocational assistance.

(12) Upon determining the worker eligible, the insurer and worker shall jointly select a vocational assistance provider. No later than 20 days from the date the insurer determined the worker eligible, the insurer shall either notify the worker of the selection of vocational assistance provider, or if the parties are unable to agree, refer the dispute to the director. The worker and insurer shall follow the same procedure to select a new vocational assistance provider.

(13) Unless all parties otherwise agree in writing, vocational assistance will be due at any given time with respect only to one claim of the worker. If the worker is eligible for vocational assistance under two or more claims, and there is a dispute about which claim gives rise to the need for vocational assistance pursuant to these rules, the director will select the

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claim for the injury which results in the most severe vocational impact. If services are provided under more than one claim at a time pursuant to a written agreement of all parties, time and fee limits may extend beyond the limits otherwise imposed in these rules.

Stat. Auth.: ORS 656.726(4) & 656.340(9)

Stats. Implemented: ORS 656.340

Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-120-0755

Reimbursement of Vocational Assistance Costs from the Workers' Benefit Fund

(1) The director will reimburse the insurer or self-insured employer for costs associated with providing vocational benefits when:

(a) The director issues an order overturning the insurer's or self-insured employer's denial of vocational benefits; and

(b) The insurer's or self-insured employer's denial is later upheld by a final order.

(2) To receive reimbursement from the Workers' Benefit Fund, the insurer or self-insured employer must provide the division with the following documentation, within one year from the date of the final order:

(a) Injured worker's name and Workers' Compensation Division's claim file number;

(b) Date and order number of the director's order appealed;

(c) Itemized listing with dates of service for all costs incurred after the date of the director's order that was reversed. All costs, in order to be reimbursed, must meet all conditions set forth in OAR 436-120, and reimbursement requests must:

(A) Use terms, "direct employment" or "training" to show the category of vocational assistance provided;

(B) List vocational provider costs by category of "professional services";

(C) List direct worker purchases by the categories in OAR 436-120-0710, to include purchase dates and costs;

(D) Show temporary total disability paid between the start and end dates of the return to work plan; and

(E) List any other costs incurred in providing vocational benefits as a result of the order that was appealed.

(d) Signed certified statement that the requested reimbursement amount was actually paid; and

(e) The insurer's or self-insured employer's name and address where reimbursement is to be sent.

(3) The director may require additional information to clarify and process a reimbursement request.

(4) No reimbursement is allowed for the insurer's administrative costs.

Stat. Auth.: 656.726(4)

Stats. Implemented: ORS 656.313, 656.605, OL 2005, Ch. 588, sec. 4 & 5

Hist.: WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

436-120-0900

Audits, Penalties and Sanctions

(1) Insurers and employers at injury shall fully participate in any department audit, periodic program review, investigation or review, and provide records and other information as requested.

(2) If the director finds the insurer or employer at injury failed to comply with OAR 436-120, the director may impose one or more of the following sanctions:

(a) Reprimand by the director.

(b) Recovery of reimbursements.

(c) Denial of reimbursement requests.

(d) An insurer or employer may be assessed a civil penalty under ORS 656.745 for any violation of statutes, rules, or orders of the director.

(3) In determining the amount of a civil penalty to be assessed the director may consider:

(a) The degree of harm inflicted on the worker;

(b) Whether there have been previous violations or warnings; and

(c) Other matters as justice may require.

(4) Pursuant to ORS 656.447, the director may suspend or revoke an insurer's authority to issue guaranty contracts upon determination that the insurer has failed to comply with these rules.

Stat. Auth.: ORS 656.340 & 656.726(4)

Stats. Implemented: ORS 656.340, 656.447 & 656.745(1) & (2)

Hist.: WCD 4-1981, f. 12-4-81, ef. 1-1-82; WCD 2-1983, f. 6-30-83, ef. 6-30-83; WCD 5-1983, f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0981, 5-1-85; WCD 7-1985, f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, eff. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef.

1-1-95, Renumbered from 436-120-0255 & 436-120-0270; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06

Department of Corrections Chapter 291

Adm. Order No.: DOC 15-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 12-7-05

Notice Publication Date: 10-1-05

Rules Amended: 291-104-0010, 291-104-0015, 291-104-0030, 291-104-0035

Subject: These rule amendments are necessary to ensure inmates housed within department facilities are assigned the appropriate custody level (classification). The department's recent revision to its administrative rule for inmate disciplinary rule violations has resulted in a need to revise the disciplinary severity scale, a classification tool which assess institutional risk of inmates.

Additional amendments are necessary to provide clarification for scoring the classification guide in the following areas: time remaining to serve, detainers and institutional misconduct. Other changes are necessary to update terminology and to reflect operational changes that have occurred since the previous amendments.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-104-0010

Definitions

(1) Classification Review: The process used by the department to re-evaluate and/or change an inmate's assigned custody level.

(2) Classification Unit: Central Office staff responsible for the development, implementation, training, oversight, and management of the classification function within the department.

(3) Current Offense: Any and all crimes for which the inmate is currently under commitment to the Department of Corrections. Interstate compact inmates or inmates serving a concurrent sentence from a jurisdiction other than Oregon will have those convictions considered as current offenses.

(4) Custody Classification Guide and Matrix: A classification instrument used by the department to assist it in assigning inmates an appropriate custody level. The classification instrument incorporates numerically weighted custody classification criteria and a scoring matrix to achieve a resulting proposed custody level. The classification criteria include the following elements:

(a) Public Risk Criteria:

(A) Crime Severity: (Severity of current offense);

(B) Extent of violence;

(C) Use of weapon(s);

(D) History of violence;

(E) Escape history;

(F) Time left to serve; and

(G) Felony detainers.

(b) Institutional Risk Criteria:

(A) Frequency of institutional misconduct;

(B) Severity of institutional misconduct;

(C) Primary program compliance;

(D) Security Threat Group affiliation;

(E) Substance abuse; and

(F) Age.

(5) Custody Level: One of four levels of supervision assigned each inmate through initial and classification review procedures:

(a) Maximum Custody: An inmate assigned this custody level presents extreme risk of escape, violence, and/or disruption to the safe, secure, and orderly operation of a Department of Corrections facility. Inmates committed with a sentence of death will be scored or overridden to maximum custody.

(b) Close Custody: An inmate assigned this custody level presents a serious risk of escape, violence, and/or disruption to the safe, secure, and orderly operation of a Department of Corrections facility.

(c) Medium Custody: An inmate assigned this custody level presents moderate risk of escape, violence, and/or disruption to the safe, secure, and orderly operation of a Department of Corrections facility.

(d) Minimum Custody: An inmate assigned this custody level presents minimal risk of escape, violence, and/or disruption to the safe, secure, and orderly operation of a Department of Corrections facility.

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(6) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(7) Direct Supervision: The responsibilities of authorized supervisors to ensure the on site presence of an inmate while outside the institution security perimeter and to immediately report any unauthorized absence.

(8) Disciplinary Severity Scale: A classification tool used by the department, in conjunction with the Custody Classification Guide and Matrix, to assist it in assigning inmates an appropriate custody level. The Disciplinary Severity Scale assigns certain institution disciplinary rule violations as high, moderate and low severity for purposes of scoring the Institutional Risk element of the classification instrument.

(9) Escape: The unlawful departure from within the security perimeter of a facility, from the immediate control of Department of Corrections staff while outside the facility perimeter, or from the direct supervision of non-department personnel authorized to supervise an inmates while outside the facility perimeter.

(10) Initial Classification: The process used by the Department of Corrections to assign an inmate a custody level upon his/her admission to the physical custody of the department.

(11) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post-prison supervision status.

(12) Institutional Classification Committee: A committee within each facility consisting of at least three persons (one representative from management service, one representative from security, and one representative from program functions) that reviews classification appeals.

(13) Institutional Risk: Factors considered to assess the likelihood an inmate will be disruptive to the safe, secure, and orderly operation of a Department of Corrections facility.

(14) Override: A documented condition or fact involving an unusual issue or issues not addressed in the classification factors or a degree of seriousness in a classification factor so extreme that the factor does not adequately reflect the reasonable weight the element warrants, that justifies a higher or lower custody level than indicated by the classification instrument.

(15) Public Risk: Factors considered to assess the severity of criminal behavior that an inmate has presented to the community.

(16) Serious Management Concerns: Participation either individually, or in a group, in behavior which poses a threat to the safe and secure operation of the facility, including but not limited to, threatening or inflicting serious bodily harm on inmates or staff, posing an immediate risk of escape, promoting or engaging in group disruptive behavior, promoting security threat group activities, or being involved in the planning of any activities that would significantly threaten the safe and secure operation of the facility; and which poses a sufficient threat that such behavior can only be adequately controlled in appropriate special housing.

(17) Unauthorized Departure: The unlawful departure of an inmate while on temporary release from a facility and not under direct supervision.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 2-1989, f. & cert. ef. 2-6-89; CD 14-1991, f. & cert. ef. 6-7-91; CD 18-1993, f. 6-7-93, cert. ef. 6-9-93; CD 20-1994, f. 9-21-94, cert. ef. 10-1-94; DOC 12-2005(Temp), f. 9-6-05, cert. ef. 9-7-05 thru 3-6-06; DOC 15-2005, f. & cert. ef. 12-7-05

291-104-0015

Initial Classification

(1) The Department of Corrections shall assign inmates an initial custody level in accordance with the department's Custody Classification Guide and Matrix (**Attachment 1**), Disciplinary Severity Scale (**Attachment 2**) and these rules. An inmate will generally be assigned an initial custody level within 30 days of admission to the physical custody of the Department of Corrections.

(2) Upon admission to the physical custody of the Department of Corrections, an inmate's assigned counselor will determine a proposed custody level for the inmate by entering the required information into the department's information system. After entry of the required information, the department's information system will generate a classification summary report which scores the numerically weighted custody classification criteria and assigns a proposed custody level in accordance with the Custody Classification Guide and Matrix, and Disciplinary Severity Scale.

(3) After generating a classification summary, the assigned counselor will review it for accuracy. After assuring the accuracy of the scoring, the assigned counselor will forward the classification summary to the functional unit manager or designee for approval of the proposed custody level or, in appropriate cases, for approval of the counselor's recommendation for override of the proposed custody level.

(4) No classification action is official until the functional unit manager or designee approves the classification summary. Maximum custody clas-

sifications are not official until approved by the Classification Unit. All official classification summaries will be placed and retained in the inmate's file.

[ED. NOTE: Attachments referenced are available from the agency.]

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

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

Hist.: CD 2-1989, f. & cert. ef. 2-6-89; CD 14-1991, f. & cert. ef. 6-7-91; CD 18-1993, f. 6-7-93, cert. ef. 6-9-93; CD 20-1994, f. 9-21-94, cert. ef. 10-1-94; DOC 10-1998, f. & cert. ef. 5-1-98; DOC 12-2005(Temp), f. 9-6-05, cert. ef. 9-7-05 thru 3-6-06; DOC 15-2005, f. & cert. ef. 12-7-05

291-104-0030

Override

(1) Override of a proposed custody level may be recommended by the assigned counselor in those cases where the counselor believes that circumstances justify a higher or lower custody level than indicated by the classification instrument. Final approval/denial of an override will be made at the institution level except for maximum custody, which will be made by the Classification Unit.

(2) The Classification Unit may modify any classification action. In such cases, the affected facility will be formally notified of the reason(s) for the modification.

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

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

Hist.: CD 2-1989, f. & cert. ef. 2-6-89; CD 14-1991, f. & cert. ef. 6-7-91; CD 18-1993, f. 6-7-93, cert. ef. 6-9-93; CD 20-1994, f. 9-21-94, cert. ef. 10-1-94; DOC 12-2005(Temp), f. 9-6-05, cert. ef. 9-7-05 thru 3-6-06; DOC 15-2005, f. & cert. ef. 12-7-05

291-104-0035

Administrative Review

(1) An inmate may obtain an administrative review of classification actions affecting him/her by writing to the appropriate reviewing body/staff designated in these rules, and requesting an administrative review using the Department of Corrections Request for Administrative Review form (CD 1120aD). To obtain an administrative review, an inmate must complete the portions of a CD 1120aD request form required in these rules, specifying the body/staff to whom the administrative review request is being submitted, the grounds/reason(s) for administrative review, and any documentation (attached to the request form) supporting the inmate's grounds/reason(s) for the requested administrative review.

(2) Issues Subject to Administrative Review: Administrative review is available to an inmate to contest three aspects of classification actions: the accuracy of the non-maximum classification scoring, the reason(s) for an override of a scored custody level, and an inmate's maximum custody classification.

(a) Accuracy of Scoring (Minimum, Medium, Close Custody):

(A) To obtain an administrative review of a classification score, an inmate must complete the top portion of a CD 1120aD form, and send the completed form, together with any supporting documentation, to the Institution Classification Committee at the facility where the inmate is housed. The Committee must receive the review request within 15 calendar days of the classification approval date. The Committee should complete its review within 15 days after receiving an inmate's review request.

(B) If, after receiving the review decision of the Institution Classification Committee, an inmate is not satisfied with the decision, the inmate may obtain further review of the classification score by sending another completed CD 1120aD form requesting administrative review, together with any supporting documentation, and the Committee's review decision, to the functional unit manager or designee. The functional unit manager or designee must receive the review request within 15 calendar days of the Committee's review decision. The functional unit manager or designee should complete his/her review within 15 days after receiving the inmate's review request. There shall be no further administrative review of a classification score.

(b) Overrides: To obtain an administrative review of an override of a proposed custody level, an inmate must complete the bottom portion of a CD 1120aD form, and send the completed form to the administrator or designee responsible for the Classification Unit, together with any supporting documentation. The Classification Unit must receive the review request within 15 calendar days of the classification action approval date. The Classification Unit should complete its review within 15 days after receiving an inmate's review request. There shall be no further administrative review of an override decision.

(c) Maximum Custody: Maximum custody classification may be administratively reviewed utilizing the bottom portion of the CD 1120aD with the review request being submitted to the administrator or designee responsible for the Classification Unit. The request for review shall include any supporting documentation by the inmate to be considered in reviewing the appropriateness of the maximum custody classification. The matter may be reviewed only once and the completed review shall be final.

ADMINISTRATIVE RULES

for game mammals. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-065-0015

General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

- (a) One valid general season black bear tag;
- (b) One valid additional general black bear tag valid in management units 20-30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid eastern additional general cougar (mountain lion) tag valid only in zones C-F and the Hood, White River, and Metolius unit as referenced in the current Oregon Big Game Regulations;

(g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in OAR 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

- (a) One valid deer bow tag;
- (b) One valid western Oregon deer tag;
- (c) One valid 100 series controlled buck hunt tag;
- (d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)-(4)(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag.

(5) Except as provided in OAR chapter 635, division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

- (a) One valid Cascade elk tag;
- (b) One valid Coast First Season elk tag;
- (c) One valid Coast Second Season elk tag;
- (d) One valid Rocky Mountain elk — first season tag,
- (e) One valid Rocky Mountain elk — second season tag;
- (f) One valid elk bow tag;
- (g) One valid controlled elk hunt tag.

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(8) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(9) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(10) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception: Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the department.

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. & cert. ef. 6-9-77; FWC 33-1978, f. & cert. ef. 6-30-78; FWC 28-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 6-1981, f. & cert. ef. 1-23-81; FWC 11-1981, f. & cert. ef. 3-31-81; FWC 20-1981, f. & cert. ef. 6-19-81; FWC 37-1982, f. & cert. ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. & cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01

ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-065-0401

Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11 p.m., September 29, 2006.

(2) No deer bow tag shall be issued after 11 p.m., August 25, 2006.

(3) No bear tag shall be issued after 11 p.m. September 29, 2006.

(4) No cougar (mountain lion) tag shall be issued after 11 p.m. September 29, 2006.

(5) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11 p.m., October 24, 2006.

(6) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11 p.m., November 3, 2006.

(7) No Coast First Season Elk Tag shall be issued after 11 p.m., November 10, 2006.

(8) No Coast Second Season Elk Tag shall be issued after 11 p.m., November 17, 2006.

(9) No Cascade Elk Rifle Tag shall be issued after 11 p.m., October 20, 2006.

(10) No elk bow tag shall be issued after 11 p.m., August 25, 2006.

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. & cert. ef. 6-9-77; FWC 33-1978, f. & cert. ef. 6-30-78; FWC 28-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 6-1981, f. & cert. ef. 1-23-81; FWC 11-1981, f. & cert. ef. 3-31-81; FWC 20-1981, f. & cert. ef. 6-19-81; FWC 37-1982, f. & cert. ef. 6-25-82; FWC 28, f. & cert. ef. 7-8-83; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 41-1987, f. & cert. ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; 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 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-065-0625

Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): The Bear Valley Refuge shall be closed to all entry from November 1 through March 31 annually.

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry by permit only December 1 through April 30.

(3) Cascade Head Area: The Cascade Head Area shall be closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting shall be restricted to archery and shotguns only during authorized seasons. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head Area boundaries shall be defined as follows: Beginning at the Pacific Ocean at Roads End (Lincoln City); east along the northern boundary of the Lincoln City limits to U.S. Highway 101; north along U.S. Highway 101 to Highway 18; east along Highway 18 to Old Scenic Highway 101; north along Old Scenic Highway 101 to Three Rocks Road; west on Three Rocks Road to U.S. Highway 101; north on U.S. Highway 101 to Forest Service road 1861; west on Forest Service road 1861 to the Harts Cove trailhead; west on Harts Cove Trail to the Pacific Ocean; south along the Pacific Ocean coastline to Roads End (Lincoln City), point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): Approximately 1,800 acres in the Tioga Unit including all BLM property between Hakkli Ridge Road and State Highway 38, are closed to all hunting.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S,

ADMINISTRATIVE RULES

R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area shall be closed to all big game hunting except for and during controlled deer hunts specific to the management area by hunters possessing a controlled hunt tag for the area.

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bow hunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting by permit only. Permits are available at area headquarters and shall be filled out and returned each day hunted. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(11) Enterprise Wildlife Area (Wallowa County): Open to hunting seven days a week. No entry permit is required. Posted portions of the area lying south of the Union Pacific Railroad line and the entire Marr Tract are closed to all hunting.

(12) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons, except that East and West Coyote units are closed after October 31, and hunting in Fisher Butte Unit after October 31 is limited to Saturdays, Sundays, Wednesdays, Thanksgiving Day, Christmas Day, New Year's Day, and Veteran's Day only. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, and Royal Amazon units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(13) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 26 through September 24, 2006 under the regulations for bowhunting seasons.

(b) Portions of the refuge shall be open to hunting for buck deer September 30 through October 31, 2006 under regulations for the general western Oregon deer buck season. Use of rifles is prohibited.

(c) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(14) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to county roads.

(15) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(16) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns are prohibited at all times.

(17) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season.

(18) Heppner Regulated Hunt Area: Open fires and camping prohibited in posted areas. Approximately 69 square miles in Townships 2, 3, and 4 South, Ranges 26, 27 and 28 East;

(19) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbag Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season. It is unlawful to shoot rifles and bows from or across open fields during any open Saddle Mountain Unit or Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc., in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(20) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(21) John Day River Refuge: All land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. The area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. Hunting of big game is allowed during authorized seasons.

(22) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(23) Klamath Marsh National Wildlife Refuge: Closed to deer and elk hunting.

(24) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road shall be closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting.

(25) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, S32 shall be closed to all hunting.

(26) Lower Deschutes Wildlife Area: Open to hunting of big game, game birds, and waterfowl during authorized seasons. Discharge of firearms prohibited the remainder of the year. Access by foot, boat or bicycle only.

(27) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 shall be open during authorized rifle and bow deer seasons.

(28) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(29) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(30) Metolius Wildlife Refuge (Jefferson County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). (36 CFR 261.58(v)).

(31) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(32) Newberry Crater Wildlife Refuge (Deschutes County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(33) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(34) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(35) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

(36) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 26 through September 24, 2006. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 24, 2006. Oak Island shall be closed to deer hunting. Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(37) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 30, or year-round; including BLM land within the exterior boundaries of the Wildlife Area.

(38) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(39) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(40) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The 12-foot right-of-way along each side of all 8-foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually.

(41) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally

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from Mar. 15–Aug. 15 and 3 days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit.

(42) Umatilla Refuge (Morrow County): This refuge shall be closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(43) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(44) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(45) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette River Greenway parcels, except in those parcels where hunting is prohibited.

(46) White River Wildlife Area: Open to hunting during authorized seasons.

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 33-1978, f. & ef. 6-30-78; 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 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; 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 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-065-0635

Winter Range Closure Areas

The following winter closures shall be effective during the specified periods each year:

(1) Tumalo Winter Range: December 1 through March 31, — That part of the Upper Deschutes Unit as follows: 125 square miles in Townships 15, 16, 17, 18, and 19 South, Ranges 10 and 11 East.

(2) Doak Mountain: Permanent Closure — January 1 through July 31 — That part of the Keno Unit as follows: seven square miles in Township 37 South, Ranges 7 and 8 East.

(3) Bear Valley: Closed to motor vehicle use year round — That part of the Keno Unit as follows: six square miles in Township 40 South, Ranges 7 and 8 East.

(4) Lost River: December 1 through April 15 — That part of the Klamath Falls Unit as follows: 6 square miles in Township 39 South, Ranges 11, 11-1/2, and 12 East.

(5) Lost River: December 1 through April 15 — That part of the Interstate Unit as follows: 6 square miles in Township 41 South, Range 14 East.

(6) Cabin Lake-Silver Lake: December 1 through March 31 — That part of the Paulina Unit as follows: 342 square miles in Townships 23, 24, 25, 26, 27, 28, and 29 South, Ranges 11, 12, 13, 14, 15, and 16 East.

(7) Spring Creek Winter Range: December 15 through April 30 — That part of the Starkey Unit as follows: 14 square miles in Townships 2 and 3 South, Range 36 East.

(8) McCarty Winter Range: December 15 through March 31 — That part of the Starkey Unit as follows: 12 square miles in Townships 4 and 5 South, Ranges 34 and 35 East.

(9) Coombs Canyon Regulated Hunt Area: 19.5 square miles in the Columbia Basin Unit. Closed to entry August 15 through the day prior to the statewide pheasant season annually (Exception: entry is allowed for people possessing Coombs Canyon youth buck deer tags and their adult chaperone. People hunting antlerless deer must possess a permit which can be obtained at the Watershed District Office in Pendleton).

(10) Metolius Winter Range: December 1 through March 31 — That part of the Metolius Unit as follows: 40 square miles in Townships 11, 12, and 13 South and Ranges 11 and 12 East.

(11) Bryant Mountain: November 1 through April 15 — That part of the Klamath Falls Unit as follows: 50 square miles in Townships 39, 40, and 41 South and Ranges 12 and 13 East.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: 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 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-065-0720

Bows and Arrows

Hunters shall use:

(1) Any long, recurve, or compound bow with 40-pound or heavier pull rating to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(2) Any long, recurve, or compound bow to hunt western gray squirrels.

(3) Any long, recurve, or compound bow with a 50-pound or heavier pull rating to hunt bighorn sheep, Rocky Mountain goat, or elk.

(4) Only unbarbed fixed position blade broadheads at least 7/8-inch wide to hunt game mammals other than western gray squirrel. See 635-045-0002(77). Possession of moveable blade broadheads is prohibited when hunting game mammals, except western gray squirrels may be hunted with moveable blade broadheads.

(5) A long, recurve, or compound bow and shall not possess any crossbow while hunting within an authorized bowhunting area or season.

(6) Only a long, recurve, or compound bow during any authorized pronghorn antelope, deer or elk bowhunting season to hunt pronghorn antelope, deer, or elk.

(7) For hunting seasons designated as bowhunting, hunters shall only use the bows legal for the species being hunted. Bows may be used during controlled antlerless deer seasons. Bows shall not be used during any designated rifle hunt.

(8) Hunters shall not use any electronic device(s) attached to bow or arrow.

(9) Hunters shall not use any device secured to or supported by the bow for the purpose of maintaining the bow at full draw (Persons unable to comply because of a disability may be eligible for a temporary permit from the department).

(10) Hunters shall not use any device secured to or supported by a bow's riser which supports or guides an arrow from a point rearward of a bow's brace height (i.e. the position of the bows string when the bow is undrawn).

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 33-1978, f. & ef. 6-30-78; 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 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; 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 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-065-0740

Hunting Prohibited

It is unlawful:

(1) To hunt with a centerfire or muzzleloading rifle during eastern Oregon controlled buck season (September 30–October 11, 2006, Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 18–Nov. 26, 2006) without a valid, unused tag for that species, time period and area on their person. EXCEPTION: Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands. EXCEPTION: Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (*Canis latrans*) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagontire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 18–Nov. 26, 2006).

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (4) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

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- (6) To hunt in any Safety Zones created and posted by the department.
- (7) To hunt protected wildlife except:

(a) By a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

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 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; 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 18-1996, f. 4-10-96, cert. ef. 8-1-96; 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-065-0765

Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is unlawful to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is unlawful to possess the meat or carcass of any pronghorn antelope, bighorn sheep, or Rocky Mountain goat without the animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, horns, and eyes if the animal is male.

(4) It is unlawful to possess the meat or carcass of any deer or elk without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer and elk is:

(a) Evidence of sex for deer and elk which will be taken out of Oregon is:

(A) For Bucks and Bulls: Either the head with antlers naturally attached to at least one quarter of the carcass or testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat. For hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(B) For Does and Cows: Either the head naturally attached to at least one quarter of the carcass or vulva or udder (mammary) naturally attached to one quarter of the carcass or to another major portion of meat.

(C) For Either Sex Hunts: Either the head naturally attached to at least one quarter of the carcass or reproductive organs (testicles, scrotum, penis, vulva, udder, mammary) naturally attached to one quarter of the carcass or to another major portion of meat. For bucks or bulls killed in either sex hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(D) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(b) Evidence of sex for deer and elk which will not be taken out of Oregon is either :

(A) The animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, antlers, and eyes if the animal is male; Or

(B) The head naturally attached to at least one quarter of the carcass or reproductive organs naturally attached to one quarter of the carcass or to another major portion of meat as described in (4)(a)(A)-(D) above.

(5) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the department.

(6) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the department or by the Oregon State Police.

(7) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the department or by the Oregon State Police.

(8) It is unlawful to receive or have in possession any game mammal or part thereof which:

(a) Is not properly tagged;

(b) Was taken in violation of any wildlife laws or regulations; or

(c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(9) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the department or personnel of the Oregon State Police prior to transporting.

(10) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the department may be made available to scientific and educational institutions and for ceremonial purposes.

(11) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

(a) Meat that is cut and wrapped commercially or privately;

(b) Meat that has been boned out;

(c) Quarters or other portions of meat with no part of the spinal column or head attached;

(d) Hides and/or capes with no head attached;

(e) Skull plates with antlers attached that have been cleaned of all meat and brain tissue;

(f) Antlers with no tissue attached;

(g) Upper canine teeth (buglers, whistlers, ivories);

(h) Finished taxidermy heads.

(12) For the purposes of the parts and carcass import ban in subsection (11), the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Colorado, Illinois, Kansas, Minnesota, Montana, Nebraska, New Mexico, New York, Oklahoma, South Dakota, Wisconsin, Wyoming, Utah, West Virginia, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(13) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(14) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection (11) shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800° F or at lined landfills registered by Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection (11) shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

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 33-1978, f. & ef. 6-30-78; 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 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987,

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f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 111-2005(Temp), f. & cert. ef. 9-23-05 thru 10-31-05; Administrative correction 11-18-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-066-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting set out in the document entitled "2006 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2006 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; 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 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2006 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2006 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2005 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 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 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-067-0004

Cougar Hunting Regulations

(1) Tag Requirement: Any person hunting cougar shall have on his/her person a general season cougar tag or a Blue Mountain additional cougar tag. General season cougar tags may be purchased through any authorized license agent;

(2) Hunt Area: Hunt zones, and harvest quotas for each hunt zone, are established in OAR 635-067-0015;

(a) Hunters may hunt within all hunt zones;

(b) Hunt zones will be closed to hunting when individual zone harvest quotas are reached.

(3) All hunters are required to check in the hide with skull and proof of sex attached of any cougar killed within ten days of harvest at a

Department of Fish and Wildlife office. Hunters are also required to retain the reproductive tract of all female cougars with the carcass until checked in.

(4) No person shall hunt or assist another to hunt a cougar during an authorized cougar season unless in possession of an unused cougar tag or accompanied by the holder of an cougar tag which is valid for that area and time period.

(5) No person shall use dogs to hunt or pursue cougar.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-067-0015

General Cougar Season Zone Harvest Quotas

(1) Hunt Zone: A — Hunt Name: Coast/North Cascades;

(a) Harvest Quota: 152;

(b) Hunt Area: All of Wildlife Units: 10, 11, 12, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 39, 41, and 42.

(2) Hunt Zone: B — Hunt Name: Southwest Cascades;

(a) Harvest Quota: 173;

(b) Hunt Area: All of Wildlife Units: 19, 21, 22, 23, 28, 29, 30, and

31.

(3) Hunt Zone: C — Hunt Name: Southeast Cascades;

(a) Harvest Quota: 61;

(b) Hunt Area: All of Wildlife Units: 32, 33, 34, 35, 75, 76, and 77.

(4) Hunt Zone: D — Hunt Name: Columbia Basin;

(a) Harvest Quota: 22;

(b) Hunt Area: All of Wildlife Units: 38, 40, 43, 44, and 45.

(5) Hunt Zone: E — Hunt Name: Blue Mountains;

(a) Harvest Quota: 160;

(b) Hunt Area: All of Wildlife Units: 37, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

(6) Hunt Zone: F — Hunt Name: Southeast Oregon;

(a) Harvest Quota: 100;

(b) Hunt Area: All of Wildlife Units: 36, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 118, f. & ef. 6-3-77; FWC 32-1978, f. & ef. 6-30-78; FWC 12-1979, f. & ef. 3-28-79; FWC 29-1979, f. & ef. 8-2-79; FWC 14-1980, f. & ef. 4-8-80; FWC 19-1980, f. & ef. 4-18-80; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82, Renumbered from 635-060-0700; FWC 15-1983, f. & ef. 4-19-83; FWC 16-1984, f. 4-6-84, ef. 4-15-84; FWC 21-1985, f. & ef. 5-7-85; FWC 29-1986, f. & ef. 7-23-86; FWC 11-1987, f. & ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 57-1990, f. & cert. ef. 6-21-90; FWC 60-1991, f. & cert. ef. 6-24-91; FWC 45-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 90-1994(Temp), f. & cert. ef. 12-8-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 10-1995, f. & cert. ef. 2-3-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; 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 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-072-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2006 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2006 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; 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 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

ADMINISTRATIVE RULES

635-075-0026

Application Requirements

(1) A valid controlled hunt Outfitter and Guide application shall be purchased from the department. The purchase price of the application is set forth in OAR 635-060-0005(2) (\$3.00 plus \$1.50 agent fee).

(a) Only one hunt number and one species type may be included on a single application. No more than 50% of the available tags for a specific hunt number and species may be applied for, except in cases where only one person applies for tags and/or an odd number of tags exists in particular hunt.

(b) Tags will only be issued for specific hunt units in which the Outfitter and Guide is certified.

(c) Applications must be complete and include such information as required which will include the six-digit State Marine Board Registration number required under ORS 704.020 or they may be disqualified from the tag allocation drawing.

(d) Applications, along with the proper fees, must be received by midnight December 1, of each year, at the department headquarters office. Applications received after the specified deadline dates shall be disqualified.

(2) No outfitter or guide may receive more than 25 tags per year for any single species of big game.

(3) In the event unissued tags remain they will be included in the tags available as described in OAR 635-060-0030(2).

Stat. Auth.: ORS 496.012, 496.138 & 497.112

Stats. Implemented: ORS 496.012, 496.138 & 497.112

Hist.: FWC 73-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 114-2004(Temp), f. & cert. ef. 11-23-04 thru 5-20-05; Administrative correction 6-17-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-080-0015

Willamette Unit

The Willamette Unit, number 15, is that area beginning at Sandy; southwest on State Highway 211 to State Highway 213; southwest on State Highway 213 to Cascade Highway at Silverton; south on the Cascade Highway to State Highway 22; east on State Highway 22 to Mehama; south to Lyons; south and west on State Highway 226 to Richardson Gap Road east of Scio; south on Richardson Gap Road to Baptist Church Drive; east on Baptist Church Drive to Kowitz Road; south on Kowitz Road to Lacombe Road; west on Lacombe Road to Brewster Roads; south on Brewster Road to State Highway 34; west on State Highway 34 to Interstate Highway 5; south on Interstate Highway 5 to Belt Line Road; west and south on Belt Line Road to State Highway 126; west on State Highway 126 to Poodle Creek Road; north on Poodle Creek Road to State Highway 36; northeast on State Highway 36 to Territorial Road near Cheshire; north on Territorial Road to Monroe; north on State Highway 99W to Dawson Road (County Road 45200); west on Dawson Road to Bellfountain; north on Bellfountain Road to Decker Road at In vale School; west on Decker Road to State Highway 34; northeast on State Highway 34 to Corvallis; north on State Highway 99W to Airlie Road (No. 7) at Suver; northwesterly on Airlie Road to State Highway 223; north on State Highway 223 to Perrydale Road at Dallas; north on Perrydale Road to State Highway 22; northwest on State Highway 22 to State Highway 18; northeast on State Highway 18 to State Highway 99W; north on State Highway 99W to State Highway 47; north on State Highway 47 to State Highway 8; northwest on State Highway 8 to State Highway 6; east on State Highway 6 to U.S. Highway 26; southeast on U.S. Highway 26 to Cornelius Pass Road; northeast on Cornelius Pass Road to U.S. Highway 30; southeast on U.S. Highway 30 to Multnomah Channel at the Sauvie Island bridge; southeast along Multnomah Channel to Willamette River; northeast down Willamette River to state line in the Columbia River; southeast along state line to Sandy River; southeast up Sandy River to Teneyck Road; south on Teneyck Road to Sandy, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 21-1979, f. & ef. 6-5-79; FWC 23-1981, f. & ef. 6-29-81; FWC 35-1986, f. & ef. 8-7-86; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-080-0016

Santiam Unit

The Santiam Unit, number 16, is that area beginning at Lebanon; north on Brewster Road to Lacombe Road; east on Lacombe Road to Kowitz Road; north on Kowitz Road to Baptist Church Drive; west on Baptist Church Drive to Richardson Gap Road; north on Richardson Gap Road to State Highway 226; northeast on State Highway 226 to Lyons; north to Mehama; west on State Highway 22 to Cascade Highway near Stayton; north on Cascade Highway to State Highway 213 at Silverton; northeast on

State Highway 213 to State Highway 211; northeast on State Highway 211 to Sandy; north on Teneyck Road to Sandy River; northwest down Sandy River to state line in Columbia River; northeast along state line to Multnomah-Hood River County line; southeast along Multnomah-Hood River County line to Lolo Pass; southeast along Pacific Crest Trail to Barlow Pass; west on Highway 35 to Highway 26; southeast on Highway 26 to junction of Highway 216; west and south along west boundary of Warm Springs Indian Reservation (McQuinn Strip line) to summit of Mt. Jefferson; south along Pacific Crest Trail to U.S. Highway 20; west on U.S. Highway 20 to Lebanon; point of beginning. (The McQuinn Strip portion of the White River Unit and the Warm Springs Indian Reservation was closed to public hunting September 21, 1992 until further notice).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 35-1986, f. & ef. 8-7-86; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-080-0066

Malheur River Unit

The Malheur River Unit, number 66, is that area beginning at Burns; north on U.S. Highway 395 to Seneca; easterly on Logan Valley County Road #16 through Logan Valley to Forest Road 14; southeast on Forest Road 14 to the junction of Forest Road 1663 near Antelope Mt.; south of Forest Road 1663 and Otis Valley Road (Harney County Road 304) to Drewsey; south on Drewsey Rd (Harney County Road 305) to U.S. Highway 20; east on U.S. Highway 20 to Harper; southwest on Harper-Follyfarm Road to Follyfarm (Malheur County Roads 584 and 513) to State Highway 78 near Follyfarm; northwest on State Highway 78 to Burns, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 32-1980, f. & ef. 6-30-80; FWC 39-1982, f. & ef. 6-25-82; FWC 35-1986, f. & ef. 8-7-86; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-080-0068

Whitehorse Unit

The Whitehorse Unit, number 68, is that area beginning at Follyfarm; southeast on State Highway 78 to U.S. Highway 95; northeast on U.S. Highway 95 to Jordan Valley; east on Jordan Valley-Silver City Road to Oregon-Idaho state line; south and west along state line to Denio; northeast on county road 201 through Fields and Andrews to Follyfarm, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-080-0069

Steens Mountain Unit

The Steens Mountain Unit, number 69, is that area beginning at the junction of State Highway 78 and State Highway 205, two miles east of Burns; southeast on State Highway 78 to East Steen Road (Harney County Road 201) near Follyfarm; southwest on East Steens Road through Andrews to Catlow Valley Road (Harney County Road 202) junction one mile north of Fields; northwest on Catlow Valley Road to Highway 205 at Frenchglen; north on State Highway 205 to Highway 78, point of beginning.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 28-1983, f. & ef. 7-8-83; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-080-0070

Beatys Butte Unit

The Beatys Butte Unit, number 70, is that area beginning at Denio; west along Oregon state line to Fort Bidwell-Warner Valley Road (Lake County Rd 3-14); north on 3-14 to Adel; north on county road 3-10 through Plush to county road 3-11; east on county road 3-11 to Hart Refuge and county road 3-12; north and east on 3-12 to Hart Refuge headquarters; east on Hart Mountain-Frenchglen road (Lake County Road 3-12) and Harney County Road 412 to Catlow Valley Road (Harney County Road 202); south and east on Catlow Valley Road to Harney County Rad 201, 1 mile north of Fields; south on County Road 201 through Fields to Denio, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

ADMINISTRATIVE RULES

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

635-080-0071

Juniper Unit

The Juniper Unit, number 71, is that area beginning at Burns; east two miles on State Highway 78 to State Highway 205; south on State Highway 205 through Frenchglen to Hart Mountain Road (Harney County Road 412 and Lake County Road 3-12); west on Hart Mountain Road to Flagstaff Lake Road (Lake County Road 3-11); west on Flagstaff Lake Road to Hogback Road (Lake County Road 3-10); northwest on Hogback Road to U.S. Highway 395; northeast on U.S. Highway 395 to U.S. Highway 20; east on U.S. Highway 20 to Burns, point of beginning. The Hart Mountain National Antelope Refuge is closed to all hunting seasons authorized for the Juniper Unit.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06

Adm. Order No.: DFW 129-2005(Temp)

Filed with Sec. of State: 11-29-2005

Certified to be Effective: 11-29-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-005-0045, 635-039-0090

Rules Suspended: 635-039-0090(T)

Subject: Amend rules to delay the openings of: (1) the 2005–2006 ocean commercial Dungeness crab fishery and (2) the recreational fishery for Dungeness crab in the ocean until further notice.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-005-0045

Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River.

(2) It is *unlawful* prior to January 1 to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, except as provided in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) The Northern Zone is bounded on the north by Gray's Harbor (at Oyehut) and on the south by Cascade Head, Oregon: Upon a determination by the Department that pre-season sampling indicates the consistent presence of more than 50 percent Grade II and III (softshell) crab in the samples, the Fish and Wildlife Director, in consultation with the Washington Department of Fish and Wildlife, may adopt a temporary rule delaying the opening date of the commercial crab season in all or part of the Northern Zone area until additional sampling indicates meat recovery is 23 percent or is projected to be 23 percent by the opening date.

(b) The Southern Zone is bounded on the north by Cascade Head and on the south by Point Arena: Upon a determination by the Department that pre-season sampling indicates meat recovery is projected to be less than 25 percent by December 1 in the Oregon portion of the Southern Zone, the Fish and Wildlife Director shall delay the opening date of the commercial crab fishery in all or part of the Oregon portion of the zone for 15 days and re-open December 16.

(4) In the event the season in the Northern Zone or Southern Zone is delayed, the following applies:

(a) The Director shall adopt rules identifying the boundary between, or within, the Northern and Southern zones. The boundary between or within the zones shall take into account the existence of traditional fishing patterns;

(b) If the opening date for a season is delayed for either zone, or part of a zone, fishermen electing to fish in a zone or part of a zone with a December 1 opening date may not fish in an area with the delayed opening date within the first 30 days of the delayed opening date;

(c) For the first 30 days of a fishing zone season, vessels electing to fish a zone shall be certified by officials of the State of Oregon, Washington or California to have been free of Dungeness crab on the day immediately prior to the opening day of the selected fishing zone. At the time of vessel inspection, the vessel operator shall certify the vessel has not been used to take crab in the selected fishing zone.

(4) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the

Fish and Wildlife Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05

635-039-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 151 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 2.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2005 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 372.5 metric tons, of which no more than 332 metric tons may be black rockfish.

(b) Other nearshore rockfish, 11.4 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) Effective August 11, 2005, retention of cabezon, as identified in (4)(c) is prohibited in the ocean and estuary boat fisheries. Angling for and retention of shore-based cabezon is permitted.

(6) Effective October 18, 2005, retention of Marine Fish species as identified in (7)(a) and (7)(b), and retention of sablefish are prohibited in the ocean and estuary boat fisheries shoreward of the 40-fathom depth contour, as shown in the 2005 Oregon Ocean Regulations for Salmon, Halibut and Other Marine Fish Species. Retention of black rockfish in all depths is prohibited in the ocean and estuary boat fisheries.

(7) In addition to the regulations for Marine Fish in the **2005 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2005:

(a) Lingcod (including green colored lingcod); 2 fish daily catch limit.

ADMINISTRATIVE RULES

(b) Rockfish (“sea bass”, “snapper”), greenling (“sea trout”), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 5 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) When allowed by federal groundfish regulations, retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut in the central coast fishery between Cape Falcon and Humbug Mountain. Persons must also consult the Pacific Council Decisions; **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (61FR35550, July 5, 1996); and the annual **Pacific Halibut Fishery Regulations** as published by IPHC to determine all rules applicable to the taking of halibut.

(d) When allowed by federal groundfish regulations, landing of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the Columbia River sport fishery for Pacific halibut north of Cape Falcon. Persons must also consult the Pacific Council Decisions; **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (61FR35550, July 5, 1996); and the annual **Pacific Halibut Fishery Regulations** as published by IPHC to determine all rules applicable to the taking of halibut.

(e) Harvest methods and other specifications for marine fish in subsections (7)(a) and (b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(e) Sport fisheries for species in subsections (7)(a) and (b) are open January 1 through December 31, 24 hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on **Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h)**.

(8) Until further notice, the Pacific Ocean is closed to the harvest of Dungeness crab.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05

Adm. Order No.: DFW 130-2005

Filed with Sec. of State: 12-1-2005

Certified to be Effective: 2-1-06

Notice Publication Date: 9-1-05

Rules Amended: 635-069-0000, 635-073-0000

Subject: Establish 2006 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunting regulations.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled “2006 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2006 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

[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 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled “2006 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2006 Oregon Big Game Regulations,” in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

[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 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06

Adm. Order No.: DFW 131-2005

Filed with Sec. of State: 12-1-2005

Certified to be Effective: 3-1-06

Notice Publication Date: 9-1-05

Rules Amended: 635-068-0000

Subject: Establish 2006 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunting regulations.

Rules Coordinator: Tina Edwards—(503) 947-6033

ADMINISTRATIVE RULES

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2006 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2006 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

[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 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 1-21-00; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. & cert. ef. 1-24-03; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. & cert. ef. 1-21-04; DFW 131-2005, f. & cert. ef. 6-14-05; DFW 131-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 6-14-05.

Adm. Order No.: DFW 132-2005

Filed with Sec. of State: 12-1-2005

Certified to be Effective: 4-1-06

Notice Publication Date: 9-1-05

Rules Amended: 635-060-0055, 635-070-0000, 635-071-0000

Subject: Establish 2006 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunting regulations.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-060-0055

Documents Required in Field

(1) A person hunting in any controlled game mammal hunt shall have on his or her person a valid hunting license, Hunter Education Certificate (for persons less than 18 years old), and a controlled hunt tag (if applicable) for the area and season being hunted. The hunting license number shall be the same as that indicated on the controlled hunt tag. Exception: Controlled hunts continuing or occurring after December 31, 2006 will have a 2006 hunting license number on the controlled hunt tag.

(2) A tag or permit holder for a hunt after December 31, 2006 shall have on his or her person a valid 2007 hunting license.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. & cert. ef. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 14-1992, f. & cert. ef. 3-10-92; DFW 3-13-92 (and corrected 3-13-92); FWC 36-1993, f. & cert. ef. 6-14-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; 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 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 82-2000, f. & cert. ef. 1-21-00; DFW 1-1-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 4-2003, f. & cert. ef. 1-17-03; DFW 119-2003, f. & cert. ef. 12-4-03; DFW 131-2004, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 6-14-05.

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2006 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2006 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

[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 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 1-21-00; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. & cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 1-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 131-2004, f. & cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2005 are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "2006 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2006 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]

[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 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 1-21-00; DFW 47-2001, 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. & cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; Administrative correction 11-22-04; DFW 131-2004, f. & cert. ef. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06

Adm. Order No.: DFW 133-2005

Filed with Sec. of State: 12-1-2005

Certified to be Effective: 6-1-06

Notice Publication Date: 9-1-05

Rules Amended: 635-065-0760

Subject: Establish 2006 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunting regulations.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-065-0760

Other Restrictions

It is unlawful:

(1) To take or hold in captivity the young of any game mammal.

(2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.

(3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.

(4) To resist game law enforcement officers.

(5) To refuse inspection of any license, tag or permit by an employee of the department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his land.

ADMINISTRATIVE RULES

(6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(7) To disturb, damage, remove, alter or possess any official department signs.

(8) To sell, lend, or borrow any big game tag.

(9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; 1. signs showing road closed, or 2. round green reflectors marking roads open to motorized travel. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: Three days prior to opening of general archery season through December 1 — Applies to all gated, posted, and/or barrier-closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;

(d) Luckiamute: Permanent Closure — Those parts of the Stott Mt./Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

(e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: Individual gated and posted roads on Alsea, Mapleton, and Waldport Ranger Districts, Siuslaw National Forest;

(f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season — That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Hadsall: Permanent Closure — That part of the Siuslaw Unit as follows: 6 square miles in Township 18 South, Ranges 9 and 10 West;

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: Butte Falls and Prospect Ranger Districts, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 87 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31 annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(r) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of

the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(x) Murderers Creek-Flagtail: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 69 square miles in Townships 2, 3, 4, 6, and 7 South, Ranges 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 30 annually — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(dd) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ee) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(ff) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(gg) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(hh) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(ii) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(jj) Hall Ranch: October 22, 2006 through April 30, 2007 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(kk) Little Catherine Creek: Three days prior to opening of archery season through May 31 — That part of the Catherine Creek Unit as follows: 17 square miles in Townships 4 and 5 South, Range 41 East;

(ll) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(mmm) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

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(nn) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(oo) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(pp) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(qq) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, Range 48 East.

(rr) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season — That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Melhorn: May 1 through December 1: That part of the Pine Creek Unit as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(vv) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(xx) Summit Point: May 1 to December 1: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(yy) Eagle Creek: December 1 through March 31 annually — That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(zz) Conroy Cliff: September 27 through October 11, 2006 and October 22 through November 12, 2006 — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(aaa) Devine Ridge-Rattlesnake: September 27 through October 11, 2006 and October 22 through November 12, 2006 — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(bbb) Dairy Creek: September 27 through October 11, 2006 and October 22 through November 12, 2006 — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ccc) Burnt Cabin: September 27 through October 11, 2006 and October 22 through November 12, 2006 — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ddd) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(eee) North Paunina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(fff) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(ggg) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(hhh) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(iii) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 road in Chesnimnus Unit are closed;

(jjj) Hells Canyon National Recreation Area — Permanent Closure. Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(kkk) PO Saddle Road — Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East.

(lll) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

(mmm) South Boundary: Permanent Closure — That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

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 33-1978, f. & ef. 6-30-78; 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 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; 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 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06

Adm. Order No.: DFW 134-2005(Temp)

Filed with Sec. of State: 11-30-2005

Certified to be Effective: 11-30-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-004-0019

Rules Suspended: 635-004-0019(T)

Subject: Amend rules to adopt inseason actions which have implemented by the federal government for commercial fisheries.

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 identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-01, announced inseason management changes, effective April 1, 2005, to commercial fisheries including limited entry fixed-gear sablefish tier limits, minor corrections to Rockfish Conservation Area (RCA) coordinates, and clarification of requirements when multiple gear types are on board limited entry trawl vessels.

(4) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-02, announced inseason management changes, effective May 1, 2005, to commercial fisheries including limited entry trawl trip limits and trawl gear definitions.

(5) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-03, announced inseason management changes, effective May 3, 2005, to set bycatch limits on directed open access commercial fisheries for groundfish.

(6) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-04, announced inseason management changes, effective July 1, 2005, to commercial fisheries including trip limits for limited entry trawl, limited entry fixed gear, and open access fisheries, increased bycatch limits for open access fisheries, and clarifications to trip limits for Pacific whiting.

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(7) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-07, and as corrected within NMFS-SEA-05-08, announced inseason management changes, effective October 1, 2005, to commercial fisheries including trip limits and Rockfish Conservation Area adjustments for the limited entry trawl fishery, trip limit adjustments for sablefish in the open access fishery, and an increase in the allowable harvest of widow rockfish in the whiting fishery.

(8) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-11, announced inseason management changes, effective December 1, 2005, to commercial fisheries including the prohibition of retention of petrale sole and slope rockfish in the limited entry trawl fishery.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05

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Adm. Order No.: DFW 135-2005(Temp)

Filed with Sec. of State: 11-30-2005

Certified to be Effective: 11-30-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-004-0033

Rules Suspended: 635-004-0033(T)

Subject: Amend rule to increase the two-month nearshore commercial limited entry limit for greenling from 175 lbs to 275 pounds.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish;
- (b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish);
- (c) Minor Slope Rockfish;
- (d) Black Rockfish;
- (e) Blue Rockfish;
- (f) Cabezon;
- (g) Canary Rockfish;
- (h) Greenling;
- (i) Tiger Rockfish;
- (j) Vermilion Rockfish;
- (k) Widow Rockfish;
- (l) Yelloweye Rockfish;
- (m) Yellowtail Rockfish;
- (n) Darkblotched Rockfish;
- (o) Pacific Ocean Perch;
- (p) Longspine Thornyhead;
- (q) Shortspine Thornyhead;
- (r) Arrowtooth Flounder;
- (s) Dover Sole;
- (t) Petrale Sole;
- (u) Rex Sole;
- (v) Other Flatfish;
- (w) Lingcod;
- (x) Sablefish;
- (y) Pacific Whiting.

(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2005, the commercial harvest caps are:

- (a) Black rockfish and blue rockfish combined of 108.7 metric tons, of which no more than 104.8 metric tons may be black rockfish.
- (b) Other nearshore rockfish, 12.0 metric tons.
- (c) Cabezon, 31.3 metric tons.
- (d) Greenling, 23.4 metric tons.
- (3) For Oregon the following commercial limits apply for 2005:

(a) No vessel may land more than 2,000 pounds of cabezon or 275 pounds of greenling during any cumulative catch period described in subsection 635-004-0033(4);

(b) No vessel may land more than 400 pounds of nearshore rockfish species other than black rockfish or blue rockfish during any cumulative catch period described in subsection 635-004-0033(4);

(c) No vessel may land more than 1,000 pounds of nearshore rockfish for commercial purposes during cumulative catch periods January 1–February 28 or March 1–April 30;

(d) No vessel may land more than 1,500 pounds of nearshore rockfish for commercial purposes during the cumulative catch period May 1–June 30;

(e) No vessel may land more than 700 pounds, in the aggregate, of black or blue rockfish for commercial purposes during the cumulative catch period July 1–August 31;

(f) No vessel may land more than 700 pounds of nearshore rockfish for commercial purposes during cumulative catch period September 1–October 31; and

(g) No vessel may land more than 500 pounds of nearshore rockfish for commercial purposes during cumulative catch period November 1–December 31.

(4) The cumulative catch periods are: January 1–February 28 (29); March 1–April 30; May 1–June 30; July 1–August 31; September 1–October 31; and November 1–December 31.

Stat. Auth.: ORS 506.109 & 506.119
Stats. Implemented: ORS 506.129
Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05

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Adm. Order No.: DFW 136-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 7-1-05

Rules Amended: 635-011-0072, 635-011-0100, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0130, 635-039-0080, 635-039-0090

Subject: Amend rules to adopt sport fishing regulations for 2006.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-011-0072

Bait Restrictions

Notwithstanding rules as incorporated in the **2006 Oregon Sport Fishing Regulations**, it is *unlawful* to use lamprey as bait in any recreational fishery.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 508.306
Hist.: DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

ADMINISTRATIVE RULES

635-011-0100

General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2006 Oregon Sport Fishing Regulations** by reference. 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**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-013-0003

Purpose and Scope

(1) The purpose of division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures for 2005, included in the **Pacific Fishery Management Council — Adopted 2005 Ocean Salmon Management Measures and Impacts, dated April 2005**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the **2006 Oregon Sport Fishing Regulations**.

(4) A copy of the **Pacific Fishery Management Council** referenced document and the **Federal Regulations** may be obtained by contacting Pacific Council News at www.pcouncil.org or at 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1383.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through OAR 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2006 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2006 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2006 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00,

cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-014-0080

Purpose and Scope

(1) The purpose of division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates by reference the **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 014 to determine all applicable sport fishing requirements for the Northwest Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-014-0090

Inclusions and Modifications

The **2006 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-016-0080

Purpose and Scope

(1) The purpose of division 016 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 016 incorporates by reference the **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon**

ADMINISTRATIVE RULES

Sport Fishing Regulations in addition to division 011 and division 016 to determine all applicable sport fishing requirements for the Southwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-016-0090

Inclusions and Modifications

The **2006 Oregon Sport Fishing Regulations** provide requirements for the Southwest 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**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-017-0080

Purpose and Scope

(1) The purpose of division 017 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 017 incorporates by reference the **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 017 to determine all applicable sport fishing requirements for the Willamette Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-017-0090

Inclusions and Modifications

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) No permit holder shall harvest more than one hundred (100) lamprey during each lamprey season;

(f) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(g) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; FWC 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-017-0095

Sturgeon Season

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**.

[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

635-018-0080

Purpose and Scope

(1) The purpose of division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates by reference the **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 018 to determine all applicable sport fishing requirements for the Central Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

ADMINISTRATIVE RULES

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
 Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-018-0090

Inclusions and Modifications

The **2006 Oregon Sport Fishing Regulations** provide requirements for the Central 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**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-019-0080

Purpose and Scope

(1) The purpose of division 019 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 019 incorporates by reference the **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 019 to determine all applicable sport fishing requirements for the Northeast Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-019-0090

Inclusions and Modifications

The **2006 Oregon Sport Fishing Regulations** provide requirements for the Northeast 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**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-

00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-021-0080

Purpose and Scope

(1) The purpose of division 021 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 021 incorporates by reference the **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 021 to determine all applicable sport fishing requirements for the Southeast Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-021-0090

Inclusions and Modifications

The **2006 Oregon Sport Fishing Regulations** provide requirements for the Southeast 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**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-023-0080

Purpose and Scope

(1) The purpose of division 023 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 023 incorporates by reference the **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 023 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

ADMINISTRATIVE RULES

635-023-0090

Inclusions and Modifications

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**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. 4-1-95, cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. 4-21-95, cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. 3-26-96, cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. 4-2-97, cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. 4-2-98, cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. 4-16-98, cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. 4-16-98, cert. ef. 5-4-98; DFW 46-1998, f. 4-16-98, cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. 4-16-98, cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. 4-16-98, cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. 4-9-99, cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. 4-9-99, cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. 4-9-99, cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. 4-9-99, cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. 4-9-99, cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99, cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. 4-9-99, cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. 4-9-99, cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. 4-2-00, cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. 4-9-99, cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. 4-9-01, cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. 4-9-01, cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. 4-9-01, cert. ef. 5-1-01; DFW 35-2001(Temp), f. 4-9-01, cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. 4-9-01, cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. 4-9-01, cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. 4-9-01, cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. 4-2-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. 4-2-02, cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. 4-2-02, cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02, cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. 4-9-02, cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. 4-9-03, cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. 4-9-03, cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-14-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-023-0095

Sturgeon Season

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**.

[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. 4-2-05, 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

635-023-0125

Spring Sport Fishery

The **2006 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. 4-2-04, cert. ef. 2-13-04; DFW 17-2004(Temp), f. 4-2-04, cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. 4-2-05, cert. ef. 2-14-05; DFW 27-2005(Temp), f. 4-9-05, cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. 5-5-05, cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-023-0130

Fall Sport Fishery

The **2006 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04, cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. 4-9-05, cert. ef. 4-15-05; DFW 84-2005(Temp), f. 4-9-05, cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(T), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); as amended by Federal Regulations, Vol. 70, No. 74, dated April 19, 2005.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. 4-9-98, cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. 4-9-02, cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. 4-9-05, cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. 4-9-05, cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

635-039-0090

Inclusions and Modifications

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye

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rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

- (A) Yelloweye rockfish, 3.2 metric tons.
- (B) Canary rockfish, 6.8 metric tons.
- (C) Lingcod, 151 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 1.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2005 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 372.5 metric tons, of which no more than 332 metric tons may be black rockfish.

- (b) Other nearshore rockfish, 11.4 metric tons.
- (c) Cabezon, 15.8 metric tons.
- (d) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the 2005 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2005:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish ("sea bass," "snapper"), greenling ("sea trout"), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 8 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbag Mountain. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(d) Harvest methods and other specifications for marine fish in subsections (5)(a) and (b) including the following:

- (A) Minimum length for lingcod, 24 inches.
- (B) Minimum length for cabezon, 16 inches.
- (C) Minimum length for greenling, 10 inches.
- (D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(e) Sport fisheries for species in subsections (5)(a) and (b) are open January 1 through December 31, 24 hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, f. 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f.

12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06

Adm. Order No.: DFW 137-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Adopted: 635-005-0032

Rules Amended: 635-005-0020, 635-005-0030, 635-006-0810, 635-006-0850, 635-006-0910, 635-006-1010, 635-006-1015, 635-006-1025, 635-006-1035, 635-006-1065, 635-006-1075, 635-006-1085, 635-006-1095, 635-006-1110

Subject: These rules remove bay clams from the developmental fisheries species list and establish a limited entry system for the commercial bay clams dive fishery; and adopt Dungeness crab fishery permit transfer protocol.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-005-0020

Closed Seasons and Areas

It is *unlawful* to take for commercial purposes:

(1) Gaper clams from January 1 through June 30, except under a limited entry bay clam dive fishery permit (OAR 635-006-1015), an incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch.

(2) Razor clams from July 15 through September 30 in the area north of Tillamook Head in Clatsop County.

(3) Any clams from:

- (a) Little Nestucca Bay;
- (b) Big Nestucca Bay;
- (c) Netarts Bay, except cockles may be taken;
- (d) Salmon River and Bay;
- (e) Siletz River and Bay;
- (f) All state parks south of Tillamook Head.

(4) Bay clams in Tillamook Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:

(a) The "Ghost Hole" from the floating toilet site south to Sandstone Point and 500 feet westward from the Highway 101 shoreline;

(b) The area east of a line connecting the Coast Guard tower on the north jetty and buoy marker 13;

(c) The area above mean lower low water near Kincheloe Point.

(5) Cockle clams in Netarts Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:

(a) An area extending 500 feet to the north adjacent to Oregon State University's shellfish reserve and across the entire width of the bay;

(b) The area above mean lower low water.

(6) Bay clams in Coos Bay, under a bay clam dive permit (OAR 635-006-1015), from the following areas:

(a) In depths less than 10 feet from mean lower low water;

(b) The area of South Slough east of the Charleston bridge.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0065, Renumbered from 635-036-0090; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 137-1991(Temp), f. 12-20-91, cert. ef. 12-23-91; FWC 39-1992(Temp), f. & cert. ef. 6-19-92; FWC 94-1992(Temp), f. 9-18-92, cert. ef. 9-19-92; FWC 102-1992 (Temp), f. 10-1-92, cert. ef. 10-2-92; FWC 121-1992(Temp), f. & cert. ef. 11-9-92; DFW 30-1998(Temp), f. & cert. ef. 5-6-98 thru 10-23-98; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 61-2002, f. & cert. ef. 6-14-02; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-005-0030

Size Limit

(1) The minimum legal size of razor clams taken for commercial purposes is 3-3/4 inches from tip to tip of the shell. It is *unlawful* to possess any razor clams taken for commercial purposes which are less than the minimum legal size.

(2) The minimum legal size of cockle clams taken for commercial purposes under a bay clam dive permit (OAR 635-006-1015) is 2-1/4 inches at the widest dimension. It is *unlawful* to possess any cockle clams taken for commercial purposes under a bay clam dive permit which are less than the minimum legal size.

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(3) The minimum legal size of gaper clams taken for commercial purposes under a bay clam dive permit (OAR 635-006-1015) is 4 inches at the widest dimension. It is *unlawful* to possess any gaper clams taken for commercial purposes under a bay clam dive permit which are less than the minimum legal size.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 255, f. 9-12-72, ef. 10-1-72, Renumbered from 625-10-075, Renumbered from 635-036-0100; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-005-0032

Catch Limits

(1) In Netarts Bay, the annual quota for cockle clams harvested by the bay clam dive fishery (OAR 635-006-1015) is 8,000 pounds.

(2) In Tillamook Bay, the annual quota for cockle clams harvested by the bay clam dive fishery (OAR 635-006-1015) is 90,000 pounds.

(3) Staff will initiate rulemaking to close the commercial season for cockle clams for an area when the quota is reached.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-0810

Definitions

(1) For the purposes of OAR 635-006-0820 through 635-006-1210 the following definitions shall apply:

(2) "Actively managed" means a fishery under a limited entry system according to the provision of a federal fishery management plan.

(3) "Bay clams" means cockle clams (*Climocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax, nuttallii*), native littleneck clams (*Protothaca staminea*), and softshell clams (*Mya arenaria*).

(4) "Board" means the Developmental Fisheries Board appointed by the Commission.

(5) "Commission" means the Oregon Fish and Wildlife Commission.

(6) "Department" means the Oregon Department of Fish and Wildlife.

(7) "Developed fishery" means a fishery where the level of participation, catch, and effort indicate the fishery has approached optimum sustained yield and/or there is sufficient biological information, information on harvest methods, gear types, and markets to develop a long-term management plan for the species.

(8) "Developmental fisheries species" means food fish species adopted by the Commission to be managed under the Developmental Fisheries Program.

(9) "Director" means the Director of the Oregon Department of Fish and Wildlife.

(10) "Domestic partner" means an individual who, together with a permit holder has formed a partnership in which both:

(a) Are at least 18 years of age;

(b) Share a close personal relationship and are responsible for each other's welfare;

(c) Are each other's sole domestic partner;

(d) Are not married to anyone and neither has had another domestic partner or a spouse within in the previous six months;

(e) Are not related by blood closer than would bar marriage under ORS 106.020;

(f) Have shared a household for at least six months; and

(g) Are jointly financially responsible for basic living expenses, including expenses for food, shelter, and maintaining a household.

(11) "Immediate family" means a permit holder's spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.

(12) "Maximum sustainable yield" (MSY) means an estimate of the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.

(13) "Underutilized species" means a food fish species or group of species that is not presently harvested in significant quantities due to poor markets or inadequate gear development or may be caught but not utilized due to poor markets.

(14) "Optimum sustained yield" (OSY) means the desired catch level of a fishery that will provide the greatest overall benefit to the state taking into account economic, social, and ecological considerations that will maintain a level of population that insures the long-term productivity of the stock and does not impair its ability to sustain itself into the future.

(15) "Overfishing" means a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY.

Stat. Auth.: ORS 506.109, 506.119, 506.450, 506.455 & 506.465

Stats. Implemented: ORS 596.129

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; DFW 85-1999, f. & cert. ef. 11-1-99; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-0850

Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH:

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. Hagfish permits are valid for 90 days from date of issue, unless five landings of at least 1,000 pounds each or a total of 25,000 pounds are made within 90 days from date of issue, in which case the permit is valid for the remainder of the year. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 5000 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(E) Pacific sardine (*Sardinops sagax*) fishery has a qualifying requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Annual renewal requirements are five landings totaling at least 80,000 pounds or landings totaling at least \$25,000, based on ex-vessel price. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required. This rule incorporates, by reference, the sardine management measures for 2004 included in the Pacific Council List of Decisions for the November 2003 PFMCM meeting, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660**, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council decisions and the Federal Regulations may be obtained by contacting the Fish Division at (503) 947-6200.

(b) INVERTEBRATES:

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

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(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(F) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(G) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, year-round season, taken from nonintertidal areas with an abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-0870 and 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

(a) FISH:

- (A) Salmon shark (*Lamna ditropis*);
- (B) Carp (*Cyprinus carpio*);
- (C) Black hagfish (*Eptatretus deani*);
- (D) Yellow perch (*Perca flavescens*);
- (E) Eelpouts (family Zoarcidae);
- (F) Brown bullhead (*Ameiurus nebulosus*);
- (G) Skiffish (*Erilepis zonifer*);
- (H) Northern squawfish (*Ptychocheilus oregonensis*);
- (I) Pacific saury (*Cololabis saira*);
- (J) Pacific sandfish (*Trichodon trichodon*);
- (K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);

(L) Pacific pomfret (*Brama japonica*);

(M) Slender sole (*Eopsetta exilis*).

(b) INVERTEBRATES:

- (A) Pacific sand crab (*Emerita analoga*);
- (B) Freshwater mussels (families Margaritifera, Anodonta, Gonidea, and Corbicula);
- (C) Ocean cockle clams (*Clinocardium nuttallii*);
- (D) California market squid (*Loligo opalescens*) and other squid (several species);

(E) Fragile urchin (*Allocentrotus fragilis*);

(F) Sea cucumber (*Parastichopus* spp.).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

(a) FISH:

- (A) Spiny dogfish (*Squalus acanthias*);
- (B) Soupfin shark (*Galeorhinus zyopterus*);
- (C) Skate (family Rajidae);
- (D) American shad (*Alosa sapidissima*);
- (E) Pacific cod (*Gadus macrocephalus*);
- (F) Pacific flatnose (*Antimora microlepis*);
- (G) Pacific grenadier (*Coryphaenoides acrolepis*);
- (H) Jack mackerel (*Trachurus symmetricus*);
- (I) Chub (Pacific) mackerel (*Scomber japonicus*);
- (J) Greenstriped rockfish (*Sebastes elongatus*);
- (K) Redstripe rockfish (*Sebastes proriger*);
- (L) Shortbelly rockfish (*Sebastes jordani*);
- (M) Sharpchin rockfish (*Sebastes zacentrus*);
- (N) Splitnose rockfish (*Sebastes diploproa*);
- (O) Pacific sanddab (*Citharichthys sordidus*);
- (P) Butter sole (*Pleuronectes isolepis*);
- (Q) English sole (*Pleuronectes vetulus*);
- (R) Rex sole (*Errex zechirus*);
- (S) Rock sole (*Pleuronectes bilineatus*);
- (T) Sand sole (*Psetichthys melanostictus*);
- (U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);
- (V) Spotted ratfish (*Hydrolagus colliiei*);
- (W) Wolf-eel (*Anarrhichthys ocellatus*);
- (X) Walleye pollock (*Theragra chalcogramma*).

(b) INVERTEBRATES:

- (A) Red rock crab (*Cancer productus*);
- (B) Purple sea urchins (*Strongylocentrotus purpuratus*);
- (C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97;

FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99, DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 67-2005(Temp), f. 7-5-05, cert. ef. 7-6-05 thru 12-31-05; DFW 122-2005(Temp), f. & cert. ef. 10-18-05 thru 11-30-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-0910

Procedures for Issuance, Transfer and Renewal of Developmental Fisheries Species Permits

(1) Applications:

(a) An applicant for a permit must submit a complete application in writing accompanied by an annual fee of \$75. The application shall include the species of fish to be taken, the method and gear proposed to be used, and the area from which the Developmental Fisheries Species are to be taken, the vessel operator, and other information as the Department may require;

(b) Except as listed below, complete applications must be received postmarked or date-stamped by January 1 of the year of issue for new species added to the developmental fishery list in OAR 635-006-0850, and thereafter by the annual filing date of February 1 of the year of issue.

(A) Applications for box crab permits must be postmarked or date-stamped by January 1 of the year of issue; and

(B) Applications for new hagfish permits will be accepted on a first-come, first-serve basis.

(c) An application shall be considered complete if it is legible, has all information requested on the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned and, unless it is thereafter resubmitted and deemed complete by the filing date, the individual shall not be considered to have applied in a timely manner;

(d) Before applying for a permit, an applicant must first have obtained the appropriate vessel license (or individual license if permit is issued to individual) for the year the permit will be issued.

(e) Applications for new hagfish permits must include a business plan. The plan format is provided by ODFW. The business plan may include, but is not limited to, a description of vessels and gear currently owned or expected to purchase, identification of the market, and a letter of intent to buy from a processor.

(f) The vessel operator designated in subsection (a) above may change up to twice a year, with at least three work days' notice by the permit holder to ODFW, Newport office.

(2) Number of permits allowed:

(a) An individual shall not submit more than one application, per vessel (or per person for individual permits), for each developmental fishery species gear category;

(b) A permit holder who holds a valid developmental fisheries permit may not apply for any additional permits for the same vessel (or person for an individual permit) and species gear category unless the Department proposes to deny that permit;

(c) If a permit holder who holds a permit at issue either before the Commission or a court of law, is awarded another permit for the same species gear category through the lottery and thereafter prevails before the Commission or in court, the permit holder shall immediately surrender one of the permits to any Department office, so that only one valid permit per species gear category is held.

(3) Issuance of permits:

(a) Except for new hagfish permits, if the number of applications received by the filing date is less than the number of permits available, all applicants who have submitted complete applications shall be issued a permit within 14 days of the filing date.

(A) Any remaining permits shall be issued on a first-come, first-served basis, within 14 days of receipt of each completed application, until the maximum number of permits is issued. Priority shall be based on post-mark or date-stamped date;

(B) The names of applicants who did not receive a permit shall be placed on an alternates list, in the order they are received, until the next annual filing date. Applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Permits which become available before the end of the year shall be made available to the alternates list, in the order listed. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply, he shall forfeit the permit and the permit shall then be made available to the next name on the alternates list.

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(b) Except for new hagfish permits, if the number of applications received by the filing date is greater than the number of permits available, the Department shall determine first how many applications there are with preference points as accrued under OAR 635-006-0915, except for new species that have qualification restrictions set forth in OAR 635-006-0850. Evidence of landings must be supplied by the applicant and submitted with the application.

(A) If the number of these applicants does not exceed the number of permits, they shall be given all available permits and any remaining applicants shall be placed in a lottery;

(B) If the number of applicants who have preference points exceeds the number of permits, then these applicants only shall be placed in a lottery, and grouped by the number of preference points they have accrued for each species gear category. Applicants with the highest number of preference points for each species gear category will be drawn first. Applicants having the highest number of preference points per species gear category will be drawn next. This permit issuance process will continue through descending numbers of preference points until all the available permits have been issued, unless all qualified applicants with preference points have been issued permits prior to that point. Permits shall be issued within 14 days of the lottery;

(C) In addition, remaining applicants (who do not have preference points) shall be placed in a lottery and their names shall be drawn;

(D) The Department then shall prepare an alternates list, in which applicants who have preference points are listed first (in the order drawn), and thereafter remaining applicants are listed, in the order in which they were drawn. All applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Any permits available before the end of the year shall be made available to the first name on the alternates list. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply for the lottery permit within 30 days, he shall forfeit such permit and the permit shall then be made available to the next name on the alternates list.

(c) Permits may be made available before the end of the year by a permit holder voluntarily turning in a permit.

(d) A subcommittee of the Developmental Fishery Board shall evaluate the business plans submitted by hagfish fishery applicants to determine if the applicant is likely to actively prosecute the fishery. If more applicants submit acceptable business plans than there are available new permits, then the available permits will be distributed as otherwise specified in subsections (3)(a) and (b) of this rule.

(4) Persons to whom permits are issued: Permits shall be issued to an individual person or entity and assigned to a vessel, except when hand harvest methods are used. The permit holder is the owner or controller of the vessel or the individual person when hand harvest methods are used.

(5) Transfer of permits: Permits for Developmental Fisheries Species are not transferable to another person or entity; provided however that permits may be reassigned to another vessel owned or leased and controlled by the permit holder up to two times annually.

(a) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member as defined by OAR 635-006-0810. Permit transfer shall require a copy of the death certificate and the original permit, and must be requested by the family member to the deceased which shall be presumed by possession of the permit and death certificate.

(b) To reassign the vessel on a permit, a permit holder shall first apply on a form provided by the Department and shall include a \$25 fee;

(c) If the permit holder is not the registered owner of the vessel to which a permit is being reassigned, a copy of a signed lease agreement with the owner of the vessel must accompany the application. The lease agreement must show the permit holder will be in control of the daily activities of the vessel during the time of the lease.

(d) No reassignment shall be effective until the permit holder has received approval from the Department and an updated permit.

(e) If a permit is reassigned to a vessel under the ownership of other than the permit holder, the permit holder or designated vessel operator must be aboard the vessel during harvest activities under the permit.

(6) Renewal of permits:

(a) Permits may be renewed by submission, to the Department, of the appropriate fee and a complete application date-stamped or postmarked before January 1 of the year for which renewal is sought, except renewal applications for box crab permits must be postmarked or date-stamped before December 1 of the year prior to which renewal is sought;

(b) An application for renewal shall be considered complete if it is legible and has all information requested on the form and is accompanied by the required fee in full. Any application which is not complete shall be

returned, and unless it is thereafter resubmitted and deemed complete before the deadline listed in (6)(a) above, the individual shall not be considered to have applied for renewal in a timely manner;

(c) It is the responsibility of the permit holder to ensure an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner;

(d) In addition to timely and complete filing to renew a permit, a permit holder must annually lawfully land the required pounds and/or landings listed in OAR 635-006-0850. However, if a permit holder obtained a permit later than July 1 of the prior year, the permit holder shall not be required to make the annual landing requirement by the following January. Instead, at the next renewal thereafter, the permit holder shall be required to demonstrate the annual landing requirement was fulfilled during the first full year in which the permit was held.

(e) Landings made by one vessel can not be used for qualification to renew more than one permit per permit category in any given year.

(f) In addition to the above landing requirements, logbooks required under OAR 635-006-0890 must be turned into an ODFW office by the application deadline for renewal of a permit.

(7) Authority of Director: Consistent with OAR 635-006-0810 through 635-006-0950, the Director is authorized to issue Developmental Fisheries Permits under the authority of ORS 506.460.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.540

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 2-1996, f. & cert. ef. 1-23-96; FWC 1-1997, f. & cert. ef. 1-16-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 102-2001, f. & cert. ef. 10-23-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 48-2002(Temp), f. & cert. ef. 5-13-02 thru 11-8-02; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 6-2004(Temp), f. 1-28-04, cert. ef. 1-31-04 thru 3-31-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1010

Definitions

(1) For the purpose of OAR 635-006-1015 through 635-006-1210:

(2) "Bay clam dive fishery" shall mean the commercial fishery for bay clams (including: cockle clams, *Clinocardium nuttallii*; butter clams, *Saxidomus giganteus*; gaper clams, *Tresus capax*, *nuttallii*; native littleneck clams, *Protothaca staminea*; and softshell clams, *Mya arenaria*) from subtidal areas in Oregon estuaries using dive gear.

(3) "Black rockfish/blue rockfish/nearshore fishery" shall mean the commercial fishery for black rockfish, blue rockfish and nearshore fish.

(4) "Brine shrimp fishery" shall mean the commercial fishery for adult *Artemia* spp. from Lake Abert (Lake County).

(5) "Completion" of a vessel for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931 is defined as:

(a) A date identified in a contract document as the proposed or actual date of completion; or

(b) The date an insurance policy was in effect covering the vessel for loss or liability; or

(c) The date of inspection for certification by the U.S. Coast Guard; or

(d) Other written document acceptable to the Department that establishes the actual date the vessel was completed for the purposes of entering the Oregon ocean Dungeness crab fishery.

(6) "Crab fishing season" is the period from December 1 of one year through August 14 of the next year.

(7) "Length" or "Overall Length" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform. For the purpose of initial ocean Dungeness crab permit issuance, length of the vessel is overall length of the vessel on September 9, 1995.

(8) "Ocean Dungeness crab fishery" for the purposes of ORS 508.926, means all fishing for Dungeness crab in Oregon waters of the Columbia River and all other ocean water seaward of Oregon's coastline and river mouths.

(9) "Owner" is any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. Owner does not include a leasehold interest.

(10) "Replacement vessel" is a vessel purchased to replace a permitted vessel which has been lost due to fire, capsizing, sinking or other event.

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For the ocean Dungeness crab fishery, a replacement vessel shall be no more than 10 feet greater than the vessel which it replaces.

(11) "Sea urchin fishery" shall mean the commercial fishing for *Strongylocentrotus franciscanus*, *S. purpuratus*, and *S. droebachiensis*.

(12) "Under construction" for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931, means that between December 1, 1988, and August 14, 1991, a contract was signed and earnest money paid equaling at least 10% of the value of the contract, or invoices have been paid for 10% or more of the total construction cost, to produce a newly constructed vessel, including, but not limited to, the laying of the new vessel's keel.

(13) "Yaquina Bay Roe-herring fishery" shall mean the commercial net fishery for Pacific herring (*Clupea harengus pallasi*) which occurs annually between January 1 and April 15 in Yaquina Bay pursuant to OAR 635-004-0027.

(14) "Initial eligibility for vessels to participate" for the purposes of application for an Ocean Dungeness crab permit pursuant to ORS 508.931 means eligibility of a vessel on which to make permit application is confined to vessels which have never obtained an initial permit.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 76-1995, f. 9-13-95, cert. ef. 9-19-95; FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1015

Requirement for Permit

(1) The following provide general requirements for permits:

- (a) Gillnet salmon — see ORS 508.775;
- (b) Troll salmon — see ORS 508.801 and 508.828;
- (c) Shrimp — see ORS 508.880 and 508.883;
- (d) Scallop — see ORS 508.840 and 508.843;
- (e) Roe-herring:

(A) It is *unlawful* for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.

(f) Sea Urchin:

(A) It is *unlawful* for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.

(g) Ocean Dungeness crab:

(A) Except as provided under the reciprocity provisions of ORS 508.941(3), it is *unlawful* for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.

(B) If the Commission establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.

(C) In addition to certifying that the vessel is free of crab on November 30 each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots that will be used in that season's fishery before fishing.

(D) A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.

(h) Developmental Fisheries: See ORS 506.450 through 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

(j) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.945.

(k) Brine Shrimp:

(A) It is *unlawful* to take or attempt to take brine shrimp for commercial purposes without first obtaining a brine shrimp fishery permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Department may issue no more than three permits required by section (1)(k) of this rule.

(1) Bay clam dive fishery:

(A) It is *unlawful*:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary North of Heceta Head without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining either a coast-wide bay clam dive fishery permit or a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued a permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(A)(i) of this rule nor more than five south-coast permits required by (1)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the license year.

(6) No vessel permit may be transferred away from a vessel without the lien holder's written permission.

(7) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 103-2001, f. & cert. ef. 10-23-01; DFW 95-2002, f. & cert. ef. 8-27-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1025

Permit Fee

The annual fee to participate in limited entry fisheries is as follows:

(1) Gillnet salmon — \$75. See ORS 508.790 and Section 6, Chapter 512, Oregon Laws 1989.

(2) Troll salmon — \$75. See ORS 508.816 and Section 6, Chapter 512, Oregon Laws 1989.

(3) Shrimp — \$75. See ORS 508.901.

(4) Scallop — \$75. See ORS 508.858.

(5) Roe-herring — \$75. See ORS 508.765.

(6) Sea Urchin — \$75. See ORS 508.760.

(7) Ocean Dungeness crab — \$75. See ORS 508.941(4).

(8) Black rockfish/blue rockfish/nearshore fishery — \$75. See ORS 508.949.

(9) Brine Shrimp — \$75.

(10) Bay clam dive fishery — \$0.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1035

Eligibility Requirements for a Permit

Eligibility for a limited entry permit is as follows:

(1) Gillnet salmon — see ORS 508.784.

(2) Troll salmon — see ORS 508.810.

(3) Shrimp — see ORS 508.886 and 508.895.

(4) Scallop — see ORS 508.852.

(5) Roe-herring — The ODFW shall issue a permit as per ORS 508.765:

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(a) By renewal of previous year's permit;
(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085.

(6) Sea Urchin — An individual licensed as a commercial fisherman under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or
(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085; or

(c) Through a duly authorized medical transfer of an existing permit in accordance with OAR 635-006-1095;

(d) By combining three currently renewed permits into one new permit as provided in OAR 635-006-1095.

(7) Ocean Dungeness crab:

(a) See ORS 508.931;

(b) For the purposes of eligibility for the ocean Dungeness crab fishery permit, a boat which received a license waiver issued pursuant to ORS 508.808 shall be considered as having possessed a boat license for that year;

(c) ORS 508.931 and 508.941 require that the vessel be previously licensed in accordance with ORS 508.260 for the purposes of initial eligibility for an ocean Dungeness crab fishery permit. A single delivery license may not be substituted for a boat license for this purpose.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(9) Brine Shrimp — A commercial fisherman licensed under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or

(b) If issued a brine shrimp permit under the Developmental Fisheries Program prior to 2004.

(10) Bay clam dive fishery — An individual licensed as a commercial harvester under ORS 508.235 or a vessel is eligible to obtain the permit required by OAR 635-006-1015:

(a) For a south coast bay clam dive permit for the year 2006, if a bay clam south-coast dive permit was issued to the individual or vessel under the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005; or

(b) For a coast wide bay clam dive permit for the year 2006, if a bay clam coast-wide dive permit was issued to the individual or vessel under the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005.

(c) After 2006, by renewal of the previous years' permit and satisfaction of the requirements in OAR 635-006-1075(1)(j).

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1065

Review of Denials

(1) Except for bay clam dive fishery permits, an individual whose application for issuance or renewal of a limited entry permit is denied by the Department may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board. The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon — see ORS 508.796;

(b) Troll salmon — see ORS 508.825;

(c) Shrimp — see ORS 508.910;

(d) Scallop — see ORS 508.867;

(e) Roe-herring — see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin — see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab — see ORS 508.941.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

(5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a bay clam fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted.

(b) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit.

(c) A party must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 to 183.550.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1075

Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

(a) Gillnet salmon — see ORS 508.781;

(b) Troll salmon — see ORS 508.807;

(c) Shrimp — see ORS 508.892;

(d) Scallop — see ORS 508.849;

(e) Roe-herring permit — Permits may be renewed by submission to the Department of a \$75 fee and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit — see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought and;

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned in to an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10), annual renewal requirements are waived in the year the transfer occurred.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and

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deemed complete by January 31, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1085

Lottery for Certain Limited Entry Fisheries

(1) A lottery process is provided in all limited entry fisheries except ocean Dungeness crab.

(2) A lottery for issuance of permits shall be conducted as follows:

(a) Gillnet salmon — see ORS 508.792;

(b) Troll salmon — see ORS 508.819;

(c) Shrimp — see ORS 508.904;

(d) Scallop — see ORS 508.861. If the number of permits issued in accordance with ORS 508.849 falls below 25, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 25;

(e) Roe-herring — If the number of permits issued in accordance with OAR 635-006-1035 falls below six, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed six;

(f) Sea Urchin:

(A) If the total number of permits which have been renewed, and/or for which an appeal is pending, with the Commercial Fishery Permit Board and/or awarded through a prior lottery, is less than 30, a lottery shall be held on the 4th Friday in April;

(B) An individual must be 18 years of age or older and furnish proof of age to be eligible for the lottery;

(C) An individual may not already hold a valid urchin permit, however, an individual whose permit is at issue in a pending Sea Urchin Permit Board proceeding or before a court of law may participate in the lottery;

(D) If a permittee whose permit is at issue either before the Sea Urchin Permit Board or a court of law is awarded another permit through the lottery and thereafter prevails before the Board or in court, the permittee shall immediately surrender one of the permits to any Department office, so that only one valid permit is held;

(E) An individual who qualifies to participate in the lottery shall send a complete lottery application to the Department, date-stamped or post-marked no later than April 15 of the year for which the permit is to be issued. An individual shall not submit more than one application to participate in the lottery. For successful applicants, the application fee shall apply toward the permit fee of \$75;

(F) The names of lottery applicants shall be drawn to obtain the available permits. All other names of lottery applicants shall be drawn and placed on an alternate list in the order in which they were drawn, and shall be issued permits during the next 24 months as they may become available through Permit Board actions or surrender of permits by a permit holder;

(G) An individual whose name is drawn in the lottery shall thereafter apply on the prescribed form, to the Department to obtain a permit. Such application must be received by the Department within 30 days of the date the notification was mailed to the successful applicant following the lottery;

(H) Any individual who fails to apply for the lottery permit within 30 days shall forfeit such permit. The permit shall then be made available to the first name on the alternate list, and shall be applied for in accordance with section (G) of this rule;

(I) If all permits are not issued by renewal or through the lottery, permits thereafter may be issued on a first come first served basis up to the total number of permits allowed. All applications shall be mailed to the Department and priority shall be based on postmark or date-stamped date;

(J) The Commission may suspend the lottery for up to two years based upon its assessment of the condition of the resource and recommendations of the Sea Urchin Permit Review Board.

(g) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.955. If the number of permits issued in accordance with ORS 508.947 falls below 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement.

(h) Bay clam dive fishery — If the number of permits issued in accordance with OAR 635-006-1035 falls below ten for coast-wide permits or five for south-coast permits, the Department may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed ten for coast-wide permits or five for south-coast permits.

(3) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(4) Application for vessel permits shall only be accepted for vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting the permitted species are not eligible for the lottery.

(5) Only one application per vessel may be submitted for each permit fishery lottery.

(6) Any application which is not legible, has incomplete information, or is postmarked after the deadline will not be entered in the lottery. Applications for all permits will be accepted at the Headquarters Office of the Department of Fish and Wildlife, and shall be postmarked or date stamped no later than June 30 of the year for which the permit is issued.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 70-2004(Temp), f. & cert. ef. 7-12-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1095

Transferability of Permits

Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. The following rules apply to transfer of limited entry fishery permits:

(1) Gillnet salmon — see ORS 508.793.

(2) Troll salmon — see ORS 508.822.

(3) Shrimp — see ORS 508.907.

(4) Scallop — see ORS 508.864.

(5) Roe-herring: A permit is transferable to:

(a) A replacement vessel of the permit holder; or, upon request of a permit holder, the Department may authorize transfer of a permit to a replacement vessel owned by an individual other than the permit holder. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void;

(b) The purchaser of the vessel when the vessel is sold.

(6) Sea Urchin:

(a) Medical Transfers: If the number of permits is at 31 or more, the Department may authorize a permit to be transferred to a specified individual for up to 90 days upon petition by a permittee on the form provided by the Department. The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder and such other evidence the Department considers reliable. At the end of the transfer period, the transfer may be renewed by the Department to the original transferee or to a new transferee, provided that the permittee again submits medical evidence documenting that the injury or illness continues to prevent the permittee's return to diving. There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 1996, and ending two years from that date. When the total number of permits reaches 30 or less the Department shall not allow any permit transfers for any medical reason;

(b) If the Department, or the Board, after review of a denial by the Department, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (6)(a), request the Department to transfer the permit back to the original permit holder. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (6)(a), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (6)(a) of this rule;

(c) The total landings of sea urchins by all transferees of a permit shall not exceed the greater of either of the following amounts:

(A) Up to 5,000 pounds per 90-day period, not to exceed 5,000 pounds annually; or

(B) Twenty-five percent of the amount landed by the original permit holder in the previous season's catch, for each 90-day period.

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(d) Combination Permit Transfers: If the number of permits is at 31 or more, the Department may transfer permits from one person to another as follows:

(A) The individual receiving the transferred permit (the purchaser) obtains no more than three total permits, each of which is valid for the current year in which the permit is purchased, from existing permit holders;

(B) The Department combines the three permits into a single new permit issued to the purchaser; and

(C) No transferred permit is valid for harvesting sea urchins until conditions (6)(d)(A) and (6)(d)(B) are met. Individual permits which are transferred may not be used individually and are not renewable. Once a permit has been transferred in accordance with (6)(d)(A) the individual to whom the permit has been transferred has up to 24 months from the date of transfer to combine it with two others to create a valid new permit.

(e) When the total number of permits reaches 30 or less, the Department shall approve the transfer of any permit to any purchaser of the permit, provided that not more than one sale or transfer of the permit occurs within that calendar year;

(f) Lottery-issued permit transfers: No permit issued to an individual through the lottery after 1998 may be transferred to another individual until a cumulative total of 20,000 pounds of sea urchins have been landed on commercial fish receiving tickets by the individual issued the permit through the lottery.

(7) Ocean Dungeness crab — see ORS 508.936 and:

(a) The vessel permit is transferable once in any 60-month period provided the vessel holding the permit has landed at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons in the last five crab seasons which includes landings made during any season open at the time of application. Crab fishing season means ocean Dungeness crab season. However, the Board may waive the landing requirement as well as the 60-month waiting period for transfers, if the Board finds that strict adherence to these requirements would create undue hardship to the individual seeking to transfer a permit. The board also may delegate to the Department its authority to waive these requirements in such specific instances as the Board sets forth in a letter of delegation to the Department;

(b) The vessel permit is transferable:

(A) To another vessel; or

(B) To the purchaser of the vessel when the vessel is sold.

(c) The vessel to which a permit is transferred, with the exception of vessels covered by (7)(e):

(A) Shall not be more than 10 feet longer than the vessel which held the permit on January 1, 2006; and

(B) Shall not be more than 99 feet in length.

(d) For the purpose of (7)(c)(A), the Commercial Fishery Permit Review Board may waive the boat length restriction if it finds that strict adherence would create undue hardship. For this purpose, undue hardship means significant adverse consequences caused by death, permanent disability injury or serious illness requiring extended care by a physician.

(e) Permits obtained as a result of qualifying under section (1)(e) of ORS 508.931 may only be transferred to vessels of a length of 26 feet or less;

(f) In the event a vessel is destroyed due to fire, capsizing, sinking or other event, the vessel owner has up to two years to transfer the ocean Dungeness crab fishery permit to a replacement vessel.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.957.

(9) Brine shrimp fishery: Permits are transferable.

(10) Bay clam dive fishery:

(a) The permittee may request the Department to transfer, to a replacement vessel that is owned by the same person that owns the vessel to which the permit was originally issued, a bay clam dive permit up to two times per calendar year.

(b) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member upon request, validated by the Department's receipt of a copy of the death certificate and the original permit.

(c) The Department may authorize a permit issued to an individual to be transferred to a specified individual for up to 90 days upon petition by the permittee on the form provided by the Department due to a medical condition.

(A) The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder, and such other evidence the Department considers reliable.

(B) At the end of the transfer period, the Department may reinstate the permit to the original permit holder or to a new transferee, provided that the

original permit holder again submits medical evidence documenting that the injury or illness continues to prevent their return to diving.

(C) There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 2006, and ending two years from that date.

(D) If the Department, after review of a denial by the Commission, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (10)(c), request the Department reinstate the permit back to their possession. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (10)(c), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (10)(c) of this rule.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129, 508.760 & 508.762

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 94-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1110

Logbook Required

(1) Sea urchin fishery: The Department shall provide a logbook to each individual permitted to harvest sea urchins. Each individual is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Information so received by the Department shall be considered as confidential.

(2) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.953.

(3) Bay clam dive fishery: The Department shall provide a logbook to each permit holder permitted to harvest bay clams. Each permit holder is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Catch records and trade secrets documented in the log book are confidential.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06

Adm. Order No.: DFW 138-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Amended: 635-004-0033, 635-004-0170, 635-039-0080, 635-039-0090

Subject: Amend halibut regulations for sport fishers; and amend groundfish regulations for recreational fishers and nearshore commercial fishers consistent with Pacific Fishery Management Council action.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

(a) Minor Nearshore Rockfish;

(b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish);

(c) Minor Slope Rockfish;

(d) Black Rockfish;

(e) Blue Rockfish;

(f) Cabezon;

(g) Canary Rockfish;

(h) Greenling;

(i) Tiger Rockfish;

(j) Vermilion Rockfish;

(k) Widow Rockfish;

(l) Yelloweye Rockfish;

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- (m) Yellowtail Rockfish;
- (n) Darkblotched Rockfish;
- (o) Pacific Ocean Perch;
- (p) Longspine Thornyhead;
- (q) Shortspine Thornyhead;
- (r) Arrowtooth Flounder;
- (s) Dover Sole;
- (t) Petrale Sole;
- (u) Rex Sole;
- (v) Other Flatfish;
- (w) Lingcod;
- (x) Sablefish;
- (y) Pacific Whiting.

(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2006, the commercial harvest caps are:

(a) Black rockfish and blue rockfish combined of 106.5 metric tons, of which no more than 102.5 metric tons may be black rockfish.

(b) Other nearshore rockfish, 13.5 metric tons.

(c) Cabezon, 31.3 metric tons.

(d) Greenling, 23.4 metric tons.

(3) In 2006, no vessel may land black rockfish and blue rockfish, combined, more than:

(a) 300 pounds per month in the months of January and February;

(b) 600 pounds per month in the months of March, April, May, June, July and August;

(c) 300 pounds per month in the months of September and October;

(d) 250 pounds per month in the months of November and December.

(4) In 2006, in any month, no vessel may land more than:

(a) 200 pounds of other nearshore rockfish.

(b) 1,000 pounds of cabezon.

(c) 100 pounds of greenling.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06

635-004-0170

Incidental Catch in Other Fisheries

A person may operate a vessel in the black rockfish/blue rockfish/nearshore fishery without a permit required by OAR 635-006-1015(1)(j) if the person:

(1) For only one landing per day, lands no more than 15 pounds of black rockfish, blue rockfish, nearshore fish or a combination of black rockfish, blue rockfish or nearshore fish and if the black rockfish, blue rockfish and nearshore fish:

(a) Make up 25 percent or less of the total poundage of the landing; and

(b) Are landed with fishing gear that is legal to use in the fishery in which the black rockfish, blue rockfish or nearshore fish are landed;

(2) Operates a vessel in the ocean troll salmon fishery pursuant to ORS 508.801 to 508.825 and the person lands black rockfish, blue rockfish or a combination of black rockfish and blue rockfish in the same landing in which the person lands a salmon under the permit required by ORS 508.801 to 508.825. The black rockfish or blue rockfish landed under this paragraph must be landed dead. A person who lands black rockfish and blue rockfish

under this paragraph may land up 100 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per landing.

(3) Lands no more than 15 pounds per vessel of black rockfish, blue rockfish, or a combination of black rockfish and blue rockfish per trip, after the total amount of black rockfish and blue rockfish combined landed in the salmon troll fishery reaches 3000 pounds in any calendar year, except as provided in subsection (4).

(4) Operates a vessel in the west coast groundfish trawl fishery pursuant to federal regulations and lands no more than 1,000 pounds of black rockfish, blue rockfish or a combination of black rockfish and blue rockfish per calendar year and if the black rockfish and blue rockfish:

(a) Make up 25 percent or less of the total poundage of each landing; and

(b) Are landed dead; or

(5) Is a nonprofit aquarium or has contracted with a nonprofit aquarium to land black rockfish, blue rockfish or nearshore fish for the purpose of displaying or conducting research on the black rockfish, blue rockfish or nearshore fish.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 506.450 - 506.465

Hist.: DFW 112-2003, f. & cert. ef. 11-14-03; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2006 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2006 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions document dated November 2005 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); Federal Regulations, Vol. 70, No. 74, dated April 19, 2005; and the annual Pacific Halibut Fishery Regulations to determine regulations applicable to this fishery.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06

635-039-0090

Inclusions and Modifications

(1) The **2006 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2006 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2006 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2006 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 175 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

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(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 1.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2006 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 365 metric tons, of which no more than 324.5 metric tons may be black rockfish.

(b) Other nearshore rockfish, 15.3 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the **2006 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2006:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish ("sea bass," "snapper"), greenling ("sea trout"), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the **2006 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 6 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humboldt Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(d) Harvest methods and other specifications for marine fish in subsections (5)(a) and (b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(e) Sport fisheries for species in subsections (5)(a) and (b) are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h). A 20-fathom curve (Table 1) and a 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h), may be implemented as the management line as in-season modifications necessitate.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06

Adm. Order No.: DFW 139-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Adopted: 635-004-0011, 635-004-0013, 635-004-0014, 635-004-0016

Rules Amended: 635-006-0215, 635-006-0850, 635-006-1010, 635-006-1015, 635-006-1025, 635-006-1035, 635-006-1065, 635-006-1075, 635-006-1085, 635-006-1095, 635-006-1110

Subject: Remove sardines from developmental fisheries species list and adopt rules to establish limited entry system for the commercial sardine fishery.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-004-0011

Fishing Gear

A grate with spacing no larger than 2-3/8 inches between the bars must be placed over the intake of the hold of the vessel to sort out larger species of fish.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-004-0013

Bycatch Restriction

All groundfish, as defined by OAR 365-004-0020 and salmon must be returned to the water immediately. Every effort must be made to dipnet salmon out of the seine net before they go through a pump system.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-004-0014

No Directed Reduction Fishery Allowed

(1) No more than ten percent of a sardine landing may be used for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products or by-products for purposes other than human consumption or fishing bait.

(2) Exceptions to the limit in section (1) of this rule may be granted due to unforeseen circumstances with written authorization by the ODFW Director to avoid wastage of fish.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-004-0016

Harvest Guideline

This rule incorporates, by reference, the sardine management measures for 2006 included in the Pacific Council list of decisions for the November 2005 Pacific Fishery Management Council meeting, and in addition to the extent they are consistent with these rules, Code of Federal Regulations, Title 50 Part 660, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

[Publications: Publications references are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-0215

Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish canners, or shellfish canners receiving food fish or shellfish from licensed commercial fishermen or bait fishermen;

(b) Limited fish sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all fish receiving tickets issued during the month;

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(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. The following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying the below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted — 1.15;

(ii) Gilled, gutted, and headed — 1.30.

(B) Halibut:

(i) Gilled and gutted — 1.15;

(ii) Gilled, gutted, and headed — 1.35.

(C) Sablefish, gutted and headed — 1.60;

(D) Pacific whiting:

(i) Fillet — 2.86;

(ii) Headed and gutted — 1.56;

(iii) Surimi — 6.25.

(E) Razor Clams, shelled and cleaned. — 2.0;

(F) Scallops, shelled and cleaned — 12.2;

(G) Thresher shark — 2.0;

(H) Skates — 2.6;

(I) Lingcod:

(i) Gilled and gutted — 1.1;

(ii) Gilled, gutted and headed — 1.5.

(J) Spot prawn, tails — 2.24.

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent;

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.111), 5 percent.

(C) All other food fish and shellfish, 1.09 percent until the first Emergency Board hearing of 1993 and 1.25 percent, thereafter.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Oregon Department of Fish and Wildlife on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.119 & 508.530

Stats. Implemented: ORS 506.129, 508.535 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-0850

Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH:

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. Hagfish permits are valid for 90 days from date of issue, unless five landings of at least 1,000 pounds each or a total of 25,000 pounds are made within 90 days from date of issue, in which case the permit is valid for the remainder of the year. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds.

There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required.

(b) INVERTEBRATES:

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(F) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(G) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, year-round season, taken from nonintertidal areas with an abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-0870 and 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

(a) FISH:

(A) Salmon shark (*Lamna ditropis*);

(B) Carp (*Cyprinus carpio*);

(C) Black hagfish (*Eptatretus deani*);

(D) Yellow perch (*Perca flavescens*);

(E) Eelpouts (family Zoarcidae);

(F) Brown bullhead (*Ameiurus nebulosus*);

(G) Skilfish (*Erilepis zonifer*);

(H) Northern squawfish (*Ptychocheilus oregonensis*);

(I) Pacific saury (*Cololabis saira*);

(J) Pacific sandfish (*Trichodon trichodon*);

(K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);

(L) Pacific pomfret (*Brama japonica*);

(M) Slender sole (*Eopsetta exilis*).

(b) INVERTEBRATES:

(A) Pacific sand crab (*Emerita analoga*);

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(B) Freshwater mussels (families Margaritifera, Anodonta, Gonidea, and Corbicula);

(C) Ocean cockle clams (*Clinocardium nuttallii*);

(D) California market squid (*Loligo opalescens*) and other squid (several species);

(E) Fragile urchin (*Allocentrotus fragilis*);

(F) Sea cucumber (*Parastichopus* spp.).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

(a) FISH:

(A) Spiny dogfish (*Squalus acanthias*);

(B) Soupfin shark (*Galeorhinus zyopterus*);

(C) Skate (family Rajidae);

(D) American shad (*Alosa sapidissima*);

(E) Pacific cod (*Gadus macrocephalus*);

(F) Pacific flatnose (*Antimora microlepis*);

(G) Pacific grenadier (*Coryphaenoides acrolepis*);

(H) Jack mackerel (*Trachurus symmetricus*);

(I) Chub (Pacific) mackerel (*Scomber japonicus*);

(J) Greenstriped rockfish (*Sebastes elongatus*);

(K) Redstripe rockfish (*Sebastes proriger*);

(L) Shortbelly rockfish (*Sebastes jordani*);

(M) Sharpchin rockfish (*Sebastes zacentrus*);

(N) Splitnose rockfish (*Sebastes diploproa*);

(O) Pacific sanddab (*Citharichthys sordidus*);

(P) Butter sole (*Pleuronectes isolepis*);

(Q) English sole (*Pleuronectes vetulus*);

(R) Rex sole (*Errrex zechirus*);

(S) Rock sole (*Pleuronectes bilineatus*);

(T) Sand sole (*Psetichthys melanostictus*);

(U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);

(V) Spotted ratfish (*Hydrolagus colliei*);

(W) Wolf-eel (*Anarrhichthys ocellatus*);

(X) Walleye pollock (*Theragra chalcogramma*).

(b) INVERTEBRATES:

(A) Red rock crab (*Cancer productus*);

(B) Purple sea urchins (*Strongylocentrotus purpuratus*);

(C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99; DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 67-2005(Temp), f. 7-5-05, cert. ef. 7-6-05 thru 12-31-05; DFW 122-2005(Temp), f. & cert. ef. 10-18-05 thru 11-30-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1010

Definitions

(1) For the purpose of OAR 635-006-1015 through 635-006-1210:

(2) "Bay clam dive fishery" shall mean the commercial fishery for bay clams (including: cockle clams, *Clinocardium nuttallii*; butter clams, *Saxidomus giganteus*; gaper clams, *Tresus capax*, *nuttallii*; native littleneck clams, *Protothaca staminea*; and softshell clams, *Mya arenaria*) from subtidal areas in Oregon estuaries using dive gear.

(3) "Black rockfish/blue rockfish/nearshore fishery" shall mean the commercial fishery for black rockfish, blue rockfish and nearshore fish.

(4) "Brine shrimp fishery" shall mean the commercial fishery for adult *Artemia* spp. from Lake Abert (Lake County).

(5) "Completion" of a vessel for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931 is defined as:

(a) A date identified in a contract document as the proposed or actual date of completion; or

(b) The date an insurance policy was in effect covering the vessel for loss or liability; or

(c) The date of inspection for certification by the U.S. Coast Guard; or

(d) Other written document acceptable to the Department that establishes the actual date the vessel was completed for the purposes of entering the Oregon ocean Dungeness crab fishery.

(6) "Crab fishing season" is the period from December 1 of one year through August 14 of the next year.

(7) "Length" or "Overall Length" of a vessel means the manufacturer's specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform. For the purpose of initial ocean Dungeness crab permit issuance, length of the vessel is overall length of the vessel on September 9, 1995.

(8) "Ocean Dungeness crab fishery" for the purposes of ORS 508.926, means all fishing for Dungeness crab in Oregon waters of the Columbia River and all other ocean water seaward of Oregon's coastline and river mouths.

(9) "Owner" is any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. Owner does not include a leasehold interest.

(10) "Replacement vessel" is a vessel purchased to replace a permitted vessel which has been lost due to fire, capsizing, sinking or other event. For the ocean Dungeness crab fishery, a replacement vessel shall be no more than 10 feet greater than the vessel which it replaces.

(11) "Sardine fishery" shall mean the commercial fishery for Pacific sardines (*Sardinops sagax*) in all ocean waters seaward of Oregon's coastline and river mouths.

(12) "Sea urchin fishery" shall mean the commercial fishing for *Strongylocentrotus franciscanus*, *S. purpuratus*, and *S. droebachiensis*.

(13) "Under construction" for the purposes of initial eligibility for an Oregon ocean Dungeness crab permit pursuant to ORS 508.931, means that between December 1, 1988, and August 14, 1991, a contract was signed and earnest money paid equaling at least 10% of the value of the contract, or invoices have been paid for 10% or more of the total construction cost, to produce a newly constructed vessel, including, but not limited to, the laying of the new vessel's keel.

(14) "Yaquina Bay Roe-herring fishery" shall mean the commercial net fishery for Pacific herring (*Clupea harengus pallasii*) which occurs annually between January 1 and April 15 in Yaquina Bay pursuant to OAR 635-004-0027.

(15) "Initial eligibility for vessels to participate" for the purposes of application for an Ocean Dungeness crab permit pursuant to ORS 508.931 means eligibility of a vessel on which to make permit application is confined to vessels which have never obtained an initial permit.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 76-1995, f. 9-13-95, cert. ef. 9-19-95; FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1015

Requirement for Permit

(1) The following provide general requirements for permits:

(a) Gillnet salmon — see ORS 508.775;

(b) Troll salmon — see ORS 508.801 and 508.828;

(c) Shrimp — see ORS 508.880 and 508.883;

(d) Scallop — see ORS 508.840 and 508.843;

(e) Roe-herring:

(A) It is *unlawful* for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.

(f) Sea Urchin:

(A) It is *unlawful* for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.

(g) Ocean Dungeness crab:

(A) Except as provided under the reciprocity provisions of ORS 508.941(3), it is *unlawful* for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.

(B) If the Commission establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is

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the control date for eligibility criteria related to past participation in the ocean fishery.

(C) In addition to certifying that the vessel is free of crab on November 30 each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots that will be used in that season's fishery before fishing.

(D) A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.

(h) Developmental Fisheries: See ORS 506.450 through 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

(j) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.945.

(k) Brine Shrimp:

(A) It is *unlawful* to take or attempt to take brine shrimp for commercial purposes without first obtaining a brine shrimp fishery permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Department may issue no more than three permits required by section (1)(k) of this rule.

(l) Bay clam dive fishery:

(A) It is *unlawful*:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time or where more than two persons without permits, excluding persons authorized by the Department for the performance of official duties, were on board any boat while harvesting, possessing, or transporting bay clams.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(l)(A)(i) of this rule and five south-coast permits required by (1)(l)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

(m) Sardine fishery:

(A) It is *unlawful* for an individual to operate a vessel in the Sardine fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095. The sardine fishery permit is not required for vessels to retain sardines as incidental catch in other fisheries.

(B) It is *unlawful* for a wholesaler, canner or buyer to buy or receive sardines taken in the Sardine fishery from a vessel for which the permit required by section (1)(m)(A) of this rule has not been issued.

(C) The Department may not issue more than 20 permits required by section (1)(m)(A) of this rule.

(D) The Sardine Advisory Group as defined under OAR 635-006-1065 may advise the Commission on increasing the number of permits, developing criteria for issuing the new permits, and other regulations concerning the sardine fishery.

(E) By January 1, 2008, vessels permitted under section (1)(m)(A) of this rule shall be operated or owned by the permit holder.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the license year.

(6) No vessel permit may be transferred away from a vessel without the lien holder's written permission.

(7) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 103-2001, f. & cert. ef. 10-23-01; DFW 95-2002, f. & cert. ef. 8-27-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1025

Permit Fee

The annual fee to participate in limited entry fisheries is as follows:

(1) Gillnet salmon — \$75. See ORS 508.790 and Section 6, Chapter 512, Oregon Laws 1989.

(2) Troll salmon — \$75. See ORS 508.816 and Section 6, Chapter 512, Oregon Laws 1989.

(3) Shrimp — \$75. See ORS 508.901.

(4) Scallop — \$75. See ORS 508.858.

(5) Roe-herring — \$75. See ORS 508.765.

(6) Sea Urchin — \$75. See ORS 508.760.

(7) Ocean Dungeness crab — \$75. See ORS 508.941(4).

(8) Black rockfish/blue rockfish/nearshore fishery — \$75. See ORS 508.949.

(9) Brine Shrimp — \$75.

(10) Bay clam dive fishery — \$0.

(11) Sardine fishery — \$0.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1035

Eligibility Requirements for a Permit

Eligibility for a limited entry permit is as follows:

(1) Gillnet salmon — see ORS 508.784.

(2) Troll salmon — see ORS 508.810.

(3) Shrimp — see ORS 508.886 and 508.895.

(4) Scallop — see ORS 508.852.

(5) Roe-herring — The ODFW shall issue a permit as per ORS 508.765:

(a) By renewal of previous year's permit;

(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085.

(6) Sea Urchin — An individual licensed as a commercial fisherman under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085; or

(c) Through a duly authorized medical transfer of an existing permit in accordance with OAR 635-006-1095;

(d) By combining three currently renewed permits into one new permit as provided in OAR 635-006-1095.

(7) Ocean Dungeness crab:

(a) See ORS 508.931;

(b) For the purposes of eligibility for the ocean Dungeness crab fishery permit, a boat which received a license waiver issued pursuant to ORS 508.808 shall be considered as having possessed a boat license for that year;

(c) ORS 508.931 and 508.941 require that the vessel be previously licensed in accordance with ORS 508.260 for the purposes of initial eligibility for an ocean Dungeness crab fishery permit. A single delivery license may not be substituted for a boat license for this purpose.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(9) Brine Shrimp — A commercial fisherman licensed under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or

(b) If issued a brine shrimp permit under the Developmental Fisheries Program prior to 2004.

(10) Bay clam dive fishery — An individual licensed as a commercial harvester under ORS 508.235 or a vessel is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or

(b) For a south coast bay clam dive permit for the year 2006, if a bay clam south-coast dive permit was issued to the individual or vessel under

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the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005; or

(c) For a coast wide bay clam dive permit for the year 2006, if a bay clam coast-wide dive permit was issued to the individual or vessel under the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005.

(11) Sardine fishery:

(a) An individual or entity is eligible to obtain the vessel permit required by OAR 635-006-1015:

(A) If issued a sardine permit under the Developmental Fisheries Program (OAR 635-006-0900) in 2005; and

(B) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(C) Lawfully landed:

(i) At least 1,500 mt or 35 deliveries in any one year from 2000 through 2004; or

(ii) A total of 100 deliveries of sardines into Oregon in 2000 through 2004.

(b) If the number of permits issued under section (11)(a) of this rule is less than 20, enough permits to reach a total of 20 may be issued under section (11)(c) of this rule to vessels in order of highest total number of deliveries during 2000–2004.

(c) An individual or entity is eligible to obtain the vessel permit under (11)(b) of this rule if the vessel for which applications is made:

(A) Was not issued a permit under section (11)(a) of this rule; and

(B) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(C) Lawfully landed:

(i) At least 1,500 mt or 35 deliveries in any one year from 2000 through 2004; or

(ii) A total of 100 deliveries of sardines into Oregon in 2000 through 2004.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1065

Review of Denials

(1) Except for bay clam dive fishery and sardine fishery permits, an individual whose application for issuance or renewal of a limited entry permit is denied by the Department may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board. The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon — see ORS 508.796;

(b) Troll salmon — see ORS 508.825;

(c) Shrimp — see ORS 508.910;

(d) Scallop — see ORS 508.867;

(e) Roe-herring — see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin — see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab — see ORS 508.941.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

(5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a bay clam fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted.

(b) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit.

(c) A party must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 to 183.550.

(6) Sardine fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a sardine fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted.

(b) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit. The Sardine Advisory Board is designated as a party to the contested case.

(c) A party, including the Department, must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Sardine Advisory Group:

(A) Shall consist of members appointed by the Commission as follows:

(i) Three members shall be chosen to represent the sardine industry.

(ii) Two members shall be chosen to represent the public.

(B) Is subject to requirements of OAR 635-006-1200 sections (1) and (2).

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1075

Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

(a) Gillnet salmon — see ORS 508.781;

(b) Troll salmon — see ORS 508.807;

(c) Shrimp — see ORS 508.892;

(d) Scallop — see ORS 508.849;

(e) Roe-herring permit — Permits may be renewed by submission to the Department of a \$75 fee and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit — see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

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(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10)(d), annual renewal requirements are waived in the year the transfer occurred.

(k) Sardine fishery:

(A) Permits may be renewed by submitting to the Department a complete application date-stamped or postmarked by December 31 of the permit year.

(B) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit or the permit will not be renewed.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by January 31, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1085

Lottery for Certain Limited Entry Fisheries

(1) A lottery process is provided in all limited entry fisheries except ocean Dungeness crab and sardines.

(2) A lottery for issuance of permits shall be conducted as follows:

(a) Gillnet salmon — see ORS 508.792;

(b) Troll salmon — see ORS 508.819;

(c) Shrimp — see ORS 508.904;

(d) Scallop — see ORS 508.861. If the number of permits issued in accordance with ORS 508.849 falls below 25, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 25;

(e) Roe-herring — If the number of permits issued in accordance with OAR 635-006-1035 falls below six, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed six;

(f) Sea Urchin:

(A) If the total number of permits which have been renewed, and/or for which an appeal is pending, with the Commercial Fishery Permit Board and/or awarded through a prior lottery, is less than 30, a lottery shall be held on the 4th Friday in April;

(B) An individual must be 18 years of age or older and furnish proof of age to be eligible for the lottery;

(C) An individual may not already hold a valid urchin permit, however, an individual whose permit is at issue in a pending Sea Urchin Permit Board proceeding or before a court of law may participate in the lottery;

(D) If a permittee whose permit is at issue either before the Sea Urchin Permit Board or a court of law is awarded another permit through the lottery and thereafter prevails before the Board or in court, the permittee shall immediately surrender one of the permits to any Department office, so that only one valid permit is held;

(E) An individual who qualifies to participate in the lottery shall send a complete lottery application to the Department, date-stamped or postmarked no later than April 15 of the year for which the permit is to be issued. An individual shall not submit more than one application to participate in the lottery. For successful applicants, the application fee shall apply toward the permit fee of \$75;

(F) The names of lottery applicants shall be drawn to obtain the available permits. All other names of lottery applicants shall be drawn and placed on an alternate list in the order in which they were drawn, and shall be issued permits during the next 24 months as they may become available through Permit Board actions or surrender of permits by a permit holder;

(G) An individual whose name is drawn in the lottery shall thereafter apply on the prescribed form, to the Department to obtain a permit. Such application must be received by the Department within 30 days of the date the notification was mailed to the successful applicant following the lottery;

(H) Any individual who fails to apply for the lottery permit within 30 days shall forfeit such permit. The permit shall then be made available to the first name on the alternate list, and shall be applied for in accordance with section (G) of this rule;

(I) If all permits are not issued by renewal or through the lottery, permits thereafter may be issued on a first come first served basis up to the total number of permits allowed. All applications shall be mailed to the Department and priority shall be based on postmark or date-stamped date;

(J) The Commission may suspend the lottery for up to two years based upon its assessment of the condition of the resource and recommendations of the Sea Urchin Permit Review Board.

(g) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.955. If the number of permits issued in accordance with ORS 508.947 falls below 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement.

(h) Bay clam dive fishery — If the number of permits issued in accordance with OAR 635-006-1035 falls below ten for coast-wide permits or five for south-coast permits, the Department may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed ten for coast-wide permits or five for south-coast permits;

(3) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(4) Application for vessel permits shall only be accepted for vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting the permitted species are not eligible for the lottery.

(5) Only one application per vessel may be submitted for each permit fishery lottery.

(6) Any application which is not legible, has incomplete information, or is postmarked after the deadline will not be entered in the lottery. Applications for all permits will be accepted at the Headquarters Office of the Department of Fish and Wildlife, and shall be postmarked or date stamped no later than June 30 of the year for which the permit is issued.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 70-2004(Temp), f. & cert. ef. 7-12-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1095

Transferability of Permits

Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. The following rules apply to transfer of limited entry fishery permits:

(1) Gillnet salmon — see ORS 508.793.

(2) Troll salmon — see ORS 508.822.

(3) Shrimp — see ORS 508.907.

(4) Scallop — see ORS 508.864.

(5) Roe-herring: A permit is transferable to:

(a) A replacement vessel of the permit holder; or, upon request of a permit holder, the Department may authorize transfer of a permit to a replacement vessel owned by an individual other than the permit holder. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void;

(b) The purchaser of the vessel when the vessel is sold.

(6) Sea Urchin:

(a) Medical Transfers: If the number of permits is at 31 or more, the Department may authorize a permit to be transferred to a specified individual for up to 90 days upon petition by a permittee on the form provided by the Department. The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder and such other evidence the Department considers reliable. At the end of the transfer period, the transfer may be renewed by the Department to the original transferee or to a new transferee, provided that the permittee again submits medical evidence documenting that the injury or illness continues to prevent the permittee's return to diving. There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the

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first medical transfer of that permit on or after January 1, 1996, and ending two years from that date. When the total number of permits reaches 30 or less the Department shall not allow any permit transfers for any medical reason;

(b) If the Department, or the Board, after review of a denial by the Department, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (6)(a), request the Department to transfer the permit back to the original permit holder. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (6)(a), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (6)(a) of this rule;

(c) The total landings of sea urchins by all transferees of a permit shall not exceed the greater of either of the following amounts:

(A) Up to 5,000 pounds per 90-day period, not to exceed 5,000 pounds annually; or

(B) Twenty-five percent of the amount landed by the original permit holder in the previous season's catch, for each 90-day period.

(d) Combination Permit Transfers: If the number of permits is at 31 or more, the Department may transfer permits from one person to another as follows:

(A) The individual receiving the transferred permit (the purchaser) obtains no more than three total permits, each of which is valid for the current year in which the permit is purchased, from existing permit holders;

(B) The Department combines the three permits into a single new permit issued to the purchaser; and

(C) No transferred permit is valid for harvesting sea urchins until conditions (6)(d)(A) and (6)(d)(B) are met. Individual permits which are transferred may not be used individually and are not renewable. Once a permit has been transferred in accordance with (6)(d)(A) the individual to whom the permit has been transferred has up to 24 months from the date of transfer to combine it with two others to create a valid new permit.

(e) When the total number of permits reaches 30 or less, the Department shall approve the transfer of any permit to any purchaser of the permit, provided that not more than one sale or transfer of the permit occurs within that calendar year;

(f) Lottery-issued permit transfers: No permit issued to an individual through the lottery after 1998 may be transferred to another individual until a cumulative total of 20,000 pounds of sea urchins have been landed on commercial fish receiving tickets by the individual issued the permit through the lottery.

(7) Ocean Dungeness crab — see ORS 508.936 and:

(a) The vessel permit is transferable once in any 60-month period provided the vessel holding the permit has landed at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons in the last five crab seasons which includes landings made during any season open at the time of application. Crab fishing season means ocean Dungeness crab season. However, the Board may waive the landing requirement as well as the 60-month waiting period for transfers, if the Board finds that strict adherence to these requirements would create undue hardship to the individual seeking to transfer a permit. The board also may delegate to the Department its authority to waive these requirements in such specific instances as the Board sets forth in a letter of delegation to the Department;

(b) The vessel permit is transferable:

(A) To another vessel; or

(B) To the purchaser of the vessel when the vessel is sold.

(c) The vessel to which a permit is transferred, with the exception of vessels covered by (7)(e):

(A) Shall not be more than 10 feet longer than the vessel which held the permit on January 1, 2006; and

(B) Shall not be more than 99 feet in length.

(d) For the purpose of (7)(c)(A), the Commercial Fishery Permit Review Board may waive the boat length restriction if it finds that strict adherence would create undue hardship. For this purpose, undue hardship means significant adverse consequences caused by death, permanent disability injury or serious illness requiring extended care by a physician.

(e) Permits obtained as a result of qualifying under section (1)(e) of ORS 508.931 may only be transferred to vessels of a length of 26 feet or less;

(f) In the event a vessel is destroyed due to fire, capsizing, sinking or other event, the vessel owner has up to two years to transfer the ocean Dungeness crab fishery permit to a replacement vessel.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.957.

(9) Brine shrimp fishery: Permits are transferable.

(10) Bay clam dive fishery:

(a) The permittee may request the Department to transfer, to a replacement vessel that is owned by the same person that owns the vessel to which the permit was originally issued, a bay clam dive permit up to two times per calendar year.

(b) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member upon request, validated by the Department's receipt of a copy of the death certificate and the original permit.

(c) The Department may authorize a permit issued to an individual to be transferred to a specified individual for up to 90 days upon petition by the permittee on the form provided by the Department due to a medical condition.

(A) The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder, and such other evidence the Department considers reliable.

(B) At the end of the transfer period, the Department may reinstate the permit to the original permit holder or to a new transferee, provided that the original permit holder again submits medical evidence documenting that the injury or illness continues to prevent their return to diving.

(C) There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 2006, and ending two years from that date.

(D) If the Department, after review of a denial by the Commission, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (10)(c), request the Department reinstate the permit back to their possession. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (10)(c), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (10)(c) of this rule.

(11) Sardine Fishery:

(a) Permits are transferable up to two times in one calendar year;

(b) Applications to transfer a sardine fishery permit shall only be accepted to vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting sardines are not eligible for transfer.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129, 508.760 & 508.762

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 94-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

635-006-1110

Logbook Required

(1) Sea urchin fishery: The Department shall provide a logbook to each individual permitted to harvest sea urchins. Each individual is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Information so received by the Department shall be considered as confidential.

(2) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.953.

(3) Bay clam dive fishery: The Department shall provide a logbook to each permit holder permitted to harvest bay clams. Each permit holder is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Information so received by the Department shall be considered as confidential.

(4) Sardine Fishery: The Department shall provide a logbook to each permit holder. Each permit holder is responsible for maintaining the logbook in accordance with the instructions contained therein and shall, upon request of an authorized representative of the Department, permit examination and transcription of information from such logbook. Catch records and trade secrets documented in the log book are confidential.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06

ADMINISTRATIVE RULES

Adm. Order No.: DFW 140-2005(Temp)

Filed with Sec. of State: 12-12-2005

Certified to be Effective: 12-30-05 thru 5-31-06

Notice Publication Date:

Rules Amended: 635-005-0045

Rules Suspended: 635-005-0045(T)

Subject: Amend rule to open the 2005-2006 commercial season for Dungeness crab fisheries in the ocean.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-005-0045

Closed Season in Pacific Ocean and Columbia River

(1) It is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through December 30.

(2) It is *unlawful* prior to January 31 to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on December 30.

(3) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Fish and Wildlife Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert. ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06

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Adm. Order No.: DFW 141-2005(Temp)

Filed with Sec. of State: 12-12-2005

Certified to be Effective: 12-30-05 thru 12-31-05

Notice Publication Date:

Rules Amended: 635-039-0090

Rules Suspended: 635-039-0090(T)

Subject: Amend rule to reopen the recreational season for Dungeness crab fisheries in the ocean.

Rules Coordinator: Tina Edwards—(503) 947-6033

635-039-0090

Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended to incorporate the standards in the Pacific Council News).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 151 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 2.4 metric tons.

(4) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2005 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 372.5 metric tons, of which no more than 332 metric tons may be black rockfish.

(b) Other nearshore rockfish, 11.4 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) Effective August 11, 2005, retention of cabezon, as identified in (4)(c) is prohibited in the ocean and estuary boat fisheries. Angling for and retention of shore-based cabezon is permitted.

(6) Effective October 18, 2005, retention of Marine Fish species as identified in (7)(a) and (7)(b), and retention of sablefish are prohibited in the ocean and estuary boat fisheries shoreward of the 40-fathom depth contour, as shown in the 2005 Oregon Ocean Regulations for Salmon, Halibut and Other Marine Fish Species. Retention of black rockfish in all depths is prohibited in the ocean and estuary boat fisheries.

(7) In addition to the regulations for Marine Fish in the 2005 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2005:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish ("sea bass," "snapper"), greenling ("sea trout"), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 5 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) When allowed by federal groundfish regulations, retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut in the central coast fishery between Cape Falcon and Humberg Mountain. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(d) When allowed by federal groundfish regulations, landing of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the Columbia River sport fishery for Pacific halibut north of Cape Falcon. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(e) Harvest methods and other specifications for marine fish in subsections (7)(a) and (b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (7)(a) and (b) are open January 1 through December 31, 24 hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h).

[ED. NOTE: Tables referenced are available from the agency.]

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

ADMINISTRATIVE RULES

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05

Department of Forestry Chapter 629

Adm. Order No.: DOF 7-2005

Filed with Sec. of State: 12-5-2005

Certified to be Effective: 7-1-06

Notice Publication Date: 5-1-05

Rules Adopted: 629-041-0547, 629-041-0557

Rules Repealed: 629-041-0520, 629-041-0535, 629-041-0545

Subject: Describes the boundary of the North Cascade Forest Protection District and the boundary of the South Cascade Forest Protection District. Repeals the boundary of the Clackamas-Marion Forest Protection District, the boundary of the Eastern Lane Forest Protection District and the boundary of the Linn Forest Protection District.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-041-0547

North Cascade Forest Protection District Boundary

The boundary of the North Cascade Forest Protection District is as follows: Beginning at the point where the common line of township 1 north, range 4 east and township 1 north, range 5 east intersect with the line of ordinary low water on the southern shore of the Columbia River in or near the northwest quarter of the northwest quarter of section 30, township 1 north, range 5 east, Multnomah County; thence northeasterly on the line of ordinary low water, on the southern shore of the Columbia River, to the boundary of The Dalles Unit of the Central Oregon Forest Protection District, as set forth in OAR 629-041-0515(5), in or near the northeast quarter of the northeast quarter of section 22, township 2 north, range 7 east, Multnomah County; thence southerly and easterly on the boundary of The Dalles Unit of the Central Oregon Forest Protection District, as set forth in OAR 629-041-0515(5), to the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation, in or near the southwest quarter of the northeast quarter of section 7, township 5 south, range 9 east, Clackamas County; thence northwesterly on the McQuinn Line and the northern boundary of the Warm Springs Indian Reservation to the extreme northwest corner of the Warm Springs Indian Reservation, in or near the northeast quarter of the northwest quarter of section 7, township 5 south, range 9 east, Clackamas County; thence southwesterly on the McQuinn Line and the western boundary of the Warm Springs Indian Reservation to the common boundary of Jefferson County, as set forth in ORS 201.160, and Linn County, as set forth in ORS 201.220, at the summit of Mt. Jefferson, in or near the northeast quarter of the southwest quarter of section 26, township 10 south, range 8 east, Linn County; thence southerly on the common boundary of Jefferson County, as set forth in ORS 201.160, and Linn County, as set forth in ORS 201.220, to the boundary of the Deschutes Unit of the Central Oregon Forest Protection District, as set forth in OAR 629-041-0515(2), in or near the southeast quarter of the northeast quarter of section 5, township 11 south, range 8 east, Linn County; thence southerly on the boundary of the Deschutes Unit of the Central Oregon Forest Protection District, as set forth in OAR 629-041-0515(2), to the common line of section 25, township 12 south, range 7 1/2 east and section 30, township 12 south, range 8 east, in or near the northeast quarter of the southeast quarter of section 25, township 12 south range 7 1/2 east, Linn

County; thence north to the southeast corner of section 24, township 12 south, range 7 1/2 east, Linn County; thence west to the centerline of U.S. Highway 22 in or near the southeast quarter of the southwest quarter of section 20, township 12 south, range 7 east, Linn County; thence northerly on the centerline of U.S. Highway 22 to the common line of township 11 south, range 7 east and township 12 south range 7 east, in or near southwest quarter of the southeast quarter of section 31, township 11 south, range 7 east, Linn County; thence west to the southwest corner of section 31, township 11 south, range 7 east, Linn County; thence north to the northeast corner of section 1, township 11 south, range 4 east, Linn County; thence west to the northwest corner of section 3, township 11 south, range 4 east, Linn County; thence south to the southeast corner of section 4, township 11 south, range 4 east, Linn County; thence west to the southwest corner of section 6, township 11 south, range 2 east, Linn County; thence north to the southeast corner of section 1, township 11 south, range 1 east, Linn County; thence west to the centerline of Tree Farm Road, a county road, in or near the southeast quarter of the southeast quarter of section 5, township 11 south, range 1 east, Linn County; thence southwesterly on the centerline of Tree Farm Road, a county road, to the centerline of Fish Hatchery Drive, a county road, in or near northeast quarter of the southwest quarter of section 8, township 11 south, range 1 east, Linn County; thence westerly on the centerline of Fish Hatchery Drive, a county road, to the centerline of Larwood Drive, a county road, in or near the southwest quarter of the northwest quarter of section 7, township 11 south, range 1 east, Linn County; thence northwesterly on the centerline of Larwood Drive, a county road, to the centerline of Richardsons Gap Road, a county road, in or near the southwest quarter of the southwest quarter of section 27, township 10 south, range 1 west, Linn County; thence northerly on the centerline of Richardsons Gap Road, a county road, to the centerline of Oregon Highway 226, in or near the northwest quarter of the northwest quarter of section 15, township 10 south, range 1 west, Linn County; thence northeasterly on the centerline of Oregon Highway 226 to the common boundary of Linn County, as set forth in ORS 201.220, and Marion County, as set forth in ORS 201.220, and Marion County, as set forth in ORS 201.220, to the centerline of the Stayton-Scio Road, a county road, in or near the southwest quarter of the northeast quarter of section 15, township 9 south, range 1 west, Linn County; thence northerly on the centerline of the Stayton-Scio Road, a county road to the point it becomes 1st Avenue, a county road, in or near the northeast quarter of the northwest quarter of section 15, township 9 south, range 1 west, Marion County; thence northerly on the centerline of 1st Avenue, a county road, to the point it becomes Cascade Highway, a county road, in or near the southwest quarter of the southeast quarter of section 3, township 9 south, range 1 west, Marion County; thence northerly on the centerline of Cascade Highway, a county road, to the point it becomes Center Street, a county road, in or near the southwest quarter of the northwest quarter of section 3, township 9 south, range 1 west, Marion County; thence northerly on the centerline of Center Street, a county road, to the point it becomes Cascade Highway, a county road, in or near the northwest quarter of the northeast quarter of section 34, township 8 south, range 1 west, Marion County; thence northerly on the centerline of Cascade Highway, a county road, to the point it becomes Main Street, a county road, in or near the southwest quarter of the southeast quarter of section 34, township 6 south, range 1 west, Marion County; thence northeasterly on the centerline of Main Street, a county road, to the centerline of Oregon Highway 213, in or near the northeast quarter of the southeast quarter of section 34, township 6 south, range 1 west, Marion County; thence northeasterly and northerly on the centerline of Oregon Highway 213 to the centerline of Leland Road, a county road, in or near the southwest quarter of the southeast quarter of section 21, township 3 south, range 2 east, Clackamas County; thence easterly on the centerline of Leland Road, a county road, to the common line of section 21 and section 22, township 3 south, range 2 east, in or near the southeast quarter of the southeast quarter of section 21, township 3 south, range 2 east, Clackamas County; thence south to the northwest corner of section 27, township 3 south, range 2 east, Clackamas County; thence east to the northwest corner of the northeast quarter of section 26, township 3 south, range 2 east, Clackamas County; thence north to the northwest corner of the southeast quarter of section 14, township 3 south, range 2 east, Clackamas County; thence east to the northeast corner of the southeast quarter of section 14, township 3 south, range 2 east, Clackamas County; thence south to the northeast corner of section 23, township 3 south, range 2 east, Clackamas County; thence east to the northeast corner of the northwest quarter of section 24, township 3 south, range 2 east, Clackamas County; thence south to the northeast corner of the southwest quarter of section 24, township 3 south, range 2 east, Clackamas County; thence east to the northeast corner of the southeast quarter of

ADMINISTRATIVE RULES

section 19, township 3 south, range 3 east, Clackamas County; thence south to the northeast corner of section 30, township 3 south, range 3 east, Clackamas County; thence east to the northwest corner of the northeast quarter of section 27, township 3 south, range 3 east, Clackamas County; thence north to the northwest corner of the southeast quarter of section 22, township 3 south, range 3 east, Clackamas County; thence east to the northeast corner of the southeast quarter of section 22, township 3 south, range 3 east, Clackamas County; thence south to the northeast corner of section 27, township 3 south, range 3 east, Clackamas County; thence east to the centerline of Fellows Road, a county road, in or near the northeast quarter of the northwest quarter of section 26, township 3 south, range 3 east, Clackamas County; thence southeasterly on the centerline of Fellows Road, a county road, to the common line of section 25 and section 26, township 3 south, range 3 east, in or near the southeast quarter of the southeast quarter of section 26, township 3 south, range 3 east, Clackamas County; thence south to the northeast corner of section 35, township 3 south, range 3 east, Clackamas County; thence east to the northwest corner of section 31, township 3 south, range 4 east, Clackamas County; thence north to the centerline of Springwater Road, a county road, in or near the northwest quarter of the northwest quarter of section 30, township 3 south, range 4 east, Clackamas County; thence northwesterly on the centerline of Springwater Road, a county road, to the common line of section 12 and section 13, township 3 south, range 3 east, in or near the southwest quarter of the southwest quarter of section 12, township 3 south, range 3 east, Clackamas County; thence east to the center of the main channel of the Clackamas River, in or near the northeast quarter of the northwest quarter of section 13, township 3 south, range 3 east, Clackamas County; thence northerly on the center of the main channel of the Clackamas River, to the centerline of Bakers Ferry Road, a county road, in or near the southwest quarter of the northwest quarter of section 23, township 2 south, range 3 east, Clackamas County; thence northeasterly on the centerline of Bakers Ferry Road, a county road, to the centerline of Oregon Highway 224, in or near the southeast quarter of the southwest quarter of section 14, township 2 south, range 2 east, Clackamas County; thence southeasterly on the centerline of Oregon Highway 224 to the centerline of Amisigger Road, a county road, in or near the northeast quarter of the northeast quarter of section 23, township 2 south, range 2 east, Clackamas County; thence northerly on the centerline of Amisigger Road, a county road, to the centerline of Kelso Road, a county road, in or near the northwest quarter of the northeast quarter of section 12, township 2 south, range 3 east, Clackamas County; thence easterly on the centerline of Kelso Road, a county road, to the centerline of 312th Street, a county road, in or near the northwest quarter of the northeast quarter of section 8, township 2 south, range 4 east, Clackamas County; thence northerly on the centerline of 312th Street, a county road, to the centerline of Orient Drive, a county road, in or near the southwest quarter of the northeast quarter of section 32, township 1 south, range 4 east, Clackamas County; thence northerly on the centerline of Orient Drive, a county road, to the common line of section 20 and section 29, township 1 south, range 4 east, in or near the northeast quarter of the northwest quarter of section 29, township 1 south, range 4 east, Clackamas County; thence east to the northwest corner of section 25, township 1 south, range 4 east, Clackamas County; thence north to the northwest corner of section 12, township 1 south, range 4 east, Multnomah County; thence east to the northwest corner of section 7, township 1 south, range 5 east, Multnomah County; thence north to the point of beginning.

Stat. Auth.: ORS 477.225

Stats. Implemented: ORS 477.225

Hist.: DOF 7-2005, f. 12-5-05, cert. ef. 7-1-06

629-041-0557

South Cascade Forest Protection District Boundary

The boundary of the South Cascade Forest Protection District is as follows: Beginning at the point where the boundary of the North Cascade Forest Protection District, as set forth in OAR 629-041-0547, passes through the junction of Fish Hatchery Drive, a county road, and Larwood Drive, a county road, in or near the southwest quarter of the northwest quarter of section 7, township 11 south, range 1 east, Linn County; thence easterly on the boundary of the North Cascade Forest Protection District, as set forth in OAR 629-041-0547, to the boundary of the Deschutes Unit of the Central Oregon Forest Protection District, as set forth in OAR 629-041-0515(2), in or near the northeast quarter of the southeast quarter of section 25, township 12 south range 7 1/2 east, Linn County; thence southerly on the boundary of the Deschutes Unit of the Central Oregon Forest Protection District, as set forth in OAR 629-041-0515(2), to the boundary of Klamath County, as set forth in ORS 201.180, in or near the southeast quarter of the southeast quarter of section 33, township 22 south, range 6 east, Lane County; thence southerly on the common boundary of Klamath County and Lane County, as set forth in ORS 201.180 and 201.200, to the boundary of the Douglas Forest Protection District, as set forth in OAR 629-041-0530,

in or near northeast quarter of the northwest quarter of section 4, township 25 south, range 5 1/2 east, Lane County; thence westerly on the boundary of the Douglas Forest Protection District, as set forth in OAR 629-041-0530, to the boundary of the Western Lane Forest Protection District, as set forth in OAR 629-041-0575, in or near southeast quarter of the southeast quarter of section 11, township 21 south, range 4 west, Lane County; thence easterly on the boundary of the Western Lane Forest Protection District, as set forth in OAR 629-041-0575, to the common line of section 11 and section 12, township 21 south, range 4 west, in or near the southwest quarter of the southwest quarter of section 12, township 21 south, range 4 west, Lane County; thence south to the center of the northbound lanes of Interstate 5 in or near the northwest quarter of the northwest quarter of section 13, township 21 south, range 4 west, Lane County; thence easterly on the centerline of the northbound lanes of Interstate 5 to the centerline of Latham Road, a county road, in or near the southwest quarter of the southeast quarter of section 8, township 21 south, range 3 west, Lane County; thence southeasterly on the centerline of Latham Road, a county road, to the centerline of Black Butte Road, a county road, in or near the northwest quarter of the northwest quarter of section 9, township 21 south, range 3 west, Lane County; thence northerly on the centerline of Black Butte Road, a county road, to the centerline of the northbound lane of Interstate 5 in or near the northeast quarter of the southwest quarter of section 4, township 21 south, range 3 west, Lane County; thence northerly on the centerline of the northbound lanes of Interstate 5 to the common line of section 28 and section 33, township 20 south, range 3 west, in or near the northeast quarter of the northeast quarter of section 33, township 20 south, range 3 west, Lane County; thence east to the centerline of Mosby Creek Road, a county road, in or near the northwest quarter of the northeast quarter of section 34, township 20 south, range 3 west, Lane County; thence southeasterly on the centerline of Mosby Creek Road, a county road, to the centerline of Laying Road, a county road, in or near the northeast quarter of the northeast quarter of section 2, township 21 south, range 3 west, Lane County; thence northerly on the centerline of Laying Road, a county road, to the centerline of Row River Road, a county road, in or near the northwest quarter of the northeast quarter of section 36, township 20 south, range 3 west, Lane County; thence westerly on the centerline of Row River Road, a county road, to the centerline of Sears Road, a county road, in or near the southeast quarter of the northwest quarter of section 35, township 20 south, range 3 west, Lane County; thence northerly on the centerline of Sears Road, a county road, to the centerline of Oregon Highway 222, in or near the northeast quarter of the southeast quarter of section 13, township 19 south, range 3 west, Lane County; thence easterly on the centerline of Oregon Highway 222 to the centerline of Danstrom Road, a county road, in or near the southeast quarter of the southeast quarter of section 7, township 19 south, range 2 west, Lane County; thence easterly on the centerline of Danstrom Road, a county road, to the centerline of Rodgers Road, a county road, in or near the southwest quarter of the southwest quarter of section 8, township 19 south, range 2 west, Lane County; thence southeasterly on the centerline of Rodgers Road, a county road, to the centerline of Enterprise Road, a county road, in or near the southeast quarter of the northwest quarter of section 17, township 19 south, range 2 west, Lane County; thence northeasterly on the centerline of Enterprise Road, a county road, to the centerline of Oregon Highway 58, in or near the southeast quarter of the northwest quarter of section 34, township 18 south, range 2 west, Lane County; thence southeasterly on the centerline of Oregon Highway 58 to the centerline of Dexter Road, a county road, in or near the northeast quarter of the southeast quarter of section 8, township 19 south, range 1 west, Lane County; thence southeasterly on the centerline of Dexter Road, a county road, to the centerline of Oregon Highway 58 in or near the northwest quarter of the southeast quarter of section 16, township 19 south, range 1 west, Lane County; thence easterly on the centerline of Oregon Highway 58 to the common line of section 23 and section 24, township 19 south, range 1 west, in or near the northwest quarter of the northwest quarter of section 24, township 19 south, range 1 west, Lane County; thence north to the centerline of the Bonneville Power Administration's Lookout Point-Alvery Powerline in or near the southwest quarter of the northwest quarter of section 13, township 19 south, range 1 west, Lane County; thence northwesterly on the centerline of the Bonneville Power Administration's Lookout Point-Alvery Powerline to the common line of section 10 and section 11, township 19 south, range 1 west, in or near the northwest quarter of the southwest quarter of section 11, township 19 south, range 1 west, Lane County; thence south to the centerline of Pengra Road, a county road, in or near the southwest quarter of the northwest quarter of section 14, township 19 south, range 1 west, Lane County; thence northwesterly on the centerline of Pengra Road, a county road, to the common line of section 9 and section 10, township 19 south, range 1 west, in or near the southwest quarter of the southwest quarter of section 10, township 19 south, range 1 west, Lane County; thence south to the center of the main channel of Middle Fork Willamette River in or near

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the northeast quarter of the northeast quarter of section 16, township 19 south, range 1 west, Lane County; thence northwesterly on the center of the main channel of Middle Fork Willamette River to the common line of section 30, township 18 south, range 1 west and section 25, township 18 south, range 2 west, in or near the southwest quarter of the southwest quarter of section 30, township 18 south, range 1 west, Lane County; thence north to the centerline of Jasper-Lowell Road, a county road, in or near the southwest quarter of the southwest quarter of section 30, township 18 south, range 1 west, Lane County; thence northwesterly on the centerline of Jasper-Lowell Road, a county road, to the centerline of Oregon Highway 222 in or near the southwest quarter of the southwest quarter of section 14, township 18 south, range 2 west, Lane County; thence northwesterly on the centerline of Oregon Highway 222 to the centerline of the Bonneville Power Administration's Marion-Alvery Powerline in or near the southwest quarter of the northwest quarter of section 10, township 18 south, range 2 west, Lane County; thence northeasterly on the centerline of the Bonneville Power Administration's Marion-Alvery Powerline to the centerline of Weyerhaeuser-Booth Kelly Road, a private road, in or near the northwest quarter of the southeast quarter of section 10, township 18 south, range 2 west, Lane County; thence northwesterly on the centerline of Weyerhaeuser-Booth Kelly Road, a private road, to the common line of section 3 and section 4, township 18 south, range 2 west, in or near the northwest quarter of the northwest quarter of section 3, township 18 south, range 2 west, Lane County; thence north to the centerline of Oregon Highway 126 in or near the northwest quarter of the southwest quarter of section 34, township 17 south, range 2 west, Lane County; thence easterly on the centerline of Oregon Highway 126 to the centerline of South 67th Street, a city street, in or near the northeast quarter of the southeast quarter of section 34, township 17 south, range 2 west, Lane County; thence southerly directly to the southwest corner of Donation Land Claim 37 in or near the southeast quarter of the northeast quarter of section 3, township 18 south, range 2 west, Lane County; thence easterly directly to the southeast corner of Donation Land Claim 37 in or near the southeast quarter of the northwest quarter of section 2, township 18 south, range 2 west, Lane County; thence northerly directly to the southwest corner of Donation Land Claim 85 in or near the northeast quarter of the northeast quarter of section 2, township 18 south, range 2 west, Lane County; thence northerly directly to the southeast corner of Donation Land Claim 54 in or near the southeast quarter of the southeast quarter of section 35, township 17 south, range 2 west, Lane County; thence northerly directly toward the east northeast corner of Donation Land Claim 54 to the centerline of Oregon Highway 126 in or near the northeast quarter of the southeast quarter of section 35, township 17 south, range 2 west, Lane County; thence northeasterly on the centerline of Oregon Highway 126 to the center of the main channel of McKenzie River in or near the northeast quarter of the northeast quarter of section 32, township 17 south, range 1 west, Lane County; thence northeasterly on the centerline of the main channel of McKenzie River to the common line of section 23 and section 24, township 17 south, range 1 west, in or near the southeast quarter of the southeast quarter of section 23, township 17 south, range 1 west, Lane County; thence south to the centerline of Deerhorn Road, a county road, in or near the southwest quarter of the southwest quarter of section 24, township 17 south, range 1 west, Lane County; thence northeasterly on the centerline of Deerhorn Road, a county road, to the centerline of Bridge Street, a county road, in or near the northwest quarter of the southeast quarter of section 17, township 17 south, range 1 east, Lane County; thence northerly on the centerline of Bridge Street, a county road, to the centerline of Holden Creek Lane, a county road, in or near the southeast quarter of the northwest quarter of section 17, township 17 south, range 1 east, Lane County; thence westerly on the centerline of Holden Creek Lane, a county road, to the centerline of Oregon Highway 126 in or near the southeast quarter of the northwest quarter of section 17, township 17 south, range 1 east, Lane County; thence southwest on the centerline of Oregon Highway 126 to the centerline of the Walterville Canal in or near the northwest quarter of the northwest quarter of section 27, township 17 south, range 1 west, Lane County; thence westerly on the centerline of the Walterville Canal to the centerline of Camp Creek Road, a county road, in or near the northeast quarter of the northwest corner of section 29, township 17 south, range 1 west, Lane County; thence westerly on the centerline of Camp Creek Road, a county road, to the centerline of Marcola Road, a county road, in or near the southwest quarter of the southwest quarter of section 20, township 17 south, range 2 west, Lane County; thence northeasterly on the centerline of Marcola Road, a county road, to the centerline of Thompson Road, a county road, in or near the northeast quarter of the southwest quarter of section 3, township 17 south, range 2 west, Lane County; thence northeasterly on the centerline of Thompson Road, a county road, to the common line of sec-

tion 35, township 16 south, range 2 west and section 2, township 17 south, range 2 west, in or near the northwest quarter of the northwest quarter of section 2, township 17 south, range 2 west, Lane County; thence east to the northwest corner of the northeast quarter of section 2, township 17 south, range 2 west, Lane County; thence north to the center of the main channel of Mohawk River, in or near the southwest quarter of the northeast quarter of section 26, township 16 south, range 2 west, Lane County; thence northeasterly on the center of the main channel of Mohawk River to the center of the main channel of Parsons Creek, in or near the northwest quarter of the southeast quarter of section 24, township 16 south, range 2 west, Lane County; thence northerly on the center of the main channel of Parsons Creek to the centerline of Marcola Road, a county road, in or near the northeast quarter of the northwest quarter of section 24, township 16 south, range 2 west, Lane County; thence southwest on the centerline of Marcola Road, a county road, to the centerline of Donna Road, a county road, in or near the southeast quarter of the southwest quarter of section 23, township 16 south, range 2 west, Lane County; thence southwest on the centerline of Donna Road, a county road, to the centerline of Hill Road, a county road, in or near northeast quarter of the northwest quarter of section 34, township 16 south, range 2 west, Lane County; thence southwest on the centerline of Hill Road, a county road, to the centerline of McKenzie View Drive, a county road, in or near the northeast quarter of the northwest quarter of section 17, township 17 south, range 2 west, Lane County; thence westerly on the centerline of McKenzie View Drive, a county road, to the eastern side of the Interstate 5 right of way, in or near the northwest quarter of the northwest quarter of section 10, township 17 south, range 3 west, Lane County; thence northerly on the eastern side of the Interstate 5 right of way to the common line of section 3 and section 4, township 17 south, range 3 west, in or near the northwest quarter of the southwest quarter of section 3, township 17 south, range 3 west, Lane County; thence north to the northwest corner of section 3, township 17 south, range 3 west, Lane County; thence east to the northwest corner of section 2, township 17 south, range 3 west, Lane County; thence north to the centerline of Van Duyen Road, a county road, in or near the southwest quarter of the northwest quarter of section 35, township 16 south, range 3 west, Lane County; thence east to the common line of the east half and the west half of section 35, township 16 south, range 3 west, Lane County; thence north to the southwest corner of the northeast quarter of section 26, township 16 south, range 3 west, Lane County; thence west to the southwest corner of the northwest quarter of section 26, township 16 south, range 3 west, Lane County; thence north to the southwest corner of the northwest quarter of section 23, township 16 south, range 3 west, Lane County; thence west to the southwest corner of the northeast quarter of section 22, township 16 south, range 3 west, Lane County; thence north to the northwest corner of the northeast quarter of section 10, township 16 south, range 3 west, Lane County; thence east to the northwest corner of section 11, township 16 south, range 3 west, Lane County; thence north to the centerline of Priceboro Drive, a county road, in or near the northwest quarter of the northwest quarter of section 26, township 15 south, range 3 west, Linn County; thence easterly on the centerline of Priceboro Drive, a county road, to the centerline of Gap Road, a county road, in or near the northeast quarter of the northeast quarter of section 26, township 15 south, range 3 west, Linn County; thence northerly and easterly on the centerline of Gap Road, a county road, to the common line of section 13 and section 24, township 15 south, range 3 west, in or near the northwest quarter of the northwest quarter of section 24, township 15 south, range 3 west, Linn County; thence east to the southwest corner of section 18, township 15 south, range 2 west, Linn County; thence north to the northwest corner of section 18, township 15 south, range 2 west, Linn County; thence east to the northwest corner of section 17, township 15 south, range 2 west, Linn County; thence north to the southwest corner of section 32, township 14 south, range 2 west, Linn County; thence west to the centerline of Gap Road, a county road, in or near the southwest quarter of the southeast quarter of section 36, township 14 south, range 3 west, Linn County; thence northerly on the centerline of Gap Road, a county road, to the common line of section 7 and section 18, township 14 south, range 2 west, in or near the northwest quarter of the northwest quarter of section 18, township 14 south, range 2 west, Linn County; thence east to the northwest corner of the northeast quarter of the northwest quarter of section 14, township 14 south, range 2 west, Linn County; thence north to the southwest corner of the southeast quarter of the southwest quarter of section 2, township 14 south, range 2 west, Linn County; thence west to the southwest corner of section 2, township 14 south, range 2 west, Linn County; thence north to the northwest corner of the southwest quarter of section 2, township 14 south, range 2 west, Linn County; thence east to the northwest corner of the southeast quarter of section 2, township 14 south, range 2 west, Linn County; thence north to the southwest corner of the southeast quarter of section 35, township 13 south, range 2 west, Linn County; thence west to the southwest corner of section 35, township 13

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south, range 2 west, Linn County; thence north to the southwest corner of section 26, township 13 south, range 2 west, Linn County; thence west to the centerline of Mountain Home Drive, a county road, in or near the southeast quarter of the southeast quarter of section 27, township 13 south, range 2 west, Linn County; thence westerly and southerly on the centerline of Mountain Home Drive, a county road, to the centerline of Northern Drive, a county road, in or near the northeast quarter of the northeast quarter of section 4, township 14 south, range 2 west, Linn County; thence westerly on the centerline of Northern Drive, a county road, to the centerline of the Brownsville Ditch irrigation canal in or near the northeast quarter of the northwest quarter of section 4, township 14 south, range 2 west, Linn County; thence westerly on the centerline of Brownsville Ditch irrigation canal to the common line of section 31 and section 32, township 13 south, range 2 west, Linn County; thence north to the centerline of Brownsville Road, a county road, in or near the southwest quarter of the southwest quarter of section 5, township 13 south, range 2 west, Linn County; thence northerly on the centerline of Brownsville Road, a county road, to the centerline of Rock Hill Drive, a county road, in or near the northwest quarter of the southeast quarter of section 32, township 12 south, range 2 west, Linn County; thence easterly on the centerline of Rock Hill Drive, a county road, to the centerline of Ty Valley Drive, a county road, in or near the northeast quarter of the southeast quarter of section 27, township 12 south, range 2 west, Linn County; thence southerly on the centerline of Ty Valley Drive, a county road, to the common line of section 34, township 12 south, range 2 west and section 3, township 13 south, range 2 west, in or near the southeast quarter of the southeast quarter of section 34, township 12 south, range 2 west, Linn County; thence east to the northwest corner of section 6, township 13 south, range 1 west, Linn County; thence north to the centerline of Maple Street, a county road, in or near the northwest corner of the southwest quarter of section 31, township 12 south, range 1 west, Linn County; thence westerly on the centerline of Maple Street, a county road, to the centerline of Washington Street, a county road, in or near the southeast quarter of the northeast quarter of section 36, township 12 south, range 2 west, Linn County; thence northerly on the centerline of Washington Street, a county road, to the centerline of Main Street, a county road, in or near the southeast quarter of the northeast quarter of section 36, township 12 south, range 2 west, Linn County; thence westerly on the centerline of Main Street, a county road, to the centerline of Sodaville Road, a county road, in or near the southeast quarter of the northeast quarter of section 36, township 12 south, range 2 west, Linn County; thence northerly on the centerline of Sodaville Road, a county road, to the centerline of Cascade Drive, a county road, in or near the southwest quarter of the northeast quarter of section 25, township 12 south, range 2 west, Linn County; thence easterly on the centerline of Cascade Drive, a county road, to the centerline of Oregon Highway 20, in or near the southwest quarter of the northeast quarter of section 30, township 12 south, range 1 west, Linn County; thence easterly and southerly on the centerline of Oregon Highway 20 to the centerline of Waterloo Road, a county road, in or near the northeast quarter of the northwest quarter of section 32, township 12 south, range 1 west, Linn County; thence easterly and northerly on the centerline of Waterloo Road, a county road, to the centerline of Berlin Road, a county road, in or near the northwest quarter of the southwest quarter of section 22, township 12 south, range 1 west, Linn County; thence easterly on the centerline of Berlin Road, a county road, to the centerline of Bellinger Scale Road, a county road, in or near the northeast quarter of the southwest quarter of section 22, township 12 south, range 1 west, Linn County; thence northerly on the centerline of Bellinger Scale Road, a county road, to the centerline of Mt. Pleasant Road, a county road, in or near the northwest quarter of the northeast quarter of section 10, township 12 south, range 1 west, Linn County; thence easterly and northerly on the centerline of Mt. Pleasant Road, a county road, to the centerline of Lacomb Drive, a county road, in or near the southeast quarter of the southwest quarter of section 25, township 11 south, range 1 west, Linn County; thence easterly and northerly on the centerline of Lacomb Drive, a county road, to the centerline of Meridian Road, a county road, in or near the northwest quarter of the southwest quarter of section 30, township 11 south, range 1 east, Linn County; thence northerly on the centerline of Meridian Road, a county road, to the centerline of East Lacomb Road, a county road, in or near the southwest quarter of the northwest quarter of section 30, township 11 south, range 1 east, Linn County; thence easterly, northerly and westerly on the centerline of East Lacomb Road, a county road, to the centerline of Meridian Road, a county road, in or near the northwest quarter of the northwest quarter of section 18, township 11 south, range 1 east, Linn County; thence northerly on the centerline of Meridian Road, a county road, to the centerline of Fish Hatchery Drive, a county road, in or near the southeast quarter of the northeast quarter of section 12, township 11 south, range 1 west, Linn County; thence northerly on the centerline of Fish Hatchery Drive, a county road, to the point of beginning.

Stat. Auth.: ORS 477.225
Stats. Implemented: ORS 477.225
Hist.: DOF 7-2005, f. 12-5-05, cert. ef. 7-1-06

Adm. Order No.: DOF 8-2005
Filed with Sec. of State: 12-13-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 8-1-05
Rules Adopted: 629-605-0173

Rules Amended: 629-001-0010, 629-001-0025, 629-600-0100, 629-605-0100, 629-605-0150, 629-605-0170, 629-605-0175, 629-605-0180, 629-605-0190, 629-605-0500, 629-610-0020, 629-610-0030, 629-610-0040, 629-610-0050, 629-610-0060, 629-610-0070, 629-610-0090, 629-615-0300, 629-623-0450, 629-623-0550, 629-623-0700, 629-625-0100, 629-625-0320, 629-625-0430, 629-630-0200, 629-630-0600, 629-630-0700, 629-630-0800, 629-635-0130, 629-640-0100, 629-640-0110, 629-640-0200, 629-640-0400, 629-645-0000, 629-645-0020, 629-645-0030, 629-645-0050, 629-650-0040, 629-660-0040, 629-660-0050, 629-665-0020, 629-665-0110, 629-665-0120, 629-665-0210, 629-665-0220, 629-665-0230, 629-665-0240, 629-670-0010, 629-670-0015, 629-670-0100, 629-670-0115, 629-670-0125, 629-670-0210, 629-672-0100, 629-672-0200, 629-672-0210, 629-672-0310, 629-674-0100

Rules Repealed: 629-001-0010(T), 629-001-0025(T), 629-600-0100(T), 629-605-0100(T), 629-605-0150(T), 629-605-0170(T), 629-605-0173(T), 629-605-0175(T), 629-605-0180(T), 629-605-0190(T), 629-605-0500(T), 629-610-0020(T), 629-610-0030(T), 629-610-0040(T), 629-610-0050(T), 629-610-0060(T), 629-610-0070(T), 629-610-0090(T), 629-615-0300(T), 629-623-0450(T), 629-623-0550(T), 629-623-0700(T), 629-625-0100(T), 629-625-0320(T), 629-625-0430(T), 629-630-0200(T), 629-630-0600(T), 629-630-0700(T), 629-630-0800(T), 629-635-0130(T), 629-640-0100(T), 629-640-0110(T), 629-640-0200(T), 629-640-0400(T), 629-645-0000(T), 629-645-0020(T), 629-645-0030(T), 629-645-0050(T), 629-650-0040(T), 629-660-0040(T), 629-660-0050(T), 629-665-0020(T), 629-665-0110(T), 629-665-0120(T), 629-665-0210(T), 629-665-0220(T), 629-665-0230(T), 629-665-0240(T), 629-670-0010(T), 629-670-0015(T), 629-670-0100(T), 629-670-0115(T), 629-670-0125(T), 629-670-0210(T), 629-672-0100(T), 629-672-0200(T), 629-672-0210(T), 629-672-0220, 629-672-0310(T), 629-674-0100(T)

Subject: The revision of the forest practice rules will comply with 2003 HB 3264 by removing requirements for prior approval and approval of written plans while maintaining resource protection. The revised rules effectively and efficiently implement the regulatory elements of the Forest Practices Act to maintain one-stop shopping and minimize program compliance costs. The permanent rules replace temporary rules which became effective on August 2, 2005.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-001-0010

Agency Representation by Officer or Employee

(1) Department of Forestry officer or employee is authorized to appear (but not make legal argument) on behalf of the department in a hearing or in a class of contested hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General has given consent is maintained by the Department of Forestry and the Department of Justice.

(2) "Legal argument" as used in ORS 183.450(8) and this rule shall include arguments on:

- The jurisdiction of the agency to hear the contested case;
- The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;
- The application of court precedent to the facts of the particular contested case proceeding.

(3) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

- The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

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(b) Comparison of prior actions of the agency in handling similar situations;

(c) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(d) The admissibility of evidence or the correctness of procedures being followed.

(4) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183 & 526

Stats. Implemented: ORS 183 & 526

Hist.: FB 1-1990, f. & cert. ef. 3-15-90; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-001-0025

Conduct of Hearings

(1) Unless otherwise provided by law or order of the board or State Forester in a specific case, contested case hearings will be conducted by an administrative law judge, who shall prepare a proposed order for consideration by the board or State Forester.

(2) Unaccepted proposals of settlement shall be privileged and shall not be admissible as evidence in the proceeding.

(3) In civil penalty proceedings, conferences and hearings shall be held at locations which are within the forest practices region of the person being assessed the penalty, unless otherwise agreed to by the State Forester and parties.

(4) The issues for hearing shall be limited to those raised by the parties or by the State Forester in a request for hearing or other pre-hearing filings.

(5) Timing of hearings and orders are stated as follows, unless all parties agree to an extension of the time limits:

(a) For appeals from orders of the State Forester under ORS 527.700(1), hearings shall be commenced within 14 days after receipt of the request for hearing, and a final order shall be issued within 28 days of the request for hearing.

(b) For appeals by persons adversely affected or aggrieved by an operation under ORS 527.700(3), hearings shall be commenced within 21 calendar days after receipt of the request for hearing. The board's comments shall be issued within 45 days after the request for hearing was filed.

(c) For appeals by persons adversely affected or aggrieved by a proposed or amended stewardship agreement, hearings shall be commenced within 45 calendar days after receipt of the request for hearing. A final order shall be issued within 45 calendar days of the concluded hearing.

(d) Hearings on notices of civil penalty under ORS 527.687 shall not be held less than 45 days from the date of service of the notice of penalty. The hearing shall be held not more than 180 days following issuance of the notice.

(6) In order to comply with statutory timelines, the administrative law judge may establish time limits different from those under OAR 137-003-0580 for making and responding to motions for ruling on legal issues. The administrative law judge shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

Stat. Auth.: ORS 526.016(4), 527.687(3) & 527.715

Stats. Implemented: ORS 183.310 - 183.550

Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 2-2004, f. & cert. ef. 2-10-04; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-600-0100

Definitions

As used in OAR chapter 629, divisions 605 through 669 and divisions 680 through 699, unless otherwise required by context:

(1) "Abandoned resource site" means a resource site that the State Forester determines is not active.

(2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. "Recent past" shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.

(3) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.

(4) "Aquatic area" means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.

(5) "Artificial reforestation" means restocking a site by planting trees or through the manual or mechanical distribution of seeds.

(6) "Basal area" means the area of the cross-section of a tree stem derived from DBH.

(7) "Basal area credit" means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a stream, or conducting other enhancement activities such as side channel creation or grazing enclosures.

(8) "Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.

(9) "Channel" is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.

(10) "Chemicals" means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliant, plant desiccants, and plant regulators, as defined in ORS 634.006(8); fertilizers, as defined in ORS 633.311; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives, anti-foam agents, wetting agents, and spreading agents.

(11) "Commercial" means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity undertaken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.

(12) "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.

(13) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.

(14) "Debris torrent-prone streams" are designated by the State Forester to include channels and confining slopes that drain watersheds containing high landslide hazard locations that are of sufficient confinement and channel gradient to allow shallow, rapid landslide movement.

(15) "Department" means the Oregon Department of Forestry.

(16) "Diameter breast height" (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.

(17) "Domestic water use" means the use of water for human consumption and other household human use.

(18) "Dying or recently dead tree" means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.

(19) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(20) "Exposure categories" are used to designate the likelihood of persons being present in structures or on public roads during periods when shallow, rapidly moving landslides may occur.

(21) "Filling" means the deposit by artificial means of any materials, organic or inorganic.

(22) "Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(23) "Fledging tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.

(24) "Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.

(25) "Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.

(26) "Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed

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or how any state or local statutes, ordinances, rules or regulations are applied.

(27) "Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.

(28) "Further review area" means an area of land that may be subject to rapidly moving landslides as mapped by the State Department of Geology and Mineral Industries or as otherwise determined by the State Forester.

(29) "Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.

(30) "High landslide hazard location" means a specific site that is subject to initiation of a shallow, rapidly moving landslide.

(31) "High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.

(32) "Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.

(33) "Important springs" are springs in arid parts of eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.

(34) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.

(35) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledging trees or perching trees.

(36) "Lake" means a body of year-round standing open water.

(a) For the purposes of the forest practice rules, lakes include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein; and

(B) Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.

(b) "Lakes" do not include water developments as defined in section (81) of this rule.

(37) "Landslide mitigation" means actions taken to reduce potential landslide velocity or re-direct shallow, rapidly moving landslides near structures and roads so risk to persons is reduced.

(38) "Large lake" means a lake greater than eight acres in size.

(39) "Live tree" means a tree that has 10 percent or greater live crown.

(40) "Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.

(41) "Main channel" means a channel that has flowing water when average flows occur.

(42) "Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.

(43) "Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.

(44) "Nest tree" means the tree, snag, or other structure that contains a bird nest.

(45) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.

(46) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(47) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(48) "Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.

(49) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.

(50) "Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted to the State Forester for written approval describing practices different than those prescribed in statute or administrative rule.

(51) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.

(52) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.

(53) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.

(54) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.

(a) For the purposes of protection:

(A) For threatened and endangered bird species, "resource site" is the nest tree, roost trees, or foraging perch and all identified key components.

(B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.

(C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.

(b) For the purposes of requesting a hearing under ORS 527.670(4) and 527.700(3), "resource site" is defined in OAR 629-680-0020.

(55) "Riparian area" means the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.

(56) "Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and fish and wildlife habitat.

(57) "Roosting site" means a site where birds communally rest at night and which is unique for that purpose.

(58) "Roost tree" is a tree within a roosting site that is used for night time roosting.

(59) "Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.

(60) "Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.

(61) "Shallow, rapidly moving landslide" means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel at a velocity difficult for people to outrun or escape.

(62) "Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.

(63) "Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection.

(64) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

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(65) "Sound snag" means a snag that retains some intact bark or limb stubs.

(66) "Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.

(67) "Stream" means a channel, such as a river or creek, that carries flowing surface water during some portion of the year.

(a) For the purposes of the forest practice rules, streams include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein;

(B) Beds and banks below the high water level which may contain water, whether or not water is actually present;

(C) The area between the high water level of connected side channels;

(D) Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and

(E) Stream-associated wetlands.

(b) "Streams" do not include:

(A) Ephemeral overland flow (such flow does not have a channel); or

(B) Road drainage systems or water developments as defined in section (81) of this rule.

(68) "Stream-associated wetland" means a wetland that is not classified as significant and that is next to a stream.

(69) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.

(70) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.

(71) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.

(72) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.

(73) "Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.

(74) "Tye Core Area" means a location with geologic conditions including thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in shallow soils creating a higher shallow, rapidly moving landslide hazard. The Tye Core area is located within coastal watersheds from the Siuslaw watershed south to and including the Coquille watershed, and that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5. Within these boundaries, locations where bedrock is highly fractured or not of sedimentary origin as determined in the field by a geotechnical specialist are not subject to the Tye Core area slope steepness thresholds.

(75) "Type D stream" means a stream that has domestic water use, but no fish use.

(76) "Type F stream" means a stream with fish use, or both fish use and domestic water use.

(77) "Type N stream" means a stream with neither fish use nor domestic water use.

(78) "Unit" means an operation area submitted on a notification of operation that is identified on a map and that has a single continuous boundary. Unit is used to determine compliance with ORS 527.676 (down log, snag and green live tree retention), ORS 527.740 and 527.750 (harvest type 3 size limitation), and other forest practice rules.

(79) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.

(80) "Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.

(81) "Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(82) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(83) "Wetland" 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. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in section (81) of this rule.

(84) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5), 527.674 & 527.714

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 1-1985, f. & ef. 3-12-85; FB 2-1985(Temp), f. & ef. 4-24-85; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0101; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

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Compliance

(1) The operator, landowner, or timber owner shall comply with the practices described in the forest practice statutes and rules unless approval has been obtained from the State Forester for a plan for an alternate practice which is designed to result in the same effect or to meet the same purpose or provide equal or better results as those practices described in statute or administrative rule.

(2) The State Forester may approve a plan for an alternate practice to waive or modify forest practice rules when:

(a) The State Forester determines that a federal or state agency, a college or university, or a private landowner has submitted an application to the State Forester for a bona fide research project involving activities not in accordance with the rules; or

(b) The State Forester determines that waiving or modifying a specific practice will result in less environmental damage than if the practice is applied; or

(c) After consulting with the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester determines that waiving or modifying a specific practice will improve soil, water quality, fish habitat, or wildlife habitat; or

(d) The State Forester determines that the alternate practice is necessary to provide for public safety or to accomplish a land use change.

(3) When the State Forester's approval does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain a written explanation of the reasons for approving the alternate practices.

(4) The State Forester may approve a plan for an alternate practice to waive or modify rules for resource sites identified in OAR 629-680-0100 (Threatened or Endangered Fish and Wildlife Species), 629-680-0200 (Sensitive Bird Nesting, Roosting and Watering Sites), 629-680-0300 (Significant Wetlands), or 629-680-0400 (Biological Sites) when:

(a) The county has an adopted program under OAR 660-016-0005 and 660-016-0010 that has evaluated the resource sites; and

(b) Applying the forest practice rules for the identified resource sites would regulate or prevent operations, or uses, allowed under the acknowledged county comprehensive plan.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.710, & 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 7-1992, f. & cert. ef. 6-5-92; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0102; DOF 2-2003, f. 6-19-03, cert. ef. 7-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-605-0150

Notification to the State Forester — When, Where and How

(1) The operator, landowner or timber owner shall notify the State Forester as required by ORS 527.670(6), at least 15 days before starting an operation.

(2) The State Forester may waive the 15 day waiting period required in section (1) of this rule, except as prohibited in ORS 527.670(9) for aerial applications of chemicals and ORS 527.670(10) for operations requiring a written plan under ORS 527.670(3)(a) and (b). Waivers may be granted when the State Forester has already previewed the operation site or has otherwise determined the operation to have only minor potential for resource damage. Waivers shall be made in writing, and on an individual notification basis.

(3) Once an operation is actually started following proper notification of the State Forester, the operation may continue into the following calendar year without further notification under 527.670(6), provided:

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(a) There are no changes to the information required on the notification;

(b) The operator gives written notice to the State Forester of their intent to continue the operation within the first two months of the following calendar year; and

(c) The operation actively continues within the first six months of the following calendar year.

(4) No notification is valid after the second calendar year, unless:

(a) The landowner or operator submits a written request to extend the notification before the end of the second calendar year;

(b) There are no changes to the information submitted on the original notification; and

(c) The State Forester approves the request.

(5) Notwithstanding sections (3) and (4) of this rule, nothing in this rule relieves an operator, landowner or timber owner of the responsibility to comply with ORS 477.625, requiring a permit to use fire or power-driven machinery; or ORS 321.550 requiring notification of intent to harvest provided to the Department of Revenue through the department for tax collection purposes.

(6) For the purposes of ORS 527.670 a notification will be considered received only when the information required by the State Forester is complete and the necessary forms are on file at the department district or unit office responsible for the area in which the operation will take place. Notifications not properly completed shall be promptly returned to the party submitting them. Properly completed notifications submitted to an incorrect department office will be forwarded to the correct office.

(7) Notifications required by ORS 527.670(6) shall be completed in detail, on forms provided by the State Forester. The notification shall include a map to scale, or aerial photograph that is corrected for distortion, on which the boundary of the operation unit is clearly marked. When more than one type of operation activity or more than one unit is submitted on a single notification, each operation unit shall be identifiable as to the type of operation activity, by legal subdivision, and drawn on a map to scale, aerial photograph corrected for distortion, or other appropriate means. Operations involving harvesting in more than one county may not be combined on the same notification because of tax collection requirements.

(8) When operations include the application of chemicals, properly completed notifications shall include the common name of the chemicals to be used; the brand name, if known at the time of notification; the application method; and, for fertilizers, the intended application rate per acre. Public information on allowable application rates of commonly applied forest chemicals will be maintained at department field offices. Additional information on chemical applications shall be collected and recorded by operators at the time of application, and made available upon request to the State Forester, pursuant to OAR 629-620-0600.

(9) The operator, landowner or timber owner, whichever filed the original notification, shall contact the State Forester and report any subsequent change to information contained in the notification. Additions to the geographic location, however, shall require a separate notification.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 33, f. 6-15-73, ef. 7-1-73; FB 5-1978, f. 6-7-78; FB 2-1988, f. & cert. ef. 5-11-88; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0108; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-605-0170

Written Plans

Statutory Written Plans

(1) Operators must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting any operations requiring notification under OAR 629-605-0140, which are within:

(a) 100 feet of a stream classified as Type F or Type D. Written plans for Type F and Type D streams, are further described in OAR 629-635-0130.

(b) 300 feet of a specific site involving threatened or endangered wildlife species, or sensitive bird nesting, roosting, or watering sites; as listed by approximate legal description, in a document published by the Department of Forestry titled "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984."

(c) 300 feet of any resource site identified in OAR 629-665-0100 (Sensitive Bird Nesting, Roosting and Watering Resource Sites on Forestlands), 629-665-0200 (Threatened and Endangered Species that use Resource Sites on Forestlands), or 629-645-0000 (Significant Wetlands).

(d) 300 feet of any nesting or roosting site of threatened or endangered species listed by the U.S. Fish and Wildlife Service or by the Oregon Fish and Wildlife Commission by administrative rule.

(2) The State Forester shall notify the operator of the presence of one of the sites listed in section (1) of this rule and the requirement of the writ-

ten plan at any time the State Forester determines the presence of the above sites.

(3) Written plans required under section (1) of this rule shall be subject to the hearings provisions of ORS 527.700(3) (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of ORS 527.670(10), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.

Non-Statutory Written Plans

(4) Unless waived by the State Forester, the operator must submit a written plan as required by ORS 527.670(2) and the rules listed below, which shall not be subject to the provisions of ORS 527.700(3) or 527.670(10), (11) and (12).

(a) 629-605-0190(1) — Operating near or within sites that are listed in the "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984" or sites designated by the State Forester;

(b) 629-605-0190(2) — Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered;

(c) 629-623-700(1) — Conducting timber harvesting or road construction operations with intermediate or substantial downslope public safety risk;

(d) 629-623-700(2) — Constructing a stream crossing fill over a debris torrent-prone stream with intermediate or substantial downslope public safety risk;

(e) 629-623-700(3) — Locating a waste-fill area within a drainage containing debris torrent-prone streams with intermediate or substantial downslope public safety risk;

(f) 629-625-100(2)(a) — Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow;

(g) 629-625-100(2)(c) — Constructing a road within the riparian management area of a medium or large Type N stream;

(h) 629-625-0100(3) — Constructing a road on high landslide hazard locations;

(i) 629-625-0100(4) — Placing woody debris or boulders in the stream channel of a Type N stream for stream enhancement;

(j) 629-625-0320(1)(b)(B) — Constructing a permanent stream crossing fill over 15 feet deep in a Type N stream;

(k) 629-630-0200(3) — Locating a landing within the riparian management area of a medium or large Type N stream;

(l) 629-630-0700(3) — Yarding across streams classified as medium or large Type N;

(m) 629-630-0800(4)(c) — Constructing a temporary stream crossing fill over 8 feet deep in a Type N stream;

(n) 629-635-0130(1)(c) — Operating within 100 feet of a large lake;

(o) 629-660-0050(1) — Removing beaver dams or other natural obstructions located farther than 25 feet from a culvert in a Type N stream;

(p) 629-665-0020(2) — Operating near a resource site requiring special protection; and

(q) 629-665-0210(1) — Operating near a Northern Spotted Owl resource site.

(5) If an operator, timber owner or landowner is required to submit a written plan to the State Forester under subsection (4) of this section:

(a) The State Forester shall review the written plan and may provide comments to the person who submitted the written plan;

(b) Provided that notice has been given as required by ORS 527.670 and OAR 629-605-0150, the operation may commence on the date the State Forester provides comments. If no comments are provided the operation may commence at any time after 14 calendar days following the date the written plan was received;

(c) Comments provided by the State Forester under paragraph (a) of this subsection, to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester do not constitute an approval of the written plan or operation;

(d) If the State Forester does not comment on a written plan, the failure to comment does not mean an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation;

(e) In the event that the State Forester determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted thereunder, the State

ADMINISTRATIVE RULES

Forester shall consider, but is not bound by, comments that the State Forester provided under this section.

Written Plan Content Required for All Written Plans

(6) Written plans required under OAR 629-605-0170 must contain a description of how the operation is planned to be conducted in sufficient detail to allow the State Forester to evaluate and comment on the likelihood that the operation will comply with the Forest Practices Act or administrative rules.

(7) Written plans required under OAR 629-605-0170 will be considered received when complete with the following information:

(a) A map showing protected resource(s) and the harvest area; and

(b) The specific resource(s) that require protection; and

(c) The practices that may affect the protected resource(s) such as road and landing location, disposal of waste materials, felling and bucking and post operation stabilization measures; and

(d) The specific techniques and methods employed for resource protection such as road and landing design, road construction techniques, drainage systems, buffer strips, yarding system and layout; and

(e) Additional written plan content required in individual rules.

(8) Modification of a written plan shall be required when, based on information that was not available or was unknown at the time the original written plan was reviewed, the State Forester determines the written plan no longer addresses compliance with applicable forest practice rules. Written plans with modifications required under this section shall not be subject to the provisions of ORS 527.670(10) and (11) relating to waiting periods for written plans.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.670

Hist.: FB 3-1983, f. & ef. 9-13-83; FB 3-1985, f. & ef. 6-11-85; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0113; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-605-0173

Plans for an Alternate Practice

(1) Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting forest practices utilizing protection standards or methods different than those specified in rule or statute.

(2) Plans for an alternate practice must include sufficient information to allow the State Forester to assess the plan to determine that the practices described in the plan will yield results consistent with ORS 527.610 to 527.770 and administrative rules adopted thereunder.

(3) Plans for alternate practices proposed as part of a written plan required by ORS 527.670(3) shall be subject to the hearings provisions of ORS 527.700(3) (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of ORS 527.670(10), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.

(4) An operator must comply with all provisions of an approved plan for an alternate practice.

(5) The following rules require a plan for an alternate practice to be submitted and approved by the State Forester prior to commencing the practice or operation:

(a) 629-605-0100(2)(a) — Modifying, exempting or suspending the rules or statutes for a bona fide research project conducted by a federal or state agency, a college or university, or a private landowner;

(b) 629-605-0100(2)(b) — Waiving or modifying a specific practice that will result in less environmental damage than if the practice is applied;

(c) 629-605-0100(2)(c) — Waiving or modifying a specific practice that will improve soil, water quality, fish habitat, or wildlife habitat;

(d) 629-605-0100(2)(d) — Waiving or modifying rules to provide for public safety or to accomplish a land use change;

(e) 629-605-0100(4) — Waiving or modifying rules for resource sites when a county has an adopted program under OAR 660-016-0005 and OAR 660-016-0010 that has evaluated the resource sites;

(f) 629-605-0173(1) — Conducting forest practices utilizing protection standards or methods different than those specified in rule or statute;

(g) 629-605-0175(2) — Conducting operations that result in a single harvest type 3 unit, or combinations of harvest type 3 units, that exceed the contiguous 120 acre limit on a single ownership;

(h) 629-605-0175(7) — Waiving the harvest type 3 acreage limitations for conversions or disasters described in ORS 527.740(4);

(i) 629-605-0500 — Modifying the protection requirements for streams, lakes, wetlands and riparian management areas for reasons of forest health or because of hazards to public safety or property;

(j) 629-610-0020(3) — Waiving or modifying the reforestation requirements following a stand improvement operation where the residual stand conditions will result in enhanced long-term tree growth;

(k) 629-610-0030(3) — Utilizing natural reforestation methods when an operation results in a reforestation requirement;

(l) 629-610-0040(3) — Extending the time allowed for reforestation when natural reforestation methods are utilized;

(m) 629-610-0050(2) — Utilizing more than 20% hardwood stocking when an operation results in a reforestation requirement;

(n) 629-610-0060(1) — Utilizing non-native tree species when an operation results in a reforestation requirement;

(o) 629-610-0070(1) — Suspending the reforestation rules for the salvage or conversion of low value forest stands when participating in a forest incentive program;

(p) 629-610-0090(1) — Exempting the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover;

(q) 629-615-0300(5) — Modifying the protection requirements for riparian areas, aquatic areas and wetlands when the need for prescribed burning outweighs the benefits of protecting components required to be left;

(r) 629-620-0400(7)(d) — Modifying the protection requirements for aerial application of fungicides;

(s) 629-625-0320(3) — Modifying the culvert sizing requirements of 629-625-320(2)(a) to reduce the height of fills where roads cross wide flood plains;

(t) 629-640-0100(13) — Modifying the retention requirements in a Type F RMA for the removal of roadside trees which pose a safety hazard;

(u) 629-640-0200(14) — Modifying the retention requirements in a Type D or N RMA for the removal of roadside trees which pose a safety hazard;

(v) 629-640-0400(1)(a) — Utilizing site specific vegetation retention prescriptions for streams and riparian management areas;

(w) 629-645-0020(1) — Utilizing site specific vegetation retention prescriptions for significant wetlands;

(x) 629-645-0050(3) — Modifying the retention requirements for significant wetlands for reasons of forest health;

(y) 629-650-0040(3) — Modifying the retention requirements for lakes for reasons of forest health;

(z) 629-665-0020(1)(b)(C) — Structural or temporal exceptions when proposed forest practices conflict with a resource site;

(aa) 629-665-0110(3) — Structural replacement of an osprey site;

(bb) 629-665-0110(4) — Temporal exceptions near an osprey site;

(cc) 629-665-0120(3) — Structural exceptions of a great blue heron site;

(dd) 629-665-0120(5) — Temporal exceptions near a great blue heron site.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.670(10-12), 527.700(2), (5), (6), (8)&(9)

Hist.: DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-605-0175

Harvest Type 3 Units Exceeding 120 Acres

(1) The purpose of this rule is to describe the process that operators shall follow to gain approval of a plan for an alternate practice for a harvest type 3 unit that is between 120 and 240 acres in size.

(2) Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting operations that result in a single harvest type 3 unit, or combinations of harvest type 3 units, that exceed the contiguous 120 acre limit on a single ownership.

(3) For each unit on which a harvest type 3 is proposed to exceed the contiguous 120 acre limit, the plan for an alternate practice shall:

(a) Describe the planned harvest including, but not limited to, the elements of a written plan listed in OAR 629-605-0170;

(b) Include a detailed map of the planned harvest that shows the specific unit boundaries; and

(c) Demonstrate that the larger harvest size will result in increased protection of, or reduced adverse impact on, any or all of the resources and values protected by the Oregon Forest Practices Act. For the purposes of this rule, resources and values includes:

(A) Air quality, water resources, soil productivity, and fish and wildlife resources as described in ORS 527.710(2);

(B) The resource sites needing protection as listed in ORS 527.710(3);

(C) Scenic resources within visually sensitive corridors as provided in ORS 527.755; and

(D) Public safety related to landslides.

ADMINISTRATIVE RULES

(4) The State Forester shall review the operator's compliance with the Oregon Forest Practices Act and deny approval of the plan for an alternate practice submitted under this rule when the operator has:

(a) Received citations for violating a forest practice rule or statute within the past year; or

(b) Failed to comply with an order to cease further violation, an order to repair damage, or an order to correct an unsatisfactory condition under ORS 527.680(2).

(5) Plans for an alternate practice submitted under this rule shall not be subject to appeal under ORS 527.700(3).

(6) Single harvest type 3 units or combinations of harvest type 3 units may not exceed 240 contiguous acres on a single ownership, except when the units have been reforested as described in ORS 527.750(1)(a), (b) and (c).

(7) The harvest type 3 acreage limitations do not apply for conversions or disasters described in ORS 527.740(4) when the operator obtains approval from the State Forester of a plan for an alternate practice before conducting operations.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715
Stats. Implemented: ORS 527.750(5), 527.765, 527.710(3)(a)(D) & 527.670(8)
Hist.: DOF 6-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-605-0180

Interim Process for Protecting Sensitive Resource Sites Requiring Written Plans

Protection practices for sites requiring written plans under OAR 629-605-0170(1)(b) or (d) shall be determined for each site as follows:

(1) The State Forester shall notify the operator and landowner of the presence of a site requiring a written plan, and request their input into the decision making process.

(2) The State Forester shall, when practical, inspect the proposed operation with the landowner or landowner's representative, the operator, and the appropriate representative of the Department of Fish and Wildlife. The State Forester shall then determine if the proposed forest practice is in conflict with the protection of the sensitive resource site.

(3) If planned forest practices are determined to conflict with protection of the sensitive resource site, the written plan must describe reasonable measures sufficient to resolve the conflict in favor of the resource site. Reasonable measures to resolve the conflict in favor of the resource site may include but are not limited to preparing and implementing a habitat management plan, obtaining approval of a plan for an alternate practice, limiting the timing of forest practices, redesigning the proposed practices in favor of site protection and excluding the forest activities outright.

(4) If planned forest practices are determined not to conflict with protection of the sensitive resource site, the written plan shall describe how the operation will be conducted in compliance with existing forest practice rules. No additional protection measures shall be required.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715
Stats. Implemented: ORS 527.750(5), 527.765, 527.710(3)(a)(D), 527.670(8)
Hist.: FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0118; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-605-0190

Written Plans for Operations Near Critical, Threatened, or Endangered Wildlife Habitat Sites

Operators must submit a written plan to the State Forester before operating near or within:

(1) Critical wildlife or aquatic habitat sites that are listed in a 1984 cooperative agreement between the Board of Forestry and the Fish and Wildlife Commission or sites designated by the State Forester; or

(2) Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.710
Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-605-0500

Modification of Requirements for Forest Health and Public Safety

Protection requirements for streams, lakes, wetlands and riparian management areas may be modified by approval of a plan for an alternate practice by the State Forester for reasons of forest health or because of hazards to public safety or property. Hazards to public safety or property include hazards to river navigation and hazards to improvements such as roads, bridges, culverts, or buildings. Forest health concerns include fire, insect infestations, disease epidemics, or other catastrophic events not otherwise addressed in OAR 629-640-0300. Such modifications of protection requirements should prevent, reduce or alleviate the forest health conflict or hazard while meeting the intent of the protection goals as much as possible.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.674 & 527.710
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2040; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-610-0020

Reforestation Stocking Standards

(1) The landowner shall increase tree stocking to a level that meets the applicable productivity-based stocking standards described in sections (4), (5) and (6) of this rule within the time limits established by OAR 629-610-0040 whenever post-operation free to grow tree stocking in all or a portion of the operation area is below the applicable stocking standards and:

(a) Trees or snags of acceptable species are harvested; or

(b) Free to grow tree stocking is reduced as a result of the operation.

(2) Reforestation is not required on those portions of the operation area:

(a) Where adequate free to grow tree stocking remains after the completion of the operation;

(b) That are not disturbed by operation activities; or

(c) On soils or sites not meeting the minimum productivity requirements of OAR 629-610-0010.

(3) The State Forester shall approve a plan for an alternate practice to waive or modify the reforestation requirements following a stand improvement operation such as a precommercial thinning, commercial thinning, overstory removal, or other partial cut harvest if the State Forester determines that the residual stand conditions after such an operation will result in enhanced long-term tree growth and there is a high probability the purpose of the reforestation rules will be achieved.

(4) For Cubic Foot Site Class I, II and III forestlands (capable of producing at least 120 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 200 free to grow seedlings per acre; or

(b) 120 free to grow saplings and poles per acre; or

(c) 80 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(5) For Cubic Foot Site Class IV and V forestlands (capable of producing between 50 and 119 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 125 free to grow seedlings per acre; or

(b) 75 free to grow saplings and poles per acre; or

(c) 50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(6) For Cubic Foot Site Class VI forestlands (capable of producing between 20 and 49 cubic feet per acre per year at culmination of mean annual increment), the minimum tree stocking standards are:

(a) 100 or more free to grow seedlings per acre; or

(b) 60 free to grow saplings and poles per acre; or

(c) 40 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or

(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule.

(7) In both even-aged and uneven-aged stands, the stocking of residual seedlings, saplings and poles, and larger trees shall be weighted to determine stand stocking and potential reforestation requirements. For this purpose, seedlings, saplings and poles, and trees 11-inches DBH and larger are proportionally equivalent in the following ratios: 100 free to grow seedlings are equivalent to 60 free to grow saplings and poles, which are equivalent to 40 square feet of basal area of free to grow trees 11-inches DBH and larger.

(8) Live conifer trees 11-inches DBH and larger left standing in harvested areas to meet the green tree and snag retention requirements of Section 5, Chapter 919, Oregon Laws 1991 shall be counted towards meeting the tree stocking standards if the trees are free to grow.

(9) For the purposes of determining compliance with the tree stocking requirements of the reforestation rules, tree stocking in riparian management areas within an operation area will be considered separately from stocking in the rest of the operation area.

(10) Landowners may submit plans for alternate practices that do not conform to the reforestation stocking levels established under these rules. A plan for alternate practices may be approved if the State Forester determines that there is a high probability that the purpose of the reforestation rules will be achieved, or if the plan carries out an authorized research project conducted by a public agency or educational institution.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.745

ADMINISTRATIVE RULES

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-610-0030

Natural Reforestation Methods

(1) Natural reforestation methods may be the best means to meet a variety of resource management objectives on some forestlands. Successful natural reforestation requires careful, flexible, site-specific pre-harvest planning and post-harvest monitoring.

(2) Reforestation may be difficult on Cubic Foot Site Class VI forestlands due to factors such as poor soils, harsh climate and competing vegetation. Reforestation in wetland areas may be difficult because of high water tables, competing vegetation, and inaccessibility. Careful reforestation planning is needed before operations are conducted on these sites. On Cubic Site Class VI forestlands and in wetlands, the use of silvicultural systems that promote natural regeneration and the retention of good quality residual trees after operations often have a higher probability of success than artificial reforestation methods.

(3) When an operation will result in a reforestation requirement and natural reforestation methods are planned, the landowner shall obtain written approval from the State Forester of a plan for an alternate practice which describes how reforestation will be accomplished. Information in the plan shall include:

- (a) A description of the seed sources that will be used;
- (b) Site preparation and vegetation competition control methods;
- (c) An estimate of the time needed to obtain an adequately stocked free to grow stand;
- (d) How progress towards natural reforestation will be evaluated; and
- (e) Alternative strategies that will be used if natural reforestation does not progress as planned.

(4) The plan for an alternate practice required in section (3) of this rule must be submitted no later than twelve months after tree stocking is reduced.

(5) Plans for an alternate practice for the use of natural reforestation methods shall be approved by the State Forester if a determination is made that the information provided accurately indicates there is a high probability the purpose of the reforestation rules will be achieved.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-610-0040

Time Allowed for Reforestation

(1) The time period for compliance with the reforestation rules begins at the completion of the operation or 12 months after tree stocking has been reduced, whichever comes first.

(2) The landowner shall begin reforestation, including any necessary site preparation, within 12 months when reforestation is required.

(3) The landowner shall complete planting or seeding within 24 months unless a plan for an alternate practice for natural reforestation has been approved by the State Forester.

(4) By the end of the sixth full calendar year, the landowner shall have established a free to grow stand of trees which meets or exceeds the minimum stocking level required by OAR 629-610-0020.

(5) When natural reforestation methods are planned, the time limits for evidence of successful germination and for establishing a free to grow stand of trees which meets or exceeds the minimum stocking level required for the site shall be established in the approved plan for an alternate practice required for such methods.

(6) If reforestation cannot be accomplished within the specified time due to circumstances determined by the State Forester to be beyond the landowner's control, the State Forester shall extend the time to accomplish reforestation. Such circumstances may include, but are not limited to:

- (a) Nursery failure;
- (b) Inadequate seedling availability following salvage harvesting;
- (c) Extreme drought;
- (d) Insect infestation;
- (e) State smoke management restrictions on the burning of slash;
- (f) Wildfire or disease damage; or
- (g) Severe wildlife damage that could not be reasonably anticipated or controlled by the landowner.

(7) Extensions shall be made only upon a determination by the State Forester, based on timely written evidence provided by the landowner, that documents the landowner made reasonable attempts to comply with the reforestation requirements of the rules.

(8) Where an extension is granted for reforestation failure on land suitable for reforestation or in cases where a violation of the reforestation rules is cited, the landowner shall be required to take remedial action to

achieve the required stocking standards within a time prescribed by the State Forester using recognized stand establishment methods.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-610-0050

Acceptable Species for Reforestation and Residual Stand Stocking

(1) The State Forester shall determine if tree species are acceptable for artificial reforestation, natural reforestation, and as residual seedling, sapling and pole, or larger tree stocking based on all of the following criteria:

- (a) The species must be ecologically suited to the planting site;
- (b) The species must be capable of producing logs, fiber, or other wood products suitable in size and quality for the production of lumber, sheeting, pulp or other commercial forest products; and
- (c) The species must be marketable in the foreseeable future.

(2) Up to 20 percent of the site-based stocking levels required by 629-610-0020 may be met by using free to grow hardwood trees remaining after harvest if the trees are of species meeting the requirements of section (1) of this rule. An approved plan for an alternate practice is required before more than 20 percent of the required stocking may be met with residual, post-operation hardwood trees. Approval for the use of higher levels of hardwood residual stocking shall be based on a determination by the State Forester that there is a high probability the purpose of the reforestation rules will be achieved.

(3) Landowners are encouraged to reforest with a mixture of acceptable tree species, where appropriate, to reduce the risk of insect and disease losses and to promote stand diversity. Seedlings or seeds used for artificial reforestation should be from seed sources that are genetically adapted to the growing site.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-610-0060

Use of Non-Native Tree Species

(1) When an operation will result in a reforestation requirement, and the landowner intends to plant or seed a tree species not native to the operation area, the landowner shall submit for approval a plan for an alternate practice to the State Forester which describes the tree species and how it will be used to meet the reforestation requirements. Information in the plan must include:

- (a) The tree species that will be used;
- (b) Evidence that the species is ecologically suited to the planting site;
- (c) Evidence that the species is capable of producing commercial forest products that will be marketable in the foreseeable future; and
- (d) Available research or field test findings which demonstrate the tree species has been successfully used in reforesting sites similar to the operation area.

(2) A plan for an alternate practice for the use of non-native tree species must be submitted for approval no later than twelve months after tree stocking is reduced and prior to planting. Plans for an alternate practice for the use of non-native tree species shall be approved by the State Forester if a determination is made that the information provided indicates there is a high probability the purpose of the reforestation rules will be achieved.

(3) For the purpose of this rule, any tree species that the State Forester determines has naturally existed and reproduced in the operation area or on similar sites shall be considered a native species.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-610-0070

Suspension of the Reforestation Rules

(1) A landowner must submit to the State Forester a plan for an alternate practice to suspend the reforestation rules for the salvage or conversion of low value forest stands, to establish forest stands that are adequately stocked and free to grow.

(2)(a) The State Forester may approve the plan for an alternate practice when the harvest area is a conversion of underproducing forestland, or a salvage of forest stands where the merchantable trees are dead or dying due to wildfire, insects, diseases or other factors beyond the landowner's control and the State Forester determines:

(A) The landowner is approved for funding from a forest incentive program, for which the State Forester is the technical advisor; and

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(B) The gross harvest revenues will not exceed the total costs of harvest, taxation, and reforestation.

(b) For the purposes of this rule, "conversion of underproducing forestland" means an operation conducted on forestland subject to the reforestation requirements that does not currently support the minimum number of free to grow trees required with the objective of removing undesirable competing vegetation, including the incidental harvest of forest products, and establishing an adequately stocked, free to grow forest stand.

(3) To determine whether subsection (2)(a)(B) of this rule is met on a harvest operation that has not started, the State Forester shall make a field observation of the harvest area to determine:

(a) The estimated merchantable volume;

(b) The value of the merchantable volume by applying current local market values; and

(c) The estimated harvest, taxation, and reforestation costs.

(4) When the State Forester is not able to determine the projected revenues and projected costs from the field observation described in subsection (3) of this rule, the State Forester may require the landowner to submit one or more of the following:

(a) A third party estimate, by species and grade, of the volumes and values of logs to be delivered to the mill;

(b) The projected costs of harvesting the forest products, including, but not limited to, harvest planning and administration, road construction and maintenance, felling and bucking, yarding, and loading and hauling;

(c) The projected severance, harvest, and income taxes;

(d) The projected costs of reforestation, including planning and administration, site preparation, trees, tree planting, tree protection, and moisture conservation; or

(e) The projected costs of any other measures necessary to establish a forest stand in an adequately stocked and free to grow condition, as specified in the reforestation rules.

(5) To determine whether subsection (2)(a)(B) of this rule is met on a harvest operation that has started, but is not yet complete, the landowner shall submit to the State Forester one or more of the following:

(a) The contracts executed to sell and harvest forest products, including but not limited to, all logging costs and receipts;

(b) All the forest products scaling summaries showing gross and net volumes, by species and corresponding mill receipts showing payment; or

(c) Any tax forms, records or reports submitted by the landowner that detail the gross and net volumes of forest products harvested, by species, plus logging and management costs used to determine harvest and severance taxes.

(6) Operations that are complete are not eligible for a suspension of the reforestation rules.

(7) The State Forester shall revoke the suspension of the reforestation rules at any time within 6 years of completing the operation if the landowner fails to establish a forest stand:

(a) According to the specifications and time lines required under the applicable forest incentive program; or

(b) In an adequately stocked and free to grow condition, as specified in the reforestation rules.

Stat. Auth.: ORS 527.670, 527.700, 527.710, 527.730, 527.765, 919.3 & 919.9

Stats. Implemented: ORS 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95, Renumbered from 629-057-5170; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-610-0090

Exemption from Reforestation for Land Uses Not Compatible with Forest Tree Cover

(1) A landowner, through a plan for an alternate practice, may request all, or portions of, an operation area be exempted from the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover. Approval of a plan for an alternate practice shall be obtained for such an exemption from the State Forester and shall only be granted for the smallest land area necessary to carry out the intended change in land use. Reforestation shall be required on the portions of operation areas not directly involved in the land use change.

(2) In seeking approval of the plan for an alternate practice, the landowner shall provide written documentation to the State Forester which establishes:

(a) The specific portion of the operation area necessary for the proposed change in land use;

(b) The intended change in land use and the incompatibility of the land use with forest tree cover;

(c) The intended change in land use is authorized under local land use and zoning ordinances, and all necessary permits and approvals have been

obtained, or will be obtained within 12 months following the reduction in tree stocking; and

(d) The county assessor and local planning department have been notified in writing of the proposed change in land use.

(3) Reasonable progress towards the change in land use, as determined by the State Forester, shall be made within 12 months of the completion of the operation. Evidence of reasonable progress towards a change to an agricultural use may include activities such as stump removal, cultivation, fencing, and planting or seeding of crops or pasture. Evidence of reasonable progress towards a change to use involving building a structure may include activities such as stump removal, excavation, and construction.

(4) The change in land use shall be completed and continuously maintained within 24 months of the completion of the operation.

(5) If the change in land use cannot be accomplished within the specified time due to circumstances beyond the landowner's control, the State Forester shall extend the time to accomplish the change in land use. Such circumstances may include, but are not limited to, governmental delays in reviewing and processing permits and approvals, but do not include delays where a landowner is appealing the denial of a permit or approval if the State Forester does not have reason to believe the landowner will prevail on appeal. Extensions shall be made only upon a determination by the State Forester, based on written evidence provided by the landowner, that the landowner made reasonable attempts to comply. Landowners who need extensions are encouraged to contact the State Forester as soon as possible after the circumstances occur.

(6) The State Forester shall determine if the change in land use has been completed by:

(a) The presence or absence of improvements necessary for use of the land for the intended purpose; and

(b) Evidence of established and continuously maintained use of the land for the intended purpose.

(7) To remain exempt from the reforestation requirements the landowner shall continuously maintain the land in the new use until at least six calendar years following the completion of the operation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674 & 527.745

Hist.: FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-615-0300

Prescribed Burning

(1) Prescribed burning is a tool used to achieve reforestation, maintain forest health, improve wildlife habitat and reduce wildfire hazard. Prescribed burning is to be done consistent with protection of air and water quality, and fish and wildlife habitat. The purpose of this rule is to ensure that necessary prescribed burning is planned and managed to maximize benefits and minimize potential detrimental effects.

(2) When planning and conducting prescribed burning, operators shall:

(a) Comply with the rules of Oregon's "Smoke Management Plan."

(b) Adequately protect reproduction and residual timber, humus and soil surface.

(c) Consider possible detrimental effects of prescribed burning upon riparian management areas, streams, lakes, wetlands, and water quality, and how these effects can be best minimized.

(d) Lay out the unit and use harvesting methods that minimize detrimental effects to riparian management areas, streams, lakes, wetlands, and water quality during the prescribed burning operation.

(e) Fell and yard the unit to minimize accumulations of slash in channels and within or adjacent to riparian management areas.

(f) Minimize fire intensity and amount of area burned to that necessary to achieve reforestation, forest health, or hazard reduction needs.

(3) When burning within 100 feet of Type F and Type D streams, within 100 feet of large lakes, and within 300 feet of significant wetlands, operators shall describe in the written plan how detrimental effects will be minimized within riparian management areas; especially when burning on highly erosive soils, for example decomposed granite soils and slopes steeper than 60 percent.

(4) During prescribed burning operations, operators shall protect components such as live trees, snags, downed wood, and understory vegetation required to be retained by OAR 629-635-0310 through 629-650-0040. When the operator has taken reasonable precautions to protect the components, but some detrimental effects occur, the intent of the rule is met if the overall integrity of the riparian management area is maintained. Operators shall not salvage trees killed by prescribed fire in a riparian

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management area if the trees were retained for purposes of OAR 629-635-0310 through 629-655-0000.

(5) When the need for prescribed burning outweighs the benefits of protecting components required to be left within the riparian area, aquatic area and wetlands, protection requirements may be modified through a plan for an alternate practice. Approval of such a plan shall consider the environmental impacts and costs of alternative treatments.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674 & 527.715

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0302; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-623-0450

Restriction of Road Construction — Substantial Down Slope Public Safety Risk

(1) Operators shall not construct new roads on high landslide hazard locations or other very steep slopes with substantial downslope public safety risk.

(2) Operators may reconstruct existing roads in high landslide hazard locations when the written plan required by OAR 629-623-0700 incorporates site-specific practices as directed by a geotechnical specialist and demonstrates that road reconstruction will reduce landslide hazard.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-623-0550

Road Construction — Intermediate Down Slope Public Safety Risk

(1) When constructing roads on high landslide hazard locations or other very steep slopes with intermediate downslope public safety risk, operators shall follow site-specific practices as directed by a geotechnical specialist.

(2) In addition to the road construction and maintenance rules in OAR 629-625-0100 through 629-625-0440, written plans shall include:

(a) an evaluation of cutslope stability that demonstrates major cutslope failure is very unlikely; and

(b) a description of measures to be taken to prevent water from draining onto high landslide hazard locations.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5), 527.674 & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-623-0700

Written Plans to Evaluate Public Safety Risk

(1) To allow evaluation of public safety risk and the appropriate methods for reducing this risk, operators shall submit a written plan for all timber harvesting or road construction operations with intermediate or substantial downslope public safety risk as described in OAR 629-623-0300. Written plans shall include:

(a) A determination of public safety risk (OAR 629-623-0300);

(b) A map showing those portion(s) of the operation containing high landslide hazard locations;

(c) The location of all existing and proposed new roads crossing high landslide hazard locations;

(d) A detailed road design for all new or reconstructed roads crossing high landslide hazard locations;

(e) The location of habitable structures (Exposure Category A) and paved public roads (Exposure Category B) below the operation and within further review areas;

(f) Locations where timber harvesting will not occur;

(g) Locations where partial cutting will occur and the specific silvicultural prescription; and

(h) Additional information related to the operation as requested by the State Forester.

(2) Operators shall submit a written plan for proposed stream crossing fills constructed across debris torrent-prone streams with substantial or intermediate downslope public safety risk.

(3) Operators shall submit a written plan for proposed waste fill areas within a drainage containing debris torrent-prone streams where there is substantial or intermediate downslope public safety risk.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5), 527.674 & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-625-0100

Written Plans for Road Construction

(1) A properly located, designed, and constructed road greatly reduces potential impacts to water quality, forest productivity, fish, and wildlife habitat. To prevent improperly located, designed, or constructed roads, a written plan is required in the sections listed below.

(2) In addition to the requirements of the water protection rules, operators must submit a written plan to the State Forester before:

(a) Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow;

(b) Conducting machine activity in Type F or Type D streams, lakes or significant wetlands; or

(c) Constructing roads in riparian management areas.

(3) Operators shall submit a written plan to the State Forester before constructing roads on high landslide hazard locations. Operators and the State Forester shall share responsibility to identify high landslide hazard locations and to determine if there is public safety exposure from shallow, rapidly moving landslides using methods described in OAR 629-623-0000 through 0300. If there is public safety exposure, then the practices described in OAR 629-623-0400 through 0800 shall also apply.

(4) In addition to the requirements of the water protection rules, operators shall submit a written plan to the State Forester before placing woody debris or boulders in stream channels for stream enhancement.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), 527.765 & 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-625-0320

Stream Crossing Structures

(1) Operators shall design and construct stream crossing structures (culverts, bridges and fords) to:

(a) Minimize excavation of side slopes near the channel.

(b) Minimize the volume of material in the fill.

(A) Minimizing fill material is accomplished by restricting the width and height of the fill to the amount needed for safe use of the road by vehicles, and by providing adequate cover over the culvert or other drainage structure.

(B) Fills over 15 feet deep contain a large volume of material that can be a considerable risk to downstream beneficial uses if the material moves downstream by water. Consequently, for any fill over 15 feet deep operators shall submit to the State Forester a written plan that describes the fill and drainage structure design. Written plans shall include a design that minimizes the likelihood of:

(i) Surface erosion;

(ii) Embankment failure; and

(iii) Downstream movement of fill material.

(c) Prevent erosion of the fill and channel.

(2) Operators shall design and construct stream crossings (culverts, bridges, and fords) to:

(a) Pass a peak flow that at least corresponds to the 50-year return interval. When determining the size of culvert needed to pass a peak flow corresponding to the 50-year return interval, operators shall select a size that is adequate to preclude ponding of water higher than the top of the culvert; and

(b) Allow migration of adult and juvenile fish upstream and downstream during conditions when fish movement in that stream normally occurs.

(3) An exception to the requirements in subsection (2)(a) of this rule is allowed to reduce the height of fills where roads cross wide flood plains. Such an exception shall be allowed if the operator obtains approval of a plan for an alternate practice. The State Forester will approve such a plan when the plan demonstrates:

(a) The stream crossing site includes a wide flood plain; and

(b) The stream crossing structure matches the size of the active channel and is covered by the minimum fill necessary to protect the structure;

(c) Except for culvert cover, soil fill is not placed in the flood plain; and

(d) The downstream edge of all fill is armored with rock of sufficient size and depth to protect the fill from eroding when a flood flow occurs.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-625-0430

Stream Protection

(1) When constructing stream crossings, operators shall minimize disturbance to banks, existing channels, and riparian management areas.

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(2) In addition to the requirements of the water protection rules, operators shall keep machine activity in beds of streams to an absolute minimum. Acceptable activities where machines are allowed in streambeds, such as installing culverts, shall be restricted to periods of low water levels. Operators shall submit a written plan to the State Forester for machine activity in Type F or Type D streams, lakes, and significant wetlands.

(3) For all roads constructed or reconstructed operators shall install water crossing structures where needed to maintain the flow of water and passage of adult and juvenile fish between side channels or wetlands and main channels.

(4) Operators shall leave or re-establish areas of vegetation between roads and waters of the state to protect water quality.

(5) Operators shall remove temporary stream crossing structures promptly after use, and shall construct effective sediment barriers at approaches to channels.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-630-0200

Landings

(1) Operators shall minimize the size of landings to that necessary for safe operation.

(2) Operators shall locate landings on stable areas so as to minimize the risk of material entering waters of the state.

(3) Operators shall avoid locating landings in riparian management areas. When no feasible alternative landing locations exist, operators shall submit a written plan to the State Forester before locating landings in riparian management areas.

(4) Operators shall not incorporate slash, logs, or other large quantities of organic material into landing fills.

(5) Operators shall deposit excess material from landing construction in stable locations well above the high water level.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-630-0600

Felling; Removal of Slash

(1) Operators shall fell, buck, and limb trees in ways that minimize disturbance to channels, soils and retained vegetation in riparian management areas, streams, lakes and all wetlands greater than one-quarter acre, and that minimize slash accumulations in channels, significant wetlands and lakes.

(2) During felling operations operators shall:

(a) Whenever possible, fell all conifer trees away from riparian management areas, streams, lakes and significant wetlands, except for trees felled for stream improvement projects.

(b) On steep slopes, use felling practices such as jacking, line pulling, high stumps, whole tree yarding, or stage-cutting as necessary and feasible to prevent damage to vegetation retained in riparian management areas, soils, streams, lakes and significant wetlands.

(c) When hardwoods must be felled into or across streams, lakes or significant wetlands, operators shall:

(A) Buck and yard the trees to minimize damage to beds, banks and retained vegetation.

(B) When it can be done consistently with protecting beds and banks, yard hardwood trees or logs away from the water before limbing.

(3) Operators shall minimize the effects of slash that may enter waters of the state during felling, bucking, limbing or yarding by:

(a) Removing slash from Type F and Type D streams, lakes and significant wetlands as an ongoing process (removal within 24 hours of the material entering the stream) during the harvest operation.

(b) Not allowing slash to accumulate in Type N streams, lakes or wetlands in quantities that threaten water quality or increase the potential for mass debris movement.

(c) Placing any slash that is removed from streams, lakes, or wetlands above high water levels where it will not enter waters of the state.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2610; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0000; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-630-0700

Yarding; Cable Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas and minimize distur-

bance to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during cable yarding operations.

(2) Operators shall minimize the yarding of logs across streams, lakes, significant wetlands, and other wetlands greater than one-quarter acre whenever harvesting can be accomplished using existing roads or other practical alternatives.

(3) Operators may use yarding corridors through retained streamside trees as long as the numbers and widths of yarding corridors are minimized. Operators shall submit a written plan to the State Forester when yarding across streams classified as Type F or Type D, any large or medium Type N streams, lakes, or significant wetlands.

(4) When yarding across Type F or Type D streams, any large or medium Type N streams, lakes, or significant wetlands is necessary, it shall be done by swinging the yarded material free of the ground in the aquatic areas and riparian areas.

(5) Cable yarding across streams classified as small Type N or other wetlands greater than one-quarter acre shall be done in ways that minimize disturbances to the stream channel or wetland and minimize disturbances of retained streamside vegetation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2620; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0010; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-630-0800

Yarding; Ground-based Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas, and minimize disturbances to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during ground-based yarding operations.

(2) Operators shall not operate ground-based equipment within any stream channel except as allowed in the rules for temporary stream crossings.

(3) Operators shall minimize the number of stream crossings.

(4) For crossing streams that have water during the periods of the operations, operators shall:

(a) Construct temporary stream crossing structures such as log crossings, culvert installations, or fords that are adequate to pass stream flows that are likely to occur during the periods of use. Structures shall be designed to withstand erosion by the streams and minimize sedimentation.

(b) Choose locations for temporary stream crossing structures which minimize cuts and fills or other disturbances to the stream banks.

(c) Minimize the volume of material in any fills constructed at a stream crossing. Fills over eight feet deep contain such a large volume of material that they can be a considerable risk to downstream beneficial uses should the material move downstream by water. For any fill for a temporary crossing that is over eight feet deep, operators shall submit to the State Forester a written plan that includes a description of how the fills would be constructed, passage of water, and the length of time the fills would be in the stream.

(d) Design temporary structures so that fish movement is not impaired on Type F streams.

(e) Remove all temporary stream crossing structures immediately after completion of operations or prior to seasonal runoff that exceeds the water carrying capacity of the structures, whichever comes first. When removing temporary structures, operators shall place fill material where it will not enter waters of the state.

(5) For stream crossings where the channels do not contain water during the periods of the operations, operators are not required to construct temporary crossings as long as disturbances are no greater than what would occur if structures were constructed. Soil that enters the channels during the yarding operations must be removed after completion of the operation or prior to stream flow, whichever comes first. When removing such materials from the channels, operators shall place the materials in locations where they will not enter waters of the state.

(6) Operators shall construct effective sediment barriers such as water bars, dips, or other water diversion on stream crossing approaches after completion of operations, or prior to rainy season runoff, whichever comes first.

(7) Machine activity near (generally within 100 feet) streams, lakes, and other wetlands greater than one-quarter acre shall be conducted to minimize the risk of sediment entering waters of the state and preventing changes to stream channels. Operators shall only locate, construct, and maintain skid trails in riparian management areas consistent with the harvesting rules.

(8) Operators shall minimize the amount of exposed soils due to skid trails within riparian management area. Except at stream crossings, opera-

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tors shall not locate skid trails within 35 feet of Type F or Type D streams. Operators shall provide adequate distances between all skid trails and waters of the state to filter sediment from runoff water.

(9) Operators shall locate and construct skid trails so that when high stream flow occurs water from the stream will not flow onto the skid trail.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2630; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0020; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-635-0130

Written Plans for Streams, Lakes, Wetlands and Riparian Management Areas

(1) Operators shall submit to the State Forester a written plan before conducting any operation requiring notification under OAR 629-605-0140(1) within:

(a) 100 feet of fish use or domestic water use streams (classified as Type F or Type D under OAR 629-635-0200), except as described in section (3) of this rule;

(b) 300 feet of significant wetlands;

(c) 100 feet of large lakes.

(2) In addition to the written plan requirements in OAR 629-605-0170, operators shall specifically describe in the written plan for operations within 100 feet of domestic water use portions of Type F or D streams the practices and methods that will be used to prevent sediment from entering waters of the state.

(3) The State Forester may waive, in writing, the requirement for a written plan within 100 feet of a Type F or Type D stream, if the State Forester determines the intended forest practice will not directly affect the physical components of the riparian management area. "Physical components" means materials such as, but not limited to, vegetation, snags, rocks, and soil. "Directly affect" means that physical components will be moved, disturbed, or otherwise altered by the operation activity, even if only temporarily.

(4) Written plans required under section (1)(a) and (1)(b) of this rule are subject to the process required for a written plan pursuant to ORS 527.670(8) through (12), and appeal pursuant to ORS 527.700.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2030; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-640-0100

General Vegetation Retention Prescription for Type F Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type F streams.

(b) Segments of Type F streams that are different sizes within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count towards the requirements of another stream type.

(2) Operators shall retain:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(3) Operators shall retain within riparian management areas and streams all downed wood and snags that are not safety or fire hazards. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects.

(4) Notwithstanding the requirements of section (2) of this rule, vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in other rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 40 live conifer trees per 1000 feet along large streams and 30 live conifer trees per 1000 feet along medium streams. This includes trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and 8 inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain trees or snags six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in **Table 2** where the harvest unit will be a harvest type 2 or type 3 unit (as defined by ORS 527.620), or **Table 3** where the harvest unit will be a harvest type 1, partial harvest, or

thinning, operators shall retain live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in **Table 2** where the harvest unit will be a harvest type 2 or type 3 unit, or **Table 3** where the harvest unit will be a harvest type 1, partial harvest, or thinning) but greater than one-half the standard target shown in **Table 2**, operators shall retain all live conifer trees six inches DBH or larger in the riparian management area (up to a maximum of 150 conifers per 1000 feet along large streams, 100 conifers per 1000 feet along medium streams, and 70 conifers per 1000 feet along small streams).

(c) If live conifer tree basal area in the riparian management area is less than one-half the standard target shown in **Table 2**:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-640-0300 where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-640-0400; or

(B) Operators shall retain all conifers in the riparian management area and all hardwoods within 50 feet of the high water level for large streams, within 30 feet of the high water level for medium streams, and within 20 feet of the high water level for small streams.

(7) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type F streams, may count toward the basal area requirements.

(b) Up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(8) In the Eastern Cascade and Blue Mountain geographic regions, hardwood trees, dying or recently dead or dying trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) The basal area of retained live hardwood trees may count toward meeting the basal area requirements.

(b) Up to 10 percent of the basal area retained to meet the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For small Type F streams, the maximum required live conifer tree basal area that must be retained to meet the standard target is 40 square feet. The remaining basal area required may come from retained snags, dying or recently dead trees, or hardwoods if available within the riparian management area.

(9) Notwithstanding the requirements indicated in this rule, operators may conduct precommercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(10) When determining the basal area of trees, the operator may use the average basal area for a tree's diameter class, as shown in **Table 4**, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(11)(a) For large and medium Type F streams, live conifer trees retained in excess of the active management target and hardwoods retained beyond 20 feet of the high water level of the stream that otherwise meet the requirements for leave trees may be counted toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(b) For small Type F streams, all retained live trees that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(12) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management areas so long as the trees are at least 11 inches DBH for large streams and eight inches DBH for medium streams.

(13) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve

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the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the State Forester may approve a plan for an alternate practice to modify the retention requirements on a site specific basis.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2230; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-640-0110

Live Tree Retention Credit for Improvement of Type F Streams

(1) Many Type F streams currently need improvement of fish habitat because they lack adequate amounts of large woody debris in channels, or they lack other important habitat elements.

(2) This rule allows operators incentives to place conifer logs in channels or to take other enhancement actions to create immediate improvements in fish habitat.

(3) When addressed in a written plan, operators may place conifer logs or downed trees in Type F streams and receive basal area credit toward meeting the live tree retention requirements in a stream's riparian management area.

(4) For each conifer log or tree the operator places in a large or medium Type F stream, the basal area credit is twice the basal area of the placed log or tree.

(5) For each conifer log or tree the operator places in a small Type F stream, the basal area credit is equal to the basal area of the placed log or tree.

(6) Basal area credit will be determined by measuring the cross-sectional area of the large end of a log or by measuring the point on a downed tree that would be equivalent to breast height.

(7) To receive basal area credit for downed trees or conifer logs placed in a stream, the operator shall comply with the guidance and restrictions for placing logs or trees prescribed by the State Forester.

(8) Operators may propose other stream enhancement projects for basal area credit such as creation of backwater alcoves, riparian grazing enclosures (such as fencing), and placement of other instream structure such as boulders and rootwads. When a project is addressed in a written plan and reviewed by the department in consultation with the Department of Fish and Wildlife, basal area credit shall be given toward meeting the live tree requirements within riparian management areas. The basal area credit shall be negotiated between the department, operator and Department of Fish and Wildlife.

(9) Basal area credit may be given to an operation for enhancement projects conducted at locations other than at the operation site so long as the project is in the same immediate vicinity as the operation site (for instance, within one or two miles of the operation).

(10) Basal area credit may be given to an operation for improvement projects conducted at a later date (this may be necessary to avoid operating under high water conditions or to protect spawning areas), but the project must be completed within six months of the completion of the operation.

(11) In granting basal area credit, the standing tree basal area retained within riparian management areas of Type F streams shall not be reduced to less than the active management targets shown in **Table 2** or **3**, as applicable.

(12) For small Type F streams in the Eastern Cascade and Blue Mountain geographic regions, the live conifer tree basal area may be reduced to 30 square feet for the active management target. The remaining portion of the basal area requirement must come from snags, dying or recently dead or dying trees, or hardwood trees if available in the riparian management area.

(13) Operators shall notify the State Forester of the completion of live tree retention credit stream improvement projects that were planned for locations other than on the operation site under section (9) of this rule or that were planned to be completed at another date under section (10) of this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2240; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-640-0200

General Vegetation Retention Prescription for Type D and Type N Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type D and Type N streams.

(b) Segments of Type D or Type N streams that may be of a different size within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count toward the requirements of another stream type.

(2) Operators shall retain along all Type D, and large and medium Type N streams:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(3) Operators shall retain all downed wood and snags that are not safety or fire hazards within riparian management areas and streams. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects.

(4) Notwithstanding the requirements of section (2), vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in the rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 30 live conifer trees per 1000 feet along large Type D and Type N streams and 10 live conifer trees per 1000 feet along medium Type D and Type N streams. This includes any trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and eight inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain all understory vegetation and non-merchantable conifer trees (conifer trees less than six inches DBH) within 10 feet of the high water level on each side of small perennial Type N streams indicated in **Table 5**.

(a) The determination that a stream is perennial shall be made by the State Forester based on a reasonable expectation that the stream will have summer surface flow after July 15.

(b) The determination in subsection (6)(a) of this rule can be made based on a site inspection, data from other sources such as landowner information, or by applying judgment based upon stream flow patterns experienced in the general area.

(c) Operators are encouraged whenever possible to retain understory vegetation, non-merchantable trees, and leave trees required within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session) along all other small Type N streams within harvest units.

(7) Operators shall retain trees six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in **Table 6** where the harvest will be a harvest type 2 or type 3 unit (as defined by ORS 527.620), or in **Table 7** where the harvest unit is a harvest type 1, partial harvest, or thinning, operators shall retain along all Type D, and medium and large Type N streams live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in **Table 6** where the harvest will be a harvest type 1 or type 2 unit or **Table 7** where the harvest unit is a harvest type 1, partial harvest, or thinning), but greater than one-half the standard target shown in **Table 6**, operators shall retain along all Type D, and medium and large Type N streams all conifers 6 inches DBH or larger in the riparian management area (up to a maximum of 100 conifers per 1000 feet along large streams, and 70 conifers per 1000 feet along medium streams).

(c) If the live conifer tree basal area in the riparian management area is less than one-half the standard target shown in **Table 6**:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-640-0300, where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-640-0400; or

(B) Operators shall retain along all Type D, and medium and large Type N streams all conifers in the riparian management area and all hardwoods within 30 feet of the high water level for large streams and within 20 feet of the high water level for medium streams.

(8) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (7)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type D and N streams, may count toward the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the

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riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(c) For medium Type D and N streams:

(A) Up to 30 square feet of basal area per 1000 feet of stream may be comprised of hardwood trees.

(B) Up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(9) In the eastern Oregon and Blue Mountain geographic regions:

(a) The basal area of all retained live hardwood trees may count toward meeting the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For medium Type D and N streams, up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(10) Notwithstanding the requirements indicated in this rule, operators may conduct precommercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(11) When determining the basal area of trees along streams in a harvest unit, operators may use the average basal area for a tree's diameter class, as shown in **Table 4** in OAR 629-640-0100, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(12) All live trees retained along Type D and N streams that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to Section 9, Chapter 9, Oregon Laws 1996 Special Session).

(13) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management areas so long as the trees are at least 11 inches DBH for large streams and 8 inches DBH for medium streams.

(c) All merchantable trees may be harvested from islands within small Type N streams.

(14) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the operator may submit a plan for an alternate practice to the State Forester to modify the retention requirements on a site specific basis.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2250; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-640-0400

Site Specific Vegetation Retention Prescriptions for Streams and Riparian Management Areas

(1)(a) Operators are encouraged to develop site specific vegetation retention prescriptions in a plan for an alternate practice.

(b) A primary aim of these prescriptions is to identify opportunities and allow incentives for restoring or enhancing riparian management areas or streams.

(c) Another purpose of site specific vegetation retention prescriptions is to allow for changes to the vegetation retention requirements in OARs 629-640-0100 and 629-640-0200. The changes must provide for the functions and values of streams and their riparian management areas as described in the vegetation retention goals for streams while affording a better opportunity to meet other objectives.

(2) Operators may develop site specific vegetation retention prescriptions for streams and their riparian management areas to achieve the vegetation retention goals described in OAR 629-640-0000 if:

(a) The potential of the streamside stand to achieve basal area and stand density similar to mature conifer forest stands in a "timely manner" is questionable; or

(b) In-stream conditions are impaired due to inadequate large woody debris or other factors; or

(c) The modification of a standard or practice would result in less environmental damage than if the standard or practice were applied.

(3) A plan for an alternate practice shall be approved if the State Forester determines that when properly executed the alternate plan will have no significant or permanent adverse effects and:

(a) It will meet or exceed the vegetation retention goals in a more "timely manner" than if the plan were not implemented; or

(b) The long-term benefits of the proposed restoration practice are greater than short-term detrimental effects; or

(c) The proposed practice will result in less environmental damage than if the regular rules were followed.

(4) Factors that may need to be considered in the plan include, but are not limited to, the potential of the existing streamside stand to achieve mature conifer forest characteristics, the long-term supply of woody debris, survival of planted conifers, sensitivity to changes in water temperature and water quality, the potential for sedimentation, the stability of woody debris placed in aquatic areas, and monitoring the direct effects of the proposed practices.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2270; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-645-0000

Riparian Management Areas and Protection Measures for Significant Wetlands

(1)(a) The purpose of these rules is to protect the functions and values of significant wetlands, including wetlands larger than eight acres, estuaries, bogs and important springs in eastern Oregon on forestlands.

(b) Significant wetlands on forestlands provide a wide range of functions and values, including those related to water quality, hydrologic function, fish and other aquatic organisms, and wildlife.

(c) Estuaries are unique systems because they form transitions between terrestrial, marine, and freshwater environments. Because of this link, estuarine systems are among the most biologically productive in the world. Estuaries support many resident species. Estuaries also provide food, spawning area, and shelter for numerous other species at critical points in their life cycles. Removal of shoreline trees reduces the overall productivity of the estuary by reducing leaf and litter fall, thus depriving the estuary of substrate, and by removing feeding and resting habitat for birds and small mammals.

(d) Bog communities are a result of specific hydrologic, soil, and nutrient conditions. Bogs are usually saturated, low in nutrients, and highly acidic changes in runoff, sediment loading, and nutrient loading can alter the plant community composition. The peat soils have evolved over time. Compaction damages plant communities and may encourage the invasion of exotic species. Harvesting may disrupt shade tolerant vegetation, alter plant community characteristics, and hasten succession. Compaction, saturated conditions, and poor nutrient status make reforestation difficult.

(e) In arid parts of eastern Oregon, springs provide a critical source of water. These important springs have established wetland vegetation, flow year round in most years, and are used by a concentration of diverse animal species. By reason of sparse occurrence, important springs have a major influence on the distribution and abundance of upland species. Important springs shall be identified by the State Forester.

(2)(a) The goals of significant wetland protection are to maintain the functions and values of significant wetlands on forestlands over time, and to ensure that forest practices do not lead to resource site destruction or reduced productivity, while at the same time ensuring the continuous growth and harvest of forest tree species. To accomplish these goals, the rules focus on the protection of soil, hydrologic functions, and specified levels of vegetation.

(b) The intent of the rules is to minimize soil disturbance and to minimize disturbance to the natural drainage patterns of the significant wetland.

(c) Vegetation retention (including understory vegetation, snags, downed wood, and live trees) is needed to prevent erosion and sedimentation into the significant wetland, minimize soil disturbance and hydrologic changes, and to maintain components of the vegetation structure to provide for other benefits, particularly fish and wildlife values.

(3) Significant wetlands other than estuaries, bogs or important springs in eastern Oregon shall have riparian management areas extending 100 feet from the wetlands. When an operation is proposed within 300 feet of a significant wetland, the resource site evaluation process in OAR 629-665-0020 shall be followed by the landowner, operator or timber owner. If the proposed operation conflicts with the significant wetland, the operator shall submit a written plan to the State Forester before starting operations. The written plan shall comply with the requirements of OAR 629-605-0170, Written Plans.

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(4) For all significant wetlands, operators shall provide the following to the wetlands and riparian management areas:

- (a) Live tree retention (OAR 629-645-0010);
- (b) Soil and hydrologic function protection (OAR 629-645-0030);
- (c) Understory vegetation retention (OAR 629-645-0040); and
- (d) Snag and down wood retention (OAR 629-645-0050).

(5) For forested significant wetlands, written plans must address reforestation.

(6) When an operation is proposed within 300 feet of an estuary, bog or important spring in eastern Oregon, the State Forester shall determine the riparian management area during the resource site inspection required by OAR 629-665-0020. Riparian management areas shall extend outward 100 to 200 feet from the estuary, 50 to 100 feet from the bog, or 50 to 100 feet from the important spring in eastern Oregon. The distance determination of the State Forester shall depend on:

- (a) Stocking level of the timber stand adjacent to the estuary, bog or spring;
- (b) Ability of the area to withstand windthrow;
- (c) Size of the estuary, bog or spring. As the size increases, the size of the riparian management area shall increase; and
- (d) For bogs and springs only, topography and erodibility of adjacent uplands.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2300; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-645-0020

Site-Specific Vegetation Retention Prescriptions for Significant Wetlands

(1) Operators are encouraged to develop site specific vegetation retention prescriptions for significant wetlands in a plan for an alternate practice.

(2) The functions and values of forested wetlands vary with species composition, stocking levels, and geographic location. Operators are encouraged to propose site specific vegetation retention prescriptions in a plan for an alternate practice that allow for changes to the live tree requirements in OAR 629-645-0010 and that provide equal or better protection of the functions and values of forested significant wetlands and forested stream-associated wetlands, and address operational concerns.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2320; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-645-0030

Soil and Hydrologic Function Protection for Significant Wetlands

(1) In significant wetlands and their riparian management areas, operators shall protect soil from disturbances that result in impaired water quality, hydrologic functions, or soil productivity. Operators shall protect hydrologic functions by minimizing disturbances and shall prevent accelerating the natural conversion of the wetland to uplands.

(2) The written plan required under OAR 629-635-0130 shall describe how the operation will be conducted to prevent adverse effects on water quality, hydrologic functions or soil productivity. The following practices shall be addressed in written plans when they are proposed in significant wetlands:

- (a) Filling within wetlands;
 - (b) Machine activity within wetlands; and
 - (c) Road construction within wetlands.
- (3) Operators shall not drain significant wetlands.

(4) Notwithstanding subsection (3) of this rule, minor drainage for reforestation is allowed. Any drainage for reforestation must be designed so the significant wetland is not converted to an upland.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; Renumbered from 629-057-2330; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-645-0050

Snag and Downed Wood Retention for Significant Wetlands

(1) For significant wetlands, operators shall retain all snags and downed trees within the wetlands and the applicable riparian management areas.

(2) Notwithstanding subsection (1) of this rule, any snag defined to be a safety hazard under the safety requirements found in OAR 437, Division 7, Forest Activities, or determined to be a fire hazard by the State Forester, may be felled. Any snag felled because of a safety or fire hazard shall be left unyarded.

(3) The retention requirements in subsection (1) of this rule may be modified for reasons of forest health for trees that are dying or recently dead or dying because of fire, insect or disease epidemics, or other catastrophic events when addressed in a plan for an alternate practice approved by the State Forester.

(4) Snags and downed wood left pursuant to subsection (1) of this rule may not be counted toward the requirements of ORS 527.676.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2350; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-650-0040

Snag Retention and Downed Wood Retention for Lakes

(1) For lakes, operators shall retain all snags and downed trees within the lakes and the applicable riparian management areas.

(2) Notwithstanding subsection (1) of this rule, any snag defined to be a safety hazard under the safety requirements found in OAR 437, Division 7, Forest Activities, or determined to be a fire hazard by the State Forester, may be felled. Any snag felled because of a safety or fire hazard shall be unyarded.

(3) The retention requirements in subsection (1) of this rule may be modified for reasons of forest health for trees that are dying or recently dead because of fire, insect or disease epidemics, or other catastrophic events when addressed in a plan for an alternate practice approved by the State Forester.

(4) Snags and downed wood left pursuant to this rule may not be counted toward the requirements of ORS 527.676.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2440; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-660-0040

Stream Channel Changes

(1) Operators shall not channelize, relocate, or divert water from any stream, except as allowed in the forest practice rules for construction of roads, stream improvement projects or temporary stream crossings.

(2) Operators shall not add to or remove soil or rock from any streams, except as allowed in the forest practice rules for construction of roads, stream improvement projects or temporary stream crossings.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2650; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-660-0050

Beaver Dams or Other Natural Obstructions

(1) Except as needed for road maintenance, operators must submit a written plan to the State Forester prior to the removal of beaver dams and other natural obstructions from waters of the state during forest operations. Removal of any beaver dam that is within 25 feet of a culvert shall be considered to be needed for road maintenance.

(2) A written plan for removal of a beaver dam or obstruction must demonstrate:

- (a) A beaver dam or obstruction threatens existing forests or plantations; or
- (b) Beaver dam removal is part of a beaver population control program approved by the Oregon Department of Fish and Wildlife; or
- (c) Retaining the beaver dam or obstruction would result in greater environmental harm than benefit.

(3) Sediment releases and downstream channel scouring can occur when beaver dams are removed. Operators are encouraged to use techniques that result in a gradual release of water when a dam is removed.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.710 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2660; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-665-0020

Application of Protection and Exception Rules; State Forester Duties; Landowner, Timber Owner and Operator Duties

(1) When a landowner, timber owner or operator proposes an operation near a resource site that requires special protection, the State Forester shall inspect the resource site with the landowner or landowner's representative, the operator and when available, the appropriate representative of the Department of Fish and Wildlife. The State Forester shall:

- (a) Identify the resource site.
- (b) Apply the protection goal in OAR 629-665-0010.

ADMINISTRATIVE RULES

(A) If the proposed forest practices do not conflict with the resource site, the operation will not be subject to the protection requirements for the resource site. The operation shall be conducted in compliance with all other existing forest practice rules;

(B) If the proposed forest practices conflict with the resource site, the structural and temporal protection requirements for the resource site shall be required to eliminate the conflict;

(C) When the proposed forest practices conflict with a resource site, the landowner or operator may request a structural or temporal exception through a plan for an alternate practice, if the applicable administrative rule provides for such an exception.

(D) The State Forester shall document and maintain on file the reasons for granting or denying all exceptions.

(2) If the proposed operation conflicts with the resource site, the operator shall submit a written plan to the State Forester before starting operations. The written plan shall comply with the requirements of OAR 629-605-0170, Written Plans.

(3) When the written plan in subsection (2) of this rule does not follow the written recommendations of the Department of Fish and Wildlife or other responsible coordinating state agency, the State Forester shall maintain on file a written explanation of the reasons for:

- (a) Differences in the identification of the resource site; and
- (b) Different protection levels required for the resource site.

(4) When a resource site is discovered by the operator, timber owner or landowner during a forest operation, the party making the discovery shall:

(a) Immediately protect all remaining trees within 300 feet of the resource site and submit to the State Forester a written plan for the resource site; and

(b) Immediately notify the State Forester.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674 & 527.715

Hist.: FB 6-1990, f. 8-1-90, cert. ef. 1-1-1991; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1991, f. & cert. ef. 11-18-91, Renumbered from 629-024-0705; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0699; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-665-0110

Osprey Resource Sites; Key Components; Protection Requirements; Exceptions

(1) For osprey, the resource site is the active nest tree and any identified key components.

(a) An active nest tree is one that has been used by osprey within the past five (5) nesting seasons. No protection is required for abandoned resource sites.

(b) The key components associated with an osprey resource site are perching and fledging trees and replacement trees. Factors to consider when identifying key components:

(A) Actual observation data if available;

(B) Perching trees should provide for maximum visibility of the surrounding terrain and structure that allows the osprey easy access, such as large, tall snags or trees that have broken or dead tops, forks, or lateral branches high in the crown;

(C) Replacement trees should provide maximum visibility of the surrounding terrain, and be large enough to support an osprey nest;

(D) Perching and fledging trees and replacement trees should be located within 600 feet of the active nest tree;

(E) Areas of high winds may require that additional trees be retained to protect the resource site from damage.

(2) When the State Forester identifies the resource site as per OAR 629-665-0020, the operator shall provide the following protection measures:

(a) Retain the active nest tree; and

(b) Retain no fewer than eight additional trees as key components (i.e.: perching, fledging and replacement trees).

(c) During forest operations, the resource site shall be protected from damage. The operation shall be designed to protect these trees from windthrow;

(d) During the critical period of use, the active nest tree and any perch tree identified as a key component shall be protected from disturbance. From March 1st through September 15th, forest operations shall not be permitted within 600 feet of the active nest tree or perch tree unless the State Forester determines that the operations will not cause the birds to flush from these trees. The critical period of use may be modified in writing by the State Forester as the resource site is evaluated as per OAR 629-665-0020.

(3) The State Forester shall not permit structural exceptions for the resource site: Removal of a resource site may be permitted if replacement nest trees, artificial structures, or replacement key components are provided

by the operator or landowner. Replacement is not considered an exception, since the productivity of the nesting territory is maintained. When addressed in a plan for an alternate practice, replacement may be considered by the State Forester when:

(a) Alternate forest practices which retain and protect the resource site are not economically feasible; and

(b) The productivity of the nesting territory is not reduced.

(4) Temporal exceptions for the resource site may be approved by the State Forester when addressed in a plan for an alternate practice that demonstrates:

(a) Nest disruption or failure for a season does not affect the local population; and

(b) There are no economically feasible forest practices that avoid disturbance to the resource site during the critical period of use.

(5) Factors considered by the State Forester before approving a plan for an alternate practice under section (4) of this rule shall include, but are not limited to:

(a) The size of the local population;

(b) The contribution of the resource site in question to the local population; and

(c) The feasibility of alternate forest practices that do not cause disturbance.

(6) The State Forester shall document all requests and decisions concerning structural or temporal exceptions. All approved structural replacements shall be documented.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 6-1990, f. 8-1-90, cert. ef. 1-1-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0710; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-665-0120

Great Blue Heron Resource Sites; Key Components; Protection Requirements; Exceptions

(1) For the great blue heron, the resource site is the active nest tree(s) and any identified key components.

(a) An active nest tree is one that has been used by one or more pair of great blue heron within the past three nesting seasons. No protection is required for an abandoned resource site.

(b) The key components associated with a great blue heron resource site are the nest tree(s), a vegetative buffer around the nest tree(s) including perching and fledging trees, and replacement tree(s). Factors to consider when identifying key components:

(A) Actual observation data when available;

(B) Perching, fledging, and replacement tree(s) should be tall with plenty of space for these large birds to fly into and out. Older trees with open branching should be retained;

(C) Areas of high winds may require that additional trees be retained to protect the active nest tree and identified key components from damage.

(2) The operator shall provide the following protection measures when operating within or near a great blue heron resource site:

(a) Retain the active nest tree;

(b) Retain a vegetative buffer not less than 300 feet around the outermost nest trees as key components that includes perching and fledging trees, and replacement trees.

(c) The vegetative buffer around a rookery may be actively managed if the key components in subsection (1) are protected. When conducting forest management activities within this buffer, operators shall consider heron protection as the highest priority. The vegetative buffer needs to provide a visual screen from disturbing influences around the rookery, and must be designed to protect the nest tree(s), perching, fledging, and replacement tree(s) from windthrow. Examples of forest management activities that may occur within the vegetative buffer include tree topping, and/or other methods of "feathering" the outer edges of the buffer to reduce windthrow potential, or remove individual trees (especially along the edge of the buffer) if the integrity of the buffer is maintained and all the key components are adequately protected. Input from the ODFW wildlife biologist and ODF's fish and wildlife specialist is important when marking trees to be removed from this buffer.

(d) During and after forest operations, the resource site shall be protected from damage. The operation shall be designed to protect the key components from windthrow;

(e) During the critical period of use, operations shall be designed and conducted so as not to disturb great blue herons using the key components. From February 15 through July 31, forest operations shall not be permitted within one-quarter (1/4) mile of the active nest tree(s) unless the State Forester determines that the operations will not cause the birds to flush from these trees. The critical period of use may be modified by the State Forester after the resource site is evaluated following OAR 629-665-0020.

ADMINISTRATIVE RULES

(3) Structural exceptions for the resource site may be approved by the State Forester when addressed in a plan for an alternate practice. The State Forester may approve such a plan when these criteria are met:

- (a) The site contains five nests or fewer;
- (b) The State Forester determines that the loss of the site will not adversely affect the local population; and
- (c) There are no economically feasible alternatives that maintain the key components.

(4) Factors considered by the State Forester before approving a structural exception to protection of a great blue heron resource site shall include, but are not limited to:

- (a) The size of the site (number of nests);
- (b) The size of the breeding population in the local area;
- (c) The productivity of great blue herons in the local area;
- (d) The contribution of the site to local productivity;
- (e) The probability that protection measures will be successful;
- (f) Available alternate nesting sites; and
- (g) Whether alternatives that protect the site are economically feasible.

(5) Temporal exceptions to protection of a great blue heron resource site may be approved by the State Forester when addressed in a plan for an alternate practice. The State Forester may approve such a plan when:

- (a) The State Forester determines that nest disruption or failure for a season or site abandonment will not adversely affect the local population; and
 - (b) There are no economically feasible alternatives that will not disturb the birds during the critical period of use.
- (6) Factors considered by the State Forester before approving a temporal exception shall include, but are not limited to:
- (a) The size of the site (number of nests);
 - (b) The size of the breeding population in the local area;
 - (c) The productivity of great blue herons in the local area;
 - (d) The contribution of the site to local productivity; and
 - (e) Whether alternatives that protect the site are economically feasible.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715
Hist.: FB 2-1991, f. & cert. ef. 5-23-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0711; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-665-0210

Interim Requirements for Northern Spotted Owl Nesting Sites

(1) Whenever the State Forester determines that an operation will conflict with protection of a nesting site of the northern spotted owl (*Strix occidentalis caurina*), the operator must submit to the State Forester a written plan before commencing the operation. The written plan, at a minimum, must address how the operation will be conducted to provide for the following:

- (a) A 70 acre area of suitable spotted owl habitat encompassing the nest site, to be maintained as suitable spotted owl habitat;
- (b) Prevention of disturbances resulting from operation activities which cause owls to flush from the nesting site. Such disturbances must be prevented during the critical period of use for nesting. The critical period of use is the time period between March 1 and September 30, each year.

(2) For the purposes of this rule, nesting site means and includes the tree, when known, containing a spotted owl nest; or when not specifically known, includes an activity center of a pair of adult spotted owls. An activity center is a location determined by the State Forester to have been reliably identified as being occupied by an adult pair of spotted owls, capable of breeding. Such determination must be supported by repeated observation of the owls in close proximity or observation of nesting behavior.

(3)(a) For the purposes of this rule, suitable spotted owl habitat means and includes:

(A) A stand of trees with moderate to high canopy closure (60 to 80%); a multi-layered, multi-species canopy dominated by large overstory trees (greater than 30 inches in diameter at breast height); a high incidence of large trees with various deformities (e.g., large cavities, broken tops, and other evidence of decadence); numerous large snags; large accumulations of fallen trees and other woody debris on the ground; and sufficient open space below the canopy for owls to fly; or

(B) In the absence of habitat which exhibits all the characteristics listed above, the available forested habitat which comes closest to approximating the listed conditions.

(b) Stands which do not exhibit at least two of the characteristics listed in paragraph (a)(A) of this section are not suitable habitat.

(4) (For information only) Federal law prohibits a person from taking northern spotted owls. Taking under the federal law may include significant alteration of owl habitat on any class of land ownership. Compliance with

subsection (1) of this rule is not in lieu of compliance with any federal requirements related to the federal Endangered Species Act.

(5) Exceptions to the requirements for protecting northern spotted owl nesting sites are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.674 & 527.715
Hist.: FB 11-1990(Temp), f. 12-20-89, cert. ef. 12-21-90; FB 5-1991, f. & cert. ef. 6-6-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0809; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-665-0220

Bald Eagle Nesting Sites; Key Components; Protection Requirements; Exceptions

(1) For bald eagle nesting sites, the resource site is the active nest tree and all identified key components:

(a) An active nest tree is one in which a bald eagle has nested in the past, and that the State Forester determines to be structurally capable of successful future use, whether or not the tree still contains a nest.

(b) An active nest tree may fall down or may become structurally incapable of supporting a bald eagle nest site. When this happens the nest resource site shall be considered active and shall be protected for an additional five (5) years only if the site contains suitable nesting sites. In this case, if a nesting resource site is not used during this five-year period, the site shall be considered abandoned and no protection will be required.

(c) The key components associated with a bald eagle nesting site are perching and fledging trees, replacement nest trees, and a forested buffer around the nest tree. Factors to consider when identifying key components:

- (A) Actual observation data when available.
- (B) Perching and fledging trees should be tall enough to provide maximum visibility of the surrounding area. Perching and fledging trees are often snags or decadent live trees with exposed, strong, lateral branches high in the crown.

(C) Replacement nest trees should provide maximum visibility of the surrounding terrain, and be large enough to support a bald eagle nest. Bald eagles prefer to nest in large, tall trees that are alive, with large limbs, broken tops, or irregular growth patterns with open structure.

(D) Areas of high winds may require that additional trees be retained to protect the active nest tree(s) and identified key components from damage.

(2) The operator shall provide the following protection measures when operating within or near a bald eagle nesting site:

- (a) During and after forest operations, the resource site shall be protected from damage. The operation shall be designed to protect the trees from windthrow;
- (b) Retain the active nest tree.
- (c) Retain a forested buffer not less than 330 feet around the active nest tree as a key component that includes perching, fledging, and replacement tree(s).

(d) During the critical period of use, operations shall be designed and conducted to not disturb bald eagles using the resource site:

(A) Except as provided in paragraph (B) of this subsection, during the critical period of use, operations shall not be permitted within one-quarter (1/4) mile of the active nest tree or perch trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

(B) If the State Forester determines through review of the written plan that the operations will not cause the birds to flush from the trees identified in paragraph (A) of this section, then there is no conflict and the distance restrictions in paragraph (A) of this section may be modified.

(C) The critical period of use is January 1 through August 31. The specific critical period of use for individual nesting resource sites may be modified in writing by the State Forester depending upon the actual dates that bald eagles are present at the resource site and are susceptible to disturbance.

(3) Structural or temporal exceptions for the resource site are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715
Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0811; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

ADMINISTRATIVE RULES

629-665-0230

Bald Eagle Roosting Sites; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle roosting sites, the resource site is the active roost trees, probable roost trees as identified by the State Forester, and all identified key components:

(a) An active roosting site is one that has been used within the past 5 years for roosting by bald eagles. No protection is required for an abandoned bald eagle roosting site.

(b) The key components associated with a bald eagle roosting site are staging trees, probable roost trees as identified by the State Forester, and a forested buffer around the roost trees. Factors to consider when identifying key components:

(A) Actual observation data when available.

(B) Roost sites frequently occur in mature forests. Roost trees are often significantly larger than the rest of the stand.

(C) Staging trees are often large, dead-top or dominant trees or snags where one or more eagles can perch and have direct access to the roosting site.

(D) The surrounding forested buffer must be adequate to maintain a suitable microclimate around the roost trees

(E) Areas of high winds may require that additional trees be retained to protect the active roost tree(s) and identified key components from damage.

(2) The operator shall provide the following protection measures when operating within or near a bald eagle roosting site:

(a) During and after forest operations, the resource site shall be retained and protected from damage. The operation shall be designed to protect the trees from windthrow.

(b) Retain the active roost tree(s)

(c) Retain a forested buffer not less than 300 feet around the outermost active roost trees as a key component that includes probable roost trees.

(d) Retain staging trees

(e) During the critical period of use, operations shall be designed and conducted to not disturb bald eagles using the resource site:

(A) Except as provided in paragraph (B) of this subsection, during the critical period of use, operations shall not be permitted within one-quarter (1/4) mile of the active roost trees. If the eagles have line-of-sight vision from these trees to the operation, the distance is one-half (1/2) mile.

(B) If the State Forester determines through review of the written plan that the operations will not cause the birds to flush from trees identified in paragraph (A) of this subsection, then there is no conflict and the distance restrictions in paragraph (A) of this subsection may be modified.

(C) The critical period of use for bald eagle roosting sites in the Klamath Basin is October 31 through March 31. In other areas of Oregon the critical period of use is November 15 through March 15. The specific critical period of use for individual roosting resource sites may be modified in writing by the State Forester depending upon the actual dates that bald eagles are present at the resource site and are susceptible to disturbance.

(3) Structural or temporal exceptions for the resource site are allowed if the operator is in compliance with, and has on file with the State Forester, an applicable incidental take permit issued by federal authorities under the Endangered Species Act.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0812; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-665-0240

Bald Eagle Foraging Perches; Key Components; Protection Requirements; and Exceptions

(1) For bald eagle foraging perches, the resource site is the active foraging perch. An active foraging perch is one that is habitually used by eagles as a vantage point while hunting. No protection is required for abandoned bald eagle foraging perches. The presence or absence of foraging perches within or near a foraging area shall be determined by the State Forester when the forester conducts an operation inspection. Factors to consider when identifying key components:

(a) Actual observation data when available.

(b) Bald eagles usually perch in the tallest trees on the edge of forest stands overlooking the hunting area. Snags and dead-top trees are often used.

(c) Areas of high winds may require that additional trees be retained to protect the active foraging perch from damage.

(2) The operator shall provide the following protection measures when operating near a bald eagle foraging perch:

(a) During and after forest operations, the foraging perch shall be retained and protected from damage. The operation shall be designed to protect the foraging perch from windthrow.

(b) During the critical period of use, operations shall be designed and conducted so they do not cause excessive disturbance to bald eagles using the foraging area. The critical period of use shall be determined on a site specific basis. The critical period of use varies for each bald eagle foraging area, depending on whether the foraging area is used by nesting, wintering, or migrating bald eagles.

(3) Temporal exceptions for the entire foraging areas shall not be permitted by the State Forester. Temporal protection is determined by evaluating the potential disturbance to the entire foraging area used by a breeding pair or wintering population of bald eagles. Disturbance at a single foraging perch in a foraging area may be determined by the State Forester to not cause a conflict. This evaluation shall be based on the number of alternative foraging perches in the bald eagle foraging area.

(4) Structural exceptions for an active foraging perch may be permitted if the State Forester determines that adequate replacement foraging perches will remain in the vicinity after completion of the forest operation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715

Hist.: FB 7-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0813; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-670-0010

Definitions

As used in OAR chapter 629, divisions 670 through 680:

(1) "Board" means the State Board of Forestry.

(2) "Damage" means an adverse disturbance to a resource protected by the Oregon Forest Practices Act that cannot be immediately stabilized and corrected, resulting from a forest practice that is not in compliance with the Oregon Forest Practices Act or the forest practice rules.

(3) "Forest practice rule" means any rule regulating operations under the Oregon Forest Practices Act, as found in OAR chapter 629, divisions 600 through 680.

(4) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(5) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(6) "Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted for approval in writing by the State Forester describing practices different than those prescribed in statute or administrative rule.

(7) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(8) "Timely corrective action" means action to be taken by the operator within a specified time to prevent or reverse the damage potentially caused by an unsatisfactory condition.

ADMINISTRATIVE RULES

(9) "Unsatisfactory condition" means the circumstance which exists when an operator or landowner fails to comply with a practice specified in a forest practice rule or statute listed in ORS 527.990(1) or 527.992 and the State Forester determines that all of the following conditions exist:

(a) The forest practice rule or statute applies to the type of operation conducted;

(b) The practice is necessary to meet the purpose of the statute or rule; and

(c) The operator has not been exempted from the rule or statute by obtaining approval for, or having obtained approval has not followed, a plan for an alternate practice as prescribed by OAR 629-605-0100.

(10) "Violation" means the circumstances which exist any time one or more of the following occurs:

(a) An operator fails to comply with any provision of ORS 527.670(6) or (7) requiring notification to the State Forester before commencing an operation.

(b) An unsatisfactory condition exists, and:

(A) Damage has resulted; or

(B) The State Forester has determined that it is not feasible for the operator, by timely corrective action, to eliminate the consequences of the unsatisfactory condition; or

(C) A written statement of unsatisfactory condition has been issued to the operator, the deadline for action has passed and appropriate action has not been taken by the operator.

(c) The operator has failed to follow a procedural practice required in statute or rule including, but not limited to, failure to submit a required written plan.

(d) An operator has failed to comply with any term or condition of any order of the State Forester issued in accordance with ORS 527.680.

(11) "Written statement of unsatisfactory condition" means a written statement issued by the State Forester to a landowner or an operator that describes the nature of an unsatisfactory condition and that specifies the corrective action to be taken within a definite time limit.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.674, 527.685, 527.700 & 527.715

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0005; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-670-0015

Enforcement Policy

Effective administration of the Oregon Forest Practices Act and forest practice rules is a balance of technical design, education and enforcement. The forest practice rules require compliance with a practice specified in a rule unless a plan for an alternate practice has been approved in writing by the State Forester. However, it is very difficult to write rules which deal with every conceivable situation and unlikely that the State Forester can monitor every forest operation in Oregon. The board recognizes that it is appropriate that the State Forester exercises judgment in not enforcing compliance with practices in a rule where the practice is clearly not necessary to accomplish the purpose of the rule. At the same time, without written approval for an alternate practice, such a recognition by the board shall not be a defense for an operator who has not complied with a practice.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715

Stats. Implemented: ORS 527.680, 527.683, 527.685, 527.990 & 183.310 - 183.550

Hist.: DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-670-0100

Inspections; Compliance Determination

(1) The State Forester shall conduct investigations of reported Oregon Forest Practices Act violations and make preventative and compliance inspections on forest operations subject to the Oregon Forest Practices Act.

(2) When inspecting operations, the State Forester shall examine practices used by the operator to assess compliance with the applicable forest practice rules and plans for an alternate practice. The State Forester may make recommendations that would help the operator avoid an unsatisfactory condition.

(3) When the State Forester determines that an unsatisfactory condition or a violation exists, enforcement action shall be initiated by the State Forester.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.680

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0010; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-670-0115

Using the Written Statement of Unsatisfactory Condition to Prevent Damage

(1) Enforcement action may be initiated by the State Forester by issuing and serving a written statement of unsatisfactory condition to the landowner or operator when the State Forester determines that:

(a) A specific operating practice prescribed by a rule or statute, or a condition described in an approved plan for an alternate practice, has not been followed; and

(b) Noncompliance with a rule has resulted in adverse resource disturbance that is very limited in extent and that can be immediately stabilized and corrected; or

(c) Through timely corrective action the operator can eliminate the potential for resource damage or other consequences due to compliance failure. The State Forester may consider expected weather and site conditions, availability of equipment, expertise to accomplish work, and access to the site before requiring corrective action.

(2) A written statement of unsatisfactory condition shall contain:

(a) The nature of the unsatisfactory condition;

(b) The corrective action to be taken by a specific date; and

(c) A notice that a citation will be issued if damage results before corrective action is completed, or if corrective action is not completed by the specific date.

(3) If the operator completes the corrective action described in the written statement of unsatisfactory condition, it is not necessary to issue a citation or assess a civil penalty.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.680, 527.683, 527.990 & 527.992

Hist.: DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-670-0125

Using the Written Statement of Unsatisfactory Condition for Noncompliance with Procedural Rules

(1) Some forest practice rules deal with administrative procedures rather than resource protection. Rules requiring notification, written plans and plans for an alternate practice are examples of procedural rules which, if not complied with, may or may not result in resource damage.

(2) Compliance with these procedural rules is essential if the Oregon Forest Practices Act program is to succeed in educating forest landowners and operators, preventing resource damage before it occurs, and fulfilling its legal obligations to keep other agencies and interested citizens informed about planned operation activities.

(3) The board's intent is that violations of procedural rules should result in the issuance of a citation in most instances. However, the State Forester has the option of using the written statement of unsatisfactory condition, described in OAR 629-670-0110, as the enforcement action when the State Forester determines the following conditions exist:

(a) Resource damage from failure to comply with the procedural rule did not, and will not, occur;

(b) The written statement of unsatisfactory condition will result in immediate compliance with the procedural rule and will be adequate to educate the operator about the rule that was not complied with and to favorably modify the operator's future behavior;

(c) The operator had no prior knowledge or only general knowledge of the Oregon Forest Practices Act and rules and has not had significant past experience with the practice in question, or the operator has had significant past experience with the practice, but the violation was inadvertent or accidental;

(d) The rule violation did not result in a greater economic benefit for the operator than if the operator had complied with the procedural rule; and

(e) Noncompliance with the procedural rule has not denied a person an opportunity to receive a copy of a notification or written plan under ORS 527.670(9) before the operation began, if that person has previously requested copies for the purpose of commenting on the operation.

(4) If the operator or landowner reports to the State Forester an unsatisfactory condition that meets the requirements in section (3) of this rule, the State Forester may issue a written statement of unsatisfactory condition.

Stat. Auth.: ORS 527.710, 526.016(4), 527.714 & 527.715

Stats. Implemented: ORS 527.674, 527.680, 527.683, 527.685, 527.990; 183.310 - 183.550

Hist.: DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-670-0210

Amount of Civil Penalties

(1) The amount of civil penalty per violation shall be the lesser of \$5000 or the amount determined by the formula $\$(C \times P) + (\$B \times D \times R)$ where:

(a) $\$B$ is a base fine established by type of violation in section (2) of this rule;

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(b) C is cooperation;
(c) P is prior knowledge or prior violations;
(d) D is damage to protected resources; and
(e) R is the extent of damage that cannot be corrected, or prevented in the future, even though repairs are made.

(2) The base penalty value (\$B) shall be established as follows:

(a) A base penalty of \$100 shall be applied to violations of a type where the operator fails to notify the State Forester of intent to operate or fails to submit a required written plan or obtain written approval of a plan for an alternate practice.

(b) A base penalty of \$250 shall be applied to:

(A) Violations of any rule or statute which requires or sets standards for accomplishing reforestation.

(B) Violations involving a failure to comply with the terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(C) Violations of a type where the operator fails to comply with any term or condition of an approved plan for an alternate practice.

(D) Violations where the State Forester determines that an operator has intentionally failed to notify the State Forester of intent to operate, notwithstanding subsection (2)(a) of this rule.

(E) All other violations of forest practice rules or statutes not specifically described in section (2) of this rule.

(c) A base penalty of \$1000 shall be applied to violations of any rule or statute which sets a maximum size for harvesting operations.

(3) The cooperation value (C) shall be determined by the State Forester after reviewing whether the operator is taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assigned as follows:

(a) A value of 0.5 shall be assigned when, in the judgment of the State Forester, the operator takes substantial initiative to correct the damage or problem that led to the violation. Substantial initiative may include, but is not limited to, reporting the violation before it is discovered, initiating effective repairs without having to be directed, or making substantive changes in operating procedures designed to identify and avoid potential recurrences.

(b) A value of 1 shall be assigned when the operator cooperates in following the direction of the State Forester by immediately ceasing further violation and taking prompt action to repair damage or correct any unsatisfactory condition where deemed feasible by the State Forester.

(c) A value of 2 shall be assigned when the State Forester determines that the operator does not immediately cease further violation, is evasive upon attempts to make necessary communications, or neglects to take necessary and timely action to repair damage or correct any unsatisfactory condition.

(4) The prior knowledge value (P) shall be determined by the State Forester after reviewing department records of citations, operation notification or operation inspections. A value from 0.5 through 10 shall be assigned as follows:

(a) A value of 0.5 is appropriate when the operator has little or no prior knowledge of the Oregon Forest Practices Act but has cooperated in ceasing violation and correcting unsatisfactory conditions.

(b) A value of 1 is appropriate when the operator has general knowledge of the Oregon Forest Practices Act and rules, but has not had significant past experience with the practice in question, or has significant past experience with the practice, but the violation is determined by the State Forester to be inadvertent or accidental.

(c) A value of 2 is appropriate when the operator has had significant past experience with a practice or condition, or has had specific correspondence or conversation with department personnel about the required practices or actions involved in the violation, before the violation.

(d) A value of 4 is appropriate when the State Forester has issued a written statement of unsatisfactory condition to the operator for the violation and timely corrective action was not taken.

(e) A value from 3 through 5 is appropriate when the operator has received citations for any other forest practice rule or statute within the past three years.

(f) A value from 5 to 10 shall be assigned when the operator has been cited within the past three years for a violation of the same forest practice rule, statute, or condition; or in a case of failure to comply with an order to cease further violation, or order to repair damage, or order to correct an unsatisfactory condition (ORS 527.680(2)).

(5) The damage value (D) shall be determined by the State Forester as a measure of extent or relative adverse effect of damage. The specific value applied shall be based on the pre-operation condition of the site, if known, the severity and extent of damage associated with the violation, and any potential economic gain to any involved operators. The damage value should be consistent with the policy of deterring future violations. A value

from 0 through 20 shall be assigned. The following shall guide the State Forester's determination:

(a) A value of zero shall be assigned when the violation has not resulted and will not result in resource damage.

(b) A value of 1 shall be assigned when the adverse effects of the violation left uncorrected are minor and the affected resources will naturally self-restore within one year. Example: Siltation from exposed soil flows into the upper reaches of a stream, but the site will naturally revegetate within the next growing season, preventing further siltation.

(c) A value from 2 to 5 shall be assigned when the damage from the violations left uncorrected is more serious than described in subsection (b) of this section, but the affected resources will self-restore naturally within five years. Examples: A small volume debris avalanche is caused by road construction material placed in an unstable location and the debris comes to rest in a fish-bearing or domestic use water; or logs are skidded across a stream without an adequate temporary crossing leaving ruts and disturbed soil areas that will flow muddy water directly into the stream.

(d) A value from 5 through 10 shall be assigned when the damage from the violation left uncorrected is major in relative effect, with natural self-restoration taking up to 10 years. A consideration in selecting a value from 5 to 10 may include, but is not limited to the size of the area affected. Examples: Failure to reforest five acres may be assigned no less than a 5, while failure to reforest 50 acres may be assigned a 10. Removal of understory vegetation along 500 feet of a small stream may be assigned a 10.

(e) A value from 5 through 20 shall be assigned when damage is the result of harvest or destruction of trees or snags required to be maintained; or when the damage from the violation left uncorrected is major in relative effect, with self-restoration taking more than 10 years. Example: Severe riparian management area soil disturbance, combined with the total harvest or destruction of what had been a fully stocked stand of trees required to be maintained, along more than 500 feet of a small stream may be assigned a factor of 20.

(6) The repair value (R) shall be assigned by the State Forester as a measure of the relative extent of the damage that is corrected or prevented through timely corrective action. The value shall be set by the State Forester between 0 and 1, inclusive and expressed as a decimal. The decimal indicates the degree of damage that already occurred and future damage that cannot be prevented, even after the repairs are completed as directed in the repair order. Example: A tractor crossed a stream with no temporary structure, breaking the stream banks down, leaving exposed skid trails which eroded, creating turbidity, and leaving visible sediment in the stream. With no repairs, the stream bank and skid trails would revegetate in 4 years. The landowner performed all repairs as ordered, including mulching, placing rip-rap, and building waterbars. In the State Forester's judgement, compliance with the repair order will prevent all but 20% of the potential damage expected over the next 4 years. Therefore R equals 0.20. If repairs are not feasible or are not completed, R equals 1.0.

Stat. Auth.: ORS 527.710 & 526.016

Stats. Implemented: ORS 527.674 & 527.685

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88; FB 5-1990, f. 7-27-90, cert. ef. 8-1-90; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0040; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-672-0100

Orders of the State Forester

(1) As used in OAR 629-672-0100 to 629-672-0310, order of the State Forester issued under ORS 527.610 to 527.770 means:

(a) An order denying approval of a plan for an alternate practice (OAR 629-605-0173(3)).

(b) An order to repair damage or correct unsatisfactory condition (ORS 527.680(2)(b)).

(c) Temporary order to cease further activity (ORS 527.680(3)).

(d) An order prohibiting new operations (ORS 527.680(5)).

(e) An order denying approval of a stewardship agreement (ORS 527.662(13)).

(2) Whenever an order affecting an operator, timber owner or landowner is issued under ORS 527.610 to 527.770, notice of the order shall be given to the affected party by personal service or certified mail. As used in this section, 'personal service' means service on the party by any officer, employee, or agent of the Oregon State Department of Forestry. The notice shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the person's right to request a hearing within 30 days from the date of service;

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(d) A statement that the notice becomes a final order unless the person makes a written request for a hearing within 30 days from the date of service or mailing of the notice; and

(e) A statement that the record of the proceedings to date, including the agency file on the subject of the order automatically becomes part of the contested case record upon default, for the purpose of providing a prima facie case.

Stat. Auth.: ORS 526.016 & 526.041
Stats. Implemented: ORS 527.662 & 527.674
Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0100; DOF 7-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 3-1999, f. & cert. ef. 7-13-99; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-672-0200

Hearings for Operators, Landowners or Timber Owners

(1) As provided in ORS 527.700(1), any operator, timber owner or landowner affected by a finding or order of the State Forester issued under ORS 527.610 to 527.770 may request a hearing within 30 days of the issuance of the order. The request for a hearing shall be in writing and must include a specific statement as to the reasons for disputing the State Forester's order, including but not limited to disagreement with any findings leading to the order. In addition, the request for hearing shall state what relief from the order is sought.

(2) Hearings under this rule shall be conducted as contested case proceedings under ORS 183.413 to 183.470.

(3) The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for hearing unless all parties agree to an extension of the time limits.

(4) An administrative law judge from the Office of Administrative Hearings shall conduct hearings under ORS 527.700. The administrative law judge shall conduct the hearing and prepare the record for filing with the board within five working days of the close of the hearing. Except as provided in section (5) of this rule, no less than a majority of the board shall then review and consider the record, hold a meeting or telephone conference, and issue a final order.

(5) If upon a determination by the chairperson of the Board of Forestry, the board cannot complete a final order in the matter within 28 days of the request for a hearing, the chairperson may delegate the authority to issue a final order to the administrative law judge as provided in ORS 527.700(2).

(6) Failure of the person requesting the hearing to appear at the hearing shall be deemed a default and shall result in a final order being entered upon a prima facie case made on the record of the agency.

Stat. Auth.: ORS 527
Stats. Implemented: ORS 527.700
Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0110; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-672-0210

Hearings for Persons Adversely Affected by an Operation for Which a Written Plan is Required under ORS 527.670(3)

(1) If a written plan under ORS 527.670(3) is required for an operation, any person who submitted written comments on the operation and who is adversely affected or aggrieved by the operation may file a request to the board for a hearing on the plan. The request shall be filed and copies served on the operator, timber owner and landowner personally or by certified mail within 14 days of the date the comment period for the State Forester ended, whether or not comments were issued. The request shall include:

(a) A copy of the written plan on which the hearing is requested.

(b) A copy of the comments on the written plan submitted by the person requesting the hearing.

(c) The person's name and address and the organization represented;

(d) If represented by an attorney, the name and address of the attorney representing the person;

(e) A detailed statement of the person's interest and of how such interest may be affected by the results of the proceeding;

(f) A detailed statement of the fact regarding how the person's interest is affected by the Forest Practices Act or rules adopted thereunder;

(g) A detailed statement of fact showing that the operation is the type described in ORS 527.670(3);

(h) A brief statement of what board action is sought by the person.

(2) Upon receipt of a request provided under section (1) of this rule, the State Forester shall determine whether the request meets the requirements of ORS 527.700(3) through (5). In making this determination, the State Forester shall consider:

(a) Whether the person has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the board's jurisdiction;

(c) The interest the petitioner represents and the qualifications the petitioner possesses in cases in which a public interest is alleged;

(d) Whether the person could reasonably be considered to be affected by the Forest Practices Act or rules adopted thereunder.

(3) If the State Forester determines that the person making the request meets the requirements of ORS 527.700(3) through (5), the State Forester shall send written notification of the date of the hearing to the person requesting the hearing and to the timber owner, landowner and operator.

(a) The hearing date shall be no later than 21 days from the receipt of the request for hearing.

(b) The notice of hearing shall contain the statements that:

(A) Failure of the person requesting a hearing to appear at the hearing shall be deemed a default and a record of the proceedings to date, including the agency file or files on the subject of the written plan, automatically becomes a part of the record for the purpose of providing a prima facie case upon which default may be granted; and

(B) The hearing shall be conducted by an administrative law judge, according to the Office of Administrative Hearings Rules in OAR 137-003-0501 to 137-003-0700 and the State Forester's Procedural rules in OAR 629-001-0000 to 629-001-0055.

(4) If the State Forester determines that the person making the request does not meet the requirements of ORS 527.700(3) through (5) the State Forester shall recommend to the chairperson of the Board of Forestry that a hearing be denied for cause. The chairperson, upon review of the request for hearing and the State Forester's recommendation, shall either:

(a) Issue a final order on behalf of the board, denying a hearing for cause; or

(b) Direct the State Forester to schedule a hearing and send notices as required in section (3) of this rule.

(5) Failure of the person requesting the hearing to appear at the hearing shall be deemed a default. Based upon a prima facie record the State Forester's comments and recommendations, if any, must stand.

(6) The landowner, timber owner or operator shall be made a party to the proceeding.

(7) The person requesting the hearing under these provisions may only present evidence on those issues raised in the person's written comments to the written plan filed under ORS 527.670(9) relating to conformity with the rules of the board.

(8) The administrative law judge shall conduct the hearing and prepare the record for filing with the board within five working days of the close of the hearing. Except as provided in section (10) of this rule, no less than a majority of the board shall then review and consider, hold a meeting or telephone conference, and issue their comments.

(9) Unless consent to an extension is granted by all parties, the board shall issue its own comments no later than 45 days after the request for hearing was filed. The board may affirm, modify or rescind the comments of the State Forester, if any. The comments of the board or the State Forester concerning a written plan cannot be appealed under ORS 183.482.

Stat. Auth.: ORS 527
Stats. Implemented: ORS 527.700
Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0120; DOF 3-2004, f. & cert. ef. 2-10-04; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-672-0310

Actual Damages Resulting from a Stay; Attorney's Fees

(1) If the board determines in its comments that the written plan of an operation for which a stay was granted is likely to result in compliance with ORS 527.610 to 527.770 or the rules of the board, the board shall award actual damages in favor of each prevailing party against the person requesting the stay. A landowner, timber owner, or operator against whom a stay was entered may petition for actual damages for the portion of the case upon which it prevailed.

(2) The board may award reasonable attorney's fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well founded, or made a request primarily for a purpose other than to secure appropriate action by the board. If a written plan pertaining to an operation for which a stay was granted is determined to likely result in compliance with the Forest Practices Act and rules, the board shall award reasonable attorney's fees in favor of each of the prevailing parties against the person requesting the stay. If the board rescinds or modifies the comments on the written plan as submitted by the State Forester pertaining to any operation, the board shall award reasonable attorney's fees and costs against the state in favor of each of the prevailing parties. Any prevailing party, as described above, may file a petition for attorney's fees, expenses and costs for the portion of the case upon which it prevailed.

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(3) An award of attorney's fees shall not exceed \$5,000.

(4) As used in this rule, a "prevailing party" is one in whose favor an order pertaining to a written plan is issued, and may include the Department of Forestry where a written plan is affirmed. Where the board rescinds or modifies the comments on portions of a written plan and determines that other portions will likely result in compliance with the FPA or rules, each party may be regarded as a prevailing party.

(5) "Actual damages" include but are not limited to costs such as:

- (a) Penalties for non-performance of contracts;
 - (b) Losses due to market fluctuations;
 - (c) Payments for crew stand-by;
 - (d) Equipment down-time;
 - (e) Move-in and move-out costs; and
 - (f) Loss in value of logs left sitting on the site for long periods.
- (6) Attorney's fees, expenses and costs shall include only the following:

(a) The actual amount of fees charged by the attorney for services directly connected with prosecuting or defending against the challenge to the written plan; or

(b) Where the prevailing party is not charged a specific fee for the case (e.g., because the attorney is paid on a retainer basis or is an employee of the party), the fee shall be the reasonable value of the attorney's services directly connected with prosecuting or defending against the challenge to the written plan. "Reasonable value" means the equivalent of the fees charged by practitioners of similar skill and experience under section (6)(a) of this section, and includes such secretarial and other overhead costs as are customarily included in those fees.

(7) A prevailing party must file a petition and supportive affidavit for award of actual damages from a stay or attorney fees within 30 days of the date of the issuance of the board's comments in the case for which awards are requested. A copy of the petition, together with a supporting affidavit, shall be served upon the opposing party or parties at the time the petition is filed and proof of service shall be provided to the board. The board shall dismiss petitions which do not comply with this rule. The petition shall include:

(a) A statement of the facts upon which petitioner relies in claiming that it is a prevailing party;

(b) A statement of the amount of award requested, supported by an affidavit that describes in detail the actual damages incurred and the basis for the amount of damages requested; or amount of the fees incurred by petitioner, or where the petitioner was not charged fees, the basis for the amount of the costs requested; and

(c) A statement describing how the amount of the award requested would be consistent with the policies and the purposes of the Oregon Forest Practices Act.

(8) An opposing party shall have 14 days from the date of service of the petition to file written objections. Such objections shall be served on the petitioner at the time the objections are filed and proof of service shall be provided to the board.

(9) In designating the amount of fees and costs to be awarded, the board shall consider, but is not limited to, the following factors:

(a) Consistency with the policies and purposes of the Oregon Forest Practices Act including but not limited to the following considerations:

- (A) The issue in the case was one of first impression; or
- (B) A complaint or defense was frivolous or otherwise without merit;

or

(C) A party was an individual who, due to the circumstances of the case, had to rely upon his or her personal financial resources.

(b) In the case of attorney's fees, the appropriate charges for the services rendered, based on:

(A) The time and labor customarily required in the same or similar cases;

(B) Hourly charges customarily made by attorneys for rendering similar services;

(C) The novelty and difficulty of the issues and the amount of preparation, research or briefing reasonably required; and

(D) The skill requisite to perform the services properly.

(c) Awards in similar cases.

(10) The administrative law judge who presided over the hearing on the written plan shall examine the petition for award of actual damages or attorney's fees and any associated arguments. The administrative law judge may require the parties to provide additional information or conduct hearings as the judge deems necessary. The administrative law judge shall prepare a proposed order for the board.

(11) The board shall review the administrative law judge's proposed order and issue a final order awarding actual damages or attorney's fees pursuant to this section, based upon the record. The board may award all or a portion of the actual damages or fees requested. The board will not act on

a petition until the appeal period has run or, where an appeal has been filed, during the pendency of the appeal.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0150; DOF 3-2004, f. & cert. ef. 2-10-04; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

629-674-0100

Procedures for Requesting Copies of Notifications and Written Plans; Fees

(1) Any person may examine or request copies of notifications or written plans filed with the State Forester as required by the Forest Practices Act. Examination of records, or requests for copies shall be made at the department district or unit office responsible for the geographic areas in question.

(2) When a person requests copies of notifications or written plans already on file, a fee shall be charged, as specified in OAR 629-010-0200, Charges for Copying and Purchasing Public Records.

(3) When a person requests to be sent notifications or written plans as they are filed at some time in the future, the request shall be made in writing on forms provided by the State Forester. The request shall require payment, in advance, of a fee established in department directive 0-5-1-301, dated October 2003. The request shall specify the geographic area of interest by legal description. The smallest unit of area described in a request shall be a section (usually 640 acres).

(4) Upon payment of fees described in section (3) of this rule, the person shall be sent all notifications and written plans filed with the State Forester for the geographic area described in the request for a period of one year from the date of payment.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.670 & 527.700

Hist.: FB 2-1988, f. & cert. ef. 5-11-88; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0200; DOF 8-2002, f. & cert. ef. 7-1-02; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06

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Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 16-2005

Filed with Sec. of State: 12-1-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 11-1-05

Rules Adopted: 413-015-0211, 413-015-0212, 413-015-0213

Rules Amended: 413-015-0200, 413-015-0205, 413-015-0210, 413-015-0215, 413-015-0220

Subject: The Child Protective Services Screening rules are being revised. Revisions include clarification for the screener in accepting calls of child abuse calls and informing the caller of their statutory rights and protections. Clarification has been provided in determining what reports will receive face-to-face assessment and what reports may be closed at screening. The rules provide screeners with additional direction in how to handle information received on open assessments and open child welfare cases. Supervisory consultation requirements are identified and the rules provide direction to field offices in cross county assignment of assessments. These rules are also being changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0200

Screening Rules, Purpose

The Department receives information from various sources. OAR 413-015-0205 to 413-015-0225 describe how the Department will review this information and determine a Department response. This process is known as screening and is conducted by a screener.

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 16-2005, f. & cert. ef. 12-1-05

413-015-0205

Screening Activities

(1) Gather information. When gathering information, the screener must do both of the following:

(a) Accept reports of child abuse regardless of where the child resides or where the alleged abuse may have occurred. If the information is about

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a child that does not reside in the county where the report is received, forward the information to the local child welfare office in the county or state where the child resides. The screener is required to confirm that the information has been successfully forwarded.

(b) Handle anonymous reports of child abuse in the same manner as other reports, gather the same information from the anonymous reporter as the screener would from any other reporter, and encourage the reporter to provide identifying information.

(2) Provide information and refer to services.

(3) Determine the information type.

(a) Child Protective Service.

(A) Familial Protection Issue:

(i) Child abuse by a parent, caregiver, or household member.

(ii) Child abuse by a third party and the parent or caregiver does not have adequate protective capacities to prevent future abuse.

(B) Third Party Child Abuse With No Familial Protection Issues.

(b) Non-Child Protective Service.

(A) Voluntary Request for Services (Preventive/Restorative) — When a screener receives a voluntary request for services, the screener must refer to DHS Child Welfare Policy I-B.2.3.1, “Preventive/Restorative Eligibility”, OAR 413-030-0000 to 413-030-0030.

(B) Other Non-Child Protective Service GAP (Guided Assessment Process) Categories. The screener must create a non-protective service GAP screening form to open a plan for services in the categories and circumstances described below:

(i) Substitute Care — when the emotional and/or behavioral problems of a child require out of home placement and referral for residential treatment or the court has ordered a pre-adjudicated delinquent into DHS care;

(ii) Independent Living — to enroll a child in the Department’s Independent Living Program (ILP) if the child is not currently a member on an open case and qualifies for ILP services;

(iii) Interstate Compact — to provide Interstate Compact supervision and services when a request is received from central office.

(4) Screening Activities For Child Protective Service Information. On the same day information alleging child abuse is received by the Department, screeners must complete the following actions, and document their actions and information gathered, unless these rules provide otherwise or an extension is granted as provided in OAR 413-015-0220:

(a) Use the guided assessment process screening template to assure critical information is collected in order to effectively evaluate the presence of safety threats.

(b) Gather information from individuals who have regular contact with the child who can provide firsthand information necessary to evaluate possible safety threats to the child and to determine the appropriate Department response.

(c) Research Department history of every identified child, parent, caregiver, and household member for essential family data to determine current or previous Department involvement related to current child abuse allegations.

(d) Inquire regarding possible Indian or Alaskan Native heritage (for further direction see OAR 413-015-0210(4)).

(e) Request relevant information when available and appropriate from law enforcement agencies (LEA), including domestic disturbance calls, arrests, warrants, convictions, and restraining orders.

(f) Determine the location and corresponding law enforcement jurisdiction of the family’s residence and the site where the alleged child abuse may have occurred.

(g) Immediately refer to DHS Child Welfare Policy I-B.2.2.3, “Assessment of Abuse Allegations in Family Foster Care, Family Group Homes and Family Shelter Homes” when information is related to a DHS-certified foster home.

(h) Immediately refer to DHS Child Welfare Policy II-E.1, “Child-Caring Agencies”, OAR 413-210-0000 to 413-210-0250 when information is related to a licensed child caring agency.

(5) Explain to reporters:

(a) The confidentiality of the reporter’s identity will be maintained by the Department, unless ordered to be released by the court or the reporter is called as a witness in court;

(b) Anyone making a child abuse report in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report;

(c) Whether the screener may inform the reporter whether the decision is to assign for CPS assessment or not. If this decision has not been determined at the time the call ends, the reporter may contact a screener at a later date to be informed if the report was assigned for CPS assessment;

(d) If the information reported does not meet the screening criteria to be documented and retained in the child abuse information system; and

(e) That mandatory reporters should consider maintaining a record of their report in order to document that their legal reporting obligation was met.

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 16-2005, f. & cert. ef. 12-1-05

413-015-0210

Determining Department’s Response and Required Time Lines

The time line for the Department’s response begins when the call is received at screening. Upon completion of the screening activities required by OAR 413-015-0205, the screener must determine whether the information alleging child abuse constitutes a report of child abuse in which a child may be unsafe and must determine the Department’s response.

(1) CPS assessment required. A CPS assessment is required if:

(a) The screener determines that information received constitutes a report of child abuse with a familial protection issue and a child may be unsafe;

(b) A Tribe or LEA requests assistance from the Department to conduct a CPS assessment, and a CPS supervisor agrees that assistance from the Department is appropriate; or

(c) A CPS supervisor determines that, although a child is currently safe, a CPS assessment is required to document whether abuse occurred (for example, a historical report of abuse).

(2) If it is determined that a CPS assessment is required, the screener must:

(a) Determine the CPS assessment response time frame:

(A) Immediate Response: within 24 hours of receiving the report. An Immediate Response referral is required if there is an immediate safety threat; or

(B) Response Required: within five calendar days of receiving the report. A Response Required referral is required if the presence of a safety threat is identified, but the information clearly indicates the safety threat is not immediate.

(b) Complete a GAP screening form on the same day the screening determination is made.

(c) Refer the CPS assessment to the appropriate county as described in OAR 413-015-0213.

(3) Close at Screening: A report will be closed at screening if either of subsections (3)(a) or (3)(b) of this rule apply:

(a) The screener determines that information received does not constitute a report of child abuse with a familial protection issue, the information does not support that a child is unsafe, and the screener determines that the information received meets any of the following criteria:

(A) Is a report of risk influences that relate to the care of a child, but does not indicate a safety threat;

(B) Is a report of third party abuse with no familial protection issues; or

(C) Is a report of a high-risk pregnancy and the pregnant woman has no children in her care (for example, prior termination of parental rights, substance abuse, or prior aggravated circumstances).

(b) The screener is unable to obtain sufficient information to locate the child.

(4) If a report is closed at screening, the screener must:

(a) Decide whether other services are appropriate and make service or resource referrals as necessary. Document what service or resource referrals are made, if any.

(b) Document how current information supports the decision to close the report at screening.

(c) Complete a GAP screening form no later than the next working day after the screening determination is made (unless an extension is approved as provided in OAR 413-015-0220).

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 16-2005, f. & cert. ef. 12-1-05

413-015-0211

Additional Screening Activities

In the specific circumstances described below, the screener must take additional steps to complete the screening process.

(1) When duplicate information is received (same alleged victim, same alleged perpetrator, same allegation, and same incident dates) on an open assessment, the screener must:

(a) Inform the caller that a new report will not be assigned because the information has already been received;

(b) Provide the caller with the assigned caseworker’s name and phone number; and

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(c) Provide contact information about the caller to the assigned case-worker.

(2) When a screener receives information on an open Child Welfare case, the screener must:

(a) Notify each assigned case worker and their respective supervisors of all information received, and document this notification in FACIS case notes;

(b) Complete notification on the same day the information is received.

(3) Information received by a screener on an open Child Welfare case that will not be documented in the GAP but must be documented in FACIS case notes includes:

(a) Additional information on an open case that does not meet the criteria for a new CPS assessment or closed at screening;

(b) Reports of child runaways; and

(c) Requests for case information.

(4) When a screener receives information related to a DHS certified foster home, the screener must notify and document notification of each assigned case worker, assigned certifier, and their respective supervisors of all information received (see DHS Child Welfare Policy I-B.2.2.3, "Assessment of Abuse Allegations in Family Foster Care, Family Group Homes and Family Shelter Homes").

(5) If a child fatality alleged to be the result of abuse and neglect occurs and there are no siblings to the deceased child and no other children in the home where the fatality occurred, the screener must complete a GAP screening form documenting the "allegation" as a "fatality" (refer to DHS Child Welfare Fatality Protocol).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05

413-015-0212

Consultation

CPS supervisor consultation is available to screeners when making all screening determinations. Screeners must consult with a CPS supervisor when:

(1) Information received constitutes a report of child abuse on a case where there was a founded disposition in the preceding six months;

(2) A review of case history shows multiple consecutive reports that were closed at screening and the information received in combination with the other reports regarding the same person(s) may constitute sufficient grounds to refer the case for CPS assessment;

(3) A new report is received on an open Child Welfare case;

(4) Information is related to a DHS certified foster home. Immediately refer to DHS Child Welfare Policy I-B.2.2.3, "Assessment of Abuse Allegations in Family Foster Care, Family Group Homes and Family Shelter Homes" for further direction;

(5) Information is related to a licensed child-caring agency. Immediately refer to DHS Child Welfare Policy II-E.1, "Child-Caring Agencies" for further direction;

(6) Making a decision not to refer for assessment a report of a drug-exposed infant; or

(7) A report is received on a DHS employee, OYA employee, community partner, or involves the media.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05

413-015-0213

Determining the County to which the CPS Assessment will be Referred

(1) Except as described in section (2) of this rule, the screener must refer the CPS assessment to the local Child Welfare office in the county where the child resides, and that county shall take the lead in completing the CPS assessment.

(2) When the alleged abuse occurred in a foster home or a residential care facility, the screener shall refer the CPS assessment to the local Child Welfare office in the county where the alleged abuse occurred, and that county shall take the lead in completing the assessment.

(3) Any exception to sections (1) or (2) of this rule must be approved by the CPS Program Manager or designee.

(4) As a courtesy, and to assist with the CPS assessment process, when the child resides in a different county than where the alleged abuse occurred, CPS workers may be assigned in the county of the child's residence and the county where the alleged abuse occurred. The county who takes the lead is described in sections (1) and (2) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05

413-015-0215

Notifications to Specific Agencies or Entities

The screener must notify specific agencies or entities of referrals that the screener determines meet the criteria described in OAR 413-015-0210.

(1) LEA. The screener must cross report to LEA as required by OAR 413-015-0305(1).

(2) Child Care Division. The screener must notify the Child Care Division of referrals alleging child abuse in a registered day-care home or in a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(3) Child Caring Agency Licensing Program. The screener must notify the Department's Child Caring Agency Licensing Program when the referral involves a licensed child caring facility (see OAR 413-200-0000).

(4) ICWA. If the screener or assigned CPS worker knows or has reason to know that the child is an Indian child, the screener or CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted.

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 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05

413-015-0220

Extensions

(1) The CPS supervisor may grant an extension to the deadline in OAR 413-015-0205 when the screener cannot complete the screening activities the same day that the information alleging child abuse is received because critical information is still needed to determine the Department's response. The screener must document the reason for the extension, including what information remains to be collected, and the approval by a supervisor.

(a) The CPS supervisor may grant a one-day extension up to two times; and

(b) Screening activities may not exceed two days beyond the day the information alleging child abuse is received by the Department.

(2) When a child welfare office is closed for a weekend or holiday and screening activities cannot be completed the day before the weekend or holiday begins, and the screener does not have enough information to determine a Department response, a CPS supervisor may grant an extension to allow screening activities to be completed on the next business day. If there is any information indicating the child's immediate safety is threatened, a Department response will not be delayed by office closure.

(3) If the screener has enough information to determine the Department's response or has information that a child is unsafe, no extension to the deadline in OAR 413-015-0205 may be allowed.

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 16-2005, f. & cert. ef. 12-1-05

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

Adm. Order No.: OMAP 60-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Ren. & Amended: 309-116-0000 to 410-011-0000, 309-116-0005 to 410-011-0010, 309-116-0010 to 410-011-0020, 309-116-0015 to 410-011-0030, 309-116-0020 to 410-011-0040, 309-116-0030 to 410-011-0050, 309-116-0040 to 410-011-0060, 309-116-0050 to 410-011-0070, 309-116-0060 to 410-011-0080, 309-116-0070 to 410-011-0090, 309-116-0080 to 410-011-0100, 309-116-0090 to 410-011-0110, 309-116-0100 to 410-011-0120

Subject: Chapter 410, Division 11, Abuse of Individuals Living in State Hospitals and Residential Training Centers rules incorporate the following changes permanently;

A. Adds definitions for Administrator, Department, Individual, Inconclusive, Not Substantiated and Substantiated.

B. Updates the rule to include statutory changes effective January 1, 2004 by adding neglect to the definition of abuse and requiring thorough and unbiased investigations.

C. Revises preliminary screening procedures for abuse and neglect reports received by the Superintendent to require notification of

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the Office of Investigations and Training (OIT) within two hours after receipt by the Superintendent. Revises procedure so that the Office of Investigations and Training makes the initial determination of whether the allegation meets the definition of abuse within 24-hours in consultation with the Superintendent.

D. Updates the rule to include current Department structure and designation for clusters Children, Adults and Families (CAF), Seniors and People with Disabilities (SPD) and Office of Mental Health and Addiction Services (OMHAS).

E. Establishes timeline and procedure of the abuse investigation report requiring completion in 30 calendar days, a special report format, review and consultation of the draft report by the Office of Investigations and Training and the Superintendent, a decision and recommendations to prevent further abuse and a final report by OIT within 15 calendar days.

F. Conforms release of completed abuse reports to Health Insurance Portability and Accountability Act (HIPAA) confidentiality requirements.

G. Provides that the Office of Investigations and Training may perform an investigation when law enforcement is conducting an investigation unless OIT is advised it will interfere with the criminal investigation.

H. Adds statutory language prohibiting retaliation against someone making a report of abuse.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-011-0000

Purpose

Purpose. To establish a policy prohibiting abuse and to define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals and residential training centers.

Stat. Auth: ORS 179.040, 409.010, 409.050.

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765.

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(1) and (2); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0000, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0010

Definitions

(1) "Abuse" means any act or absence of action by a staff or visitor inconsistent with prescribed treatment and care, that violates the well-being or dignity of the individual.

(2) "Administrator" means the Assistant Department of Human Services Director for Seniors and People with Disabilities and the Office of Mental Health and Addiction Services or their designee.

(3) "Department" means Seniors & People with Disabilities or Office of Mental Health & Addiction Services, organizational units within the Department of Human Services.

(4) "Derogatory" means an expression of a low opinion or a disparaging remark.

(5) "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.

(6) "Employee" means an individual employed by the state and subject to rules for employee conduct.

(7) "Inconclusive" means the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(8) "Individual" means a person who is receiving services in a residential training center for people with developmental disabilities or at a state hospital for people with mental illness.

(9) "Not Substantiated" means the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(10) "Office of Investigations and Training (OIT)" means the Department of Human Services office responsible for the investigation of allegations of abuse made at state hospitals and residential training centers.

(11) "Staff" means employees, contractors and their employees, and volunteers.

(12) "Substantiated" means the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(13) "Superintendent" refers to the chief executive officer of a state hospital or residential training center who serves as the designee of the Administrator to receive allegations of abuse concerning individuals and his or her designee.

(14) "Visitor" means all others persons not included as staff who visit the facility for business purposes or to visit individuals or staff.

Stat. Auth: ORS 179.040, 409.010, 409.050.

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765.

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(3); MHD 18-1985, f. & ef. 12-5-85; MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0010, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0020

General Policy

(1) The Department believes every individual is deserving of safe, respectful and dignified treatment provided in a caring environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors will conduct themselves in such a manner that individuals are free from abuse.

(2) In these rules, the term "abuse" is given a broad definition because of the unique vulnerability of individuals served by the Department. While some examples are listed later in these rules (including specific conduct listed in ORS 430.735(1)), it must be clearly understood that all possible situations cannot be anticipated and each case must be evaluated based on the particular facts available.

Stat. Auth: ORS 179.040, 409.010, 409.050.

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765.

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(4); MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0030

Policy Regarding Abuse

(1) All forms of abuse are prohibited. Staff, visitors, volunteers, contractors and their employees must continually be aware of the potential for abuse in interactions with individuals.

(2) Listed below are examples of the type of conduct which constitutes abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:

(a) Physical Abuse: Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care;

(b) Verbal Abuse: Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communication which are derogatory or disrespectful of the individual, or remarks intended to provoke a negative response by the individual;

(c) Abuse by Failure to Act: This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual either by failing to provide authorized and prescribed treatment or by failing to intervene when an individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated;

(d) Sexual Abuse: Examples include:

(A) Contact of a sexual nature between staff and individuals;

(B) Failure to discourage sexual advances toward staff by individuals;

and

(C) Permitting the sexual exploitation of individuals or use of individual sexual activity for staff entertainment or other improper purpose.

(e) Condoning Abuse: Permitting abusive conduct toward an individual by any other staff, individual, or person; and

(f) Statutory Terms of Abuse: As defined in ORS 430.735: any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury, sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult, and neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

(3) At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees are expected to use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. Abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designed as self-defense is carried beyond what is necessary under the cir-

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cumstances to protect the individual or other persons from further violence or assault, that conduct then becomes abuse.

Stat. Auth: ORS 179.040, 409.010, 409.050.

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1987, f. & ef. 4-9-87; MHD 12-1988(Temp), f. & cert. ef. 9-7-88; MHD 1-1989, f. & cert. ef. 2-23-89; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 2-1996, f. & cert. ef. 1-12-96; Renumbered from 309-116-0015, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0040

Reporting Requirements

(1) Oregon Statute requires mandatory reports and investigations of allegations of abuse of individuals with disabilities. Therefore, any person who has reasonable cause to believe that an incident of abuse has occurred to an individual residing at a state hospital or residential training center will immediately report the incident according to the procedures set forth in the applicable state hospital or residential training center policy on abuse reporting.

(2) Any person participating in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).

(3) The identity of the person reporting alleged abuse is confidential. The Department or OIT will reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protective services for the individual, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

Stat. Auth: ORS 179.040, 409.010, 409.050.

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0050

Preliminary Procedures

(1) Once a report of alleged abuse is made, the following steps will be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:

(a) No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent will notify the Office of Investigations and Training (OIT) of the report of alleged abuse. OIT will determine whether the allegation, if true, would fit within the definition of abuse. This determination will be made in consultation with the Superintendent. The determination must be made within 24 hours of receipt of the report of abuse;

(b) If the allegation is determined to not fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;

(c) The Superintendent with OIT will further ensure that if the allegation meets the definition of child abuse under ORS 419B.005, or elder abuse under ORS 124.050 it has been reported to the appropriate agency.

(2) Immediately and no later than 24 hours after determining that the allegation comes within the definition of abuse under this policy or other applicable laws, the Superintendent will:

(a) Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal or other services necessary to prevent further abuse;

(b) Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;

(c) Make a report to any other appropriate agencies, e.g., State Office for Children, Adults and Families (CAF) (formerly State Office for Services to Children and Families) or Seniors and People with Disabilities (SPD) or Office of Mental Health and Addiction Services (OMHAS).

(d) Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that will be used to investigate and resolve the matter; as well as the facility's responsibility to provide appropriate protective services;

(e) Contact the Administrator of the Department if the individual has sustained serious injury.

Stat. Auth: ORS 179.040, 409.010, 409.050.

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0030, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0060

Investigation by the Office of Investigations and Training

(1) Investigation of allegations of abuse will be thorough and unbiased. An investigation of the allegation will be conducted by the Office of Investigations and Training (OIT).

(2) OIT will conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT will also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.

(3) All records necessary for the investigation will be available to OIT for inspection and copying. OIT will collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs and videos.

(4) If the facts in the case are disputed and a law enforcement agency does not produce an investigation report, OIT will determine the manner and methods of conducting the investigation.

(5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also perform its own investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Stat. Auth: ORS 179.040, 409.010, 409.050.

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 5-1998, f. 6-26-98, cert. ef. 7-1-98; Renumbered from 309-116-0040, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0070

Abuse Investigation Report

(1) OIT will complete its investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation unless other laws or regulations require a shorter time frame. The investigation must be complete within 30 calendar days unless the Administrator grants an extension. The Administrator may grant an extension when a key party is unavailable, new evidence is discovered, the investigation is complex (e.g. large numbers of witnesses need to be interviewed, taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required) or for some other mitigating reason. The Administrator will specify the length of the extension.

(2) The Superintendent along with OIT is responsible for reviewing the OIT and/or law enforcement investigation report. The Superintendent and OIT will also review and discuss any other relevant reports or information.

(3) OIT will determine whether the evidence does or does not substantiate the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Administrator grants an extension for some other mitigating reason. Any determination not made within the 15-day period must be made as soon as reasonably possible thereafter.

(4) Once this review is complete, a final report will be prepared by OIT, which includes:

(a) A statement of the alleged incident being investigated, including the date(s), location(s) and time(s);

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, inconclusive or not substantiated;

(e) A plan of action necessary to prevent further abuse of the individual;

(f) Any additional corrective action required by the hospital or residential training center and deadlines for the completion of these actions;

(g) A list of any notices made to licensing agencies;

(h) The name and title of the person completing the report; and

(i) The date it is written.

(5) If the allegation of abuse is substantiated, the Superintendent will direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources is involved, as necessary to comply with laws related to employee rights, additional investigation may be conducted.

(6) If the allegations are found to be inconclusive; the Superintendent may request a review by the Human Resources Department to determine

ADMINISTRATIVE RULES

the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.

(7) The Superintendent will ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.

(8) The Superintendent will ensure that a copy of the law enforcement investigation report is forwarded to OIT.

Stat. Auth: ORS 179.040, 409.010, 409.050.
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0050, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0080

Disclosure of Investigation Report and Related Documents

(1) Investigation Reports prepared by OIT are subject to the following:

(a) Portions of the abuse investigation report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR 160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.

(b) Notwithstanding subsection (a) of this rule, the Department and OIT will make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department and OIT will also make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).

(c) Persons or entities receiving confidential information pursuant to this rule must maintain the confidentiality of the information and may not redisclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(d) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.

(2) The OIT report will be disclosed by OIT or the Superintendent to:

(a) The Administrator of the Department; and

(b) Any person designated by the Superintendent for purposes related to the proper administration of the institution or center such as assessing patterns of abuse or to respond to personnel actions and may be disclosed in the Superintendent's discretion;

(c) The individual involved;

(d) The guardian of an adjudicated incapacitated person; and

(e) The person or persons who allegedly abused the individual.

(3) Copies of all reports will be maintained by the Superintendent in a place separate from personnel files of employees. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.

Stat. Auth: ORS 179.040, 409.010, 409.050.
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0060, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0090

Consequences of Abuse

(1) All persons will be subject to appropriate action if found responsible for:

(a) Abusing an individual;

(b) Failing to report an alleged incident of abuse; or

(c) Refusing to give information or giving untruthful information during an investigation of alleged abuse.

(2) Any discipline of an employee as a result of the above-described conduct must be in conformance with any applicable standards contained in state law or in a Collective Bargaining Agreement.

(3) Any employee dismissed for violating the abuse policy will not be rehired in any capacity, nor will the person be permitted to visit or otherwise have contact with individuals in any manner.

(4) Any volunteer found violating the abuse policy may be denied visitation or any other contact with individuals.

(5) Any contractor found violating the abuse policy will be at risk of immediate termination of the contract. Any employee of the contractor found in violation of the abuse policy may be excluded from the grounds and may be subject to appropriate disciplinary action by his or her employer.

(6) Any visitor found in violation of the abuse policy may be excluded from the grounds and will be subject to other appropriate actions as determined by the Superintendent.

(7) Any employee, volunteer, contractor, contractor's employee, or visitor may be subject to criminal prosecution depending on the outcome of any allegation referred to law enforcement for investigation.

(8) Any staff found to have violated the abuse policy will be reported to any appropriate professional licensing or certification boards or associations; and is at risk of sanctions imposed by such a body.

Stat. Auth: ORS 179.040, 409.010, 409.050.
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0070, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0100

Notice of Abuse Policy

(1) Each individual must be informed upon admission and his or her guardian, if any, or his or her family will also be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.

(2) A clear and simple statement of the title and number of this policy and how to seek advice about its content will be prominently displayed in areas frequented by individuals at each state hospital and residential training center.

(3) All staff will be provided a copy of this rule, either at the commencement of their employment, and/or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.

(4) A summary of this policy will be posted in all state hospitals and residential training centers in areas regularly frequented by visitors and in a manner designed to notify visitors of the policy. Copies of the complete policy will be provided to visitors upon request.

Stat. Auth: ORS 179.040, 409.010, 409.050.
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0080, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0110

Retaliation

(1) No state hospital or residential training center staff or other person will retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

(2) Any state hospital or residential training center staff or other person who retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, will be subject to a penalty of up to \$1,000, notwithstanding any other remedy provided by law.

Stat. Auth: ORS 179.040, 409.010, 409.050.
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0090, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

410-011-0120

Quality Assurance Review

(1) Each of the State Hospitals and Residential Training Centers will report on critical indicators, identified by the Department; and on quality improvement activities undertaken to improve any identified issues.

(2) These reports must be provided to the Department monthly.

(3) Representatives from each State Hospital or Training Center and OIT will meet quarterly with the Administrators of the Department, or designee. They will regularly review quality indicators and any other Department generated information regarding the abuse and neglect system in State Hospitals and Training Centers.

(4) The Department must make such information part of any quality improvement activities of the Department.

Stat. Auth: ORS 179.040, 409.010, 409.050.
Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735 - 430.765
Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0100, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06

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Adm. Order No.: OMAP 61-2005

Filed with Sec. of State: 11-29-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 11-1-05

Rules Amended: 410-121-0190, 410-122-0190, 410-136-0420, 410-140-0320, 410-140-0400, 410-146-0100

Rules Repealed: 410-132-0140

ADMINISTRATIVE RULES

Subject: The AI/AN, Pharmacy, Private Duty Nursing, Medical Transportation and Visual Services Programs administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to certain clients. OMAP amended OARs 410-121-0190, 410-122-0190, 410-136-0420, 410-140-0320, 410-140-0400, 410-146-0100, and Repealed 410-132-0140 to delete any references to "Type of Service" (TOS) on claim forms. Under the Health Insurance Portability and Accountability Act (HIPAA) - Administrative Simplification Transactions and Code sets, TOS no longer exists and needed to be removed from administrative rules.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0190

Clozapine Therapy

(1) Clozapine is covered only for the treatment of clients who have failed therapy with at least two anti-psychotic medications. Clozapine Supervision is the management and record keeping of clozapine dispensings as required by the manufacturer of clozapine.

(2) Clozapine supervision:

(a) Pharmacists are to bill for Clozapine Supervision by using code 90862, adding TC modifier.

(b) Providers billing for clozapine supervision must document all of the following:

(A) Exact date and results of White Blood Counts (WBCs), upon initiation of therapy and at recommended intervals per the drug labeling;

(B) Notations of current dosage and change in dosage;

(C) Evidence of an evaluation at intervals recommended per the drug labeling requirements approved by the FDA;

(D) Dates provider sent required information to manufacturer.

(E) Only one provider, either pharmacist or physician, may bill per week per client;

(F) Limited to five units per 30 days per client;

(G) An ICD-9 diagnosis must be shown on the CMS-1500 or 837P. The diagnosis code must be shown to the 5th digit on the CMS-1500, OMAP 505, or the 837P.

(3) Drug Products — The information required on the 5.1 Universal Claim Form must be included in the billing. The actual drug product may be billed electronically or submitted on the 5.1 Universal Claim Form;

(4) Venipuncture — If the pharmacy performs venipuncture, bill for that procedure on a CMS-1500 or 837P. Use Procedure Code36415.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 17-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 45-2002, f. & cert. ef. 10-1-02; OMAP 20-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05

410-122-0190

Miscellaneous Durable Medical Equipment and Supplies

(1) When necessary, durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) providers must contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) Healthcare Common Procedure Coding System (HCPCS) Unit to obtain proper billing codes for DMEPOS items.

(2) A HCPCS code identifies the durable medical equipment, prosthetics, orthotics, and/or supplies (DMEPOS) being billed.

(3) Documentation must support that HCPCS codes are correct.

(4) Proper HCPCS codes must be used regardless of fee schedule allowables.

(5) Coverage criteria for code E1399:

(a) Code E1399 includes but is not limited to use for the following:

(A) Walker gliders — Not covered for clients in a nursing facility (NF);

(B) Oxymiser cannula — Not covered for clients in a NF;

(C) Hydraulic bathtub lift — Not covered for clients in a NF;

(D) Heavy-duty or extra-wide rehab shower/commode chair — Not covered for clients in a NF.

(b) Code E1399 may be used for gait belts when the:

(A) Client is 60 pounds or greater; and

(B) Care provider is trained in the proper use; and

(C) Client meets one of the following criteria:

(i) The client may be able to walk independently, but needs a minor correction of ambulation; or

(ii) The client needs minimal or standby assistance to walk alone; or

(iii) The client requires assistance with transfer.

(c) Documentation of medical appropriateness from the prescribing practitioner must:

(A) Be kept on file by the DMEPOS provider; and

(B) Include documentation that the care provider is trained in proper use.

(6) Table 122-0190

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 9-1993, f. & cert. ef. 4-1-93; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 54-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05

410-136-0420

Emergency Medical Transportation Procedure Codes

Ambulance Service – Refer to the supplemental guide for billing instructions:

(1) Basic Life Support (BLS) — Bill using the following procedure codes:

(a) A0429 — Ambulance service, BLS, emergency transport (BLS-emergency);

(b) A0425 — Ground mileage, per statute mile;

(c) A0424 — Extra ambulance attendant, ALS or BLS (requires medical review).

(2) Advanced Life Support (ALS) — Bill using the following procedure codes:

(a) A0427 — Ambulance service, ALS, emergency transport, level 1 (ALS1-emergency);

(b) A0433 — Ambulance service, ALS, emergency transport, level 2 (ALS2-emergency);

(c) A0425 — Ground mileage, per statute mile;

(d) A0424 — Extra ambulance attendant, ALS or BLS (requires medical review).

(3) Neonatal Intensive Care — Bill using the following procedure codes:

(a) A0225 — Ambulance service, neonatal transport, base rate, emergency transport, one-way;

(b) A0425 — Ground mileage, per statute mile.

(4) Air Ambulance — Bill using the following procedure codes:

(a) A0430 — Ambulance service, conventional air services, transport, one-way (fixed wing);

(b) A0431 — Ambulance service, conventional air services, transport, one-way (rotary wing).

(5) Aid Call — Bill procedure code T2006 for aid call.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 12-1993, f. 4-30-93, cert. ef. 5-1-93; HR 30-1993, f. & cert. ef. 10-1-93; HR 9-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1996(Temp), f. & cert. ef. 7-1-96; HR 25-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 33-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 14-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 55-2002, f. & cert. ef. 10-1-02; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05

410-140-0320

Radiological Services

Radiological Services are covered within scope of practice of an optometrist or an ophthalmologist. Bill the most appropriate CPT and modifier codes.

Stat. Auth.: ORS 184.750 & 184.770

Stats. Implemented: ORS 414.065

Hist.: HR 15-1992, f. & cert. ef. 6-1-92; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05

410-140-0400

Contractor Services

(1) The Office of Medical Assistance Programs (OMAP) contracts with SWEEP Optical Laboratories to provide vision materials and supplies. Order forms can be obtained from SWEEP Optical. A copy of the order form is included, for your information in the Visual Services provider guide. It is the responsibility of the requesting provider to check client eligibility prior to mailing or faxing an order to the Contractor. Written orders should be mailed or faxed to SWEEP Optical using the address and fax number shown in the provider guide. Orders may not be given over the phone. A phone number is listed in the provide guide for order inquiries or general information.

(2) Clients may choose any frame regardless of category listed (i.e. women may choose "Girls" frames).

(3) Contractor responsibilities:

ADMINISTRATIVE RULES

(a) Turn-around time shall be seven calendar days from receipt of the order by the contractor until delivery to the ordering provider;

(b) Ordering provider must be notified within two days of receipt of order whenever there is a delay. Delayed orders must be delivered within a reasonable time;

(c) Document the reason for delay and the date the ordering provider was notified;

(d) Provide the order as specified by the ordering provider;

(e) Contractor must pay for postage via US mail or UPS for all returned orders which are not to specifications of the order or that are damaged in shipping;

(f) Contractor will not accept phone orders for the initial orders. Contractor must accept phone calls or faxed messages if orders are not to specifications and must begin remaking the product before receiving the materials not to specifications. The ordering provider must return the product to the contractor with a note stating the problem and date contact was made with the contractor to remake the order.

(4) Neither the Contractor nor OMAP are responsible for expenses incurred due to "doctor's error" or "re-do's."

(5) Eyeglass cases are to be included with every frame. Cases will not be included in orders for only lenses, temples or frame fronts.

(6) Contractor may use the date of order as the date of service (DOS) but may not bill OMAP until the order has been completed and shipped.

(7) Contractor must bill OMAP using HCPCS Codes listed in the contract agreement. Payment will be at contracted rates. Refer to Supplemental Information, found on OMAP's website, for billing instructions.

(8) Contractor will provide display frames to the ordering provider at a cost not to exceed the contract cost.

(9) All brands of contacts will be available through the Contractor. When requesting contacts, include the brand in addition to the prescription. The Contractor cannot mail contacts directly to the client. All contacts, including replacement lenses, must be dispensed to the client by the Ophthalmologist or Optometrist.

(10) Unisex frame styles for men, women, girls or boys are available through the Contractor.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 37-1992, f. & cert. ef. 12-18-92, Renumbered from 461-018-0300; HR 15-1994, f. & cert. ef. 3-1-94; HR 5-1995, f. & cert. ef. 3-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 44-2001, f. 9-24-01 cert. ef. 10-1-01; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05

410-146-0100

Vaccines for Children (VFC)

(1) American Indian/Alaska Native (AI/AN) Health Care Facilities are eligible under the Memorandum of Agreement (MOA) for reimbursement for the administration of vaccines. These services are billed on a CMS-1500 or 837P using diagnoses that meet national coding standards and the appropriate encounter code. Refer to Supplemental Information, found on OMAP's website, for billing instructions.

(2) The Vaccines for Children (VFC) Program was implemented by the Office of Medical Assistance Programs (OMAP) on April 1, 1996. Under this federal program certain immunizations are free for clients ages 0 through 18. For more information on how to enroll for the VFC Program, call the Oregon Health Division.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 61-2005, f. 11-29-05, cert. ef. 12-1-05

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Adm. Order No.: OMAP 62-2005

Filed with Sec. of State: 11-29-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 11-1-05

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, having temporarily amended 410-141-0520 to reference the October 1, 2003 Prioritized List that incorporate the April 1, 2005 and October 1, 2005 technical changes, permanently amended the rule. The October 1, 2005 technical changes are effective retroac-

tively for dates-of-service October 1, 2005 through December 31, 2005.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520

Prioritized List of Health Services — Effective Retroactively, for Services Rendered on or after October 1, 2005 and through December 31, 2005

(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 the HSC. The HSC maintains the most current list on the HSC website (http://www.ohpr.state.or.us/hsc/index_hsc.htm) or, for a hardcopy, contact the Office of Health Policy and Research. This rule incorporates by reference the October 1, 2003 Prioritized List with technical revisions effective April 1, 2004, October 1, 2004, April 1, 2005 and October 1, 2005, 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 October 1, 2003 Prioritized List with technical revisions effective April 1, 2004, October 1, 2004, April 1, 2005 and October 1, 2005, is in effect and condition/treatment pairs through line 546 are funded.

[ED. NOTE: Lists referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05

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Adm. Order No.: OMAP 63-2005

Filed with Sec. of State: 11-29-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Amended: 410-120-1295

Rules Repealed: 410-120-1295(T)

Subject: The General Rules program administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. OMAP permanently amended OAR 410-120-1295 to reference the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered October 1, 2005 through December 31, 2005. This document is necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and is referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients. The statute is based on the budget period that coordinates with the managed care and OMAP contracts.

Rules Coordinator: Darlene Nelson—(503) 945-6927

ADMINISTRATIVE RULES

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:

(A) 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;

(B) 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)(A) and for outpatient service rates for subsection (3)(b)(B), 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.

(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

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Adm. Order No.: OMAP 64-2005

Filed with Sec. of State: 11-29-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Amended: 410-147-0365

Subject: The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) Services program rules govern the Office of Medical Assistance Programs' (OMAP) payments for services pro-

vided to certain clients. Based upon negotiations with the Centers for Medicare and Medicaid Services (CMS) that resulted in substantial changes to the State Plan Amendment, OMAP temporarily amended OAR 410-147-0365 to change the Alternate Payment Methodology (APM) calculation to a cost-based OB delivery encounter rate. This is to permanently amend the rule.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0365

Independent Rural Health Clinic (RHC) Alternate Payment Methodology (APM) for Obstetrics (OB) Care Delivery Procedures

(1) A Medicare certified independent RHC, as defined below, may be eligible for an obstetrics (OB) alternate payment methodology (APM) encounter rate for delivery procedures. The OB APM delivery encounter rate includes additional OB delivery-related costs incurred by a clinic as a cost-based payment in addition to the Prospective Payment System (PPS) medical encounter rate. The OB APM is contingent, and becomes effective, upon federal approval of the State Plan Amendment. The intent of the OB APM is to maintain access to OB care, including delivery services, in frontier and remote rural areas and to compensate eligible clinics for professional costs uniquely associated with OB care, not to exceed 100% of reasonable cost.

(2) To be eligible for the OB APM delivery encounter rate, a Medicare certified independent RHC must meet all Office of Medical Assistance Programs (OMAP) requirements applicable to an RHC, qualify as either "frontier" or "remote rural" as defined in section (2)(a) and (b) of this rule, be located in a service area with unmet medical need defined in section (2)(c), and must request to participate in writing pursuant to participation requirements specified in sections (3) and (5).

(a) Frontier RHC is defined as located in a frontier county as designated by the Oregon Office of Rural Health;

(b) Remote rural RHC is defined as located in a remote rural service area as designated by the Oregon Office of Rural Health;

(c) A frontier or remote rural RHC must be located in a service area of unmet medical need as determined by the Oregon Office of Rural Health for the year in which the written request for OB APM was made.

(3) If the frontier or remote rural RHC qualifies under section (2) of this rule and other requirements outlined by OMAP, the clinic must provide OMAP all required documentation necessary to qualify for the OB APM delivery encounter rate.

(a) An eligible RHC must submit a written request to OMAP for the OB APM delivery encounter rate. The RHC is responsible for providing all documentation necessary for OMAP to conduct the calculations described in this rule. Failure to provide necessary documentation with the request to participate may result in a delay of the calculation and effective date of the OB APM delivery encounter rate.

(b) RHCs that meet the requirements in section (2) of this rule prior to Federal approval of the State Plan Amendment (SPA) may bill, using the OB APM delivery encounter rate, effective the date of Federal approval of the SPA provided OMAP has determined the clinic's OB APM delivery encounter rate.

(c) RHCs that meet the requirements in section (2) of this rule after the Federal approval date of the SPA may bill, using the OB APM delivery encounter rate, effective the date OMAP determines the clinic's OB APM delivery encounter rate.

(4) Care status changes:

(a) OMAP reserves the right to request periodic review of utilization, cost reporting and to re-evaluate OB care access including delivery services in a community to determine the continued need to pay an OB APM delivery encounter rate for frontier and remote rural RHCs;

(b) Prior to making any changes in the RHC's status and rates, OMAP will re-evaluate the following:

(A) If OB care access including delivery services in a community has changed;

(B) If the RHC no longer meets the requirements for the OB APM:

(i) An RHC's agreement with the Secretary of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) is terminated; or

(ii) The location of an RHC does not qualify as an unmet medical need service area as determined by the Oregon Office of Rural Health for five consecutive years.

(C) The stability of new providers supplying additional OB care access including delivery services.

(c) OMAP will give the RHC 90 days notice of change in status and rate;

(d) If OMAP determines that an RHC no longer meets the OB APM requirements, the RHC may request, within 30 days from notification, that

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OMAP review any additional supporting documentation regarding the determination.

(5) Determining OB APM Delivery Encounter Rate: The frontier or remote rural RHC requesting an OB APM delivery encounter rate, and meeting the OMAP requirements, will have an OB APM delivery encounter rate which is the sum of a clinic's PPS medical encounter rate and an OB cost-based payment. The OB payment is calculated from costs uniquely associated with OB delivery services and which were not used in the calculation of a clinic's PPS medical encounter rate as outlined in the State Plan, Attachment 4.19B:

(a) Qualification of the OB APM delivery encounter rate is not considered a change of scope;

(b) The Medicare Economic Index (MEI) adjustment, as required by the PPS, will apply to the OB APM delivery encounter rate once established;

(c) OMAP will use the information listed below to determine the eligible RHC's initial OB payment. With the written request for an OB APM delivery encounter rate, both an existing and new clinic must provide:

(A) Total number of delivery encounters;

(B) Malpractice premiums for all physicians and certified nurses performing OB deliveries for the current and next year; and

(C) On-call time coverage.

(d) Delivery encounters include vaginal and cesarean delivery professional services provided by the RHC:

(A) Clinics performing deliveries prior to written request for an OB APM delivery encounter rate must provide the most recent full year of claims data for deliveries; and

(B) Clinics that have not previously provided delivery services must provide a reasonable projection of delivery encounters for the forecasted year;

(C) Clinics with actual or projected delivery encounters less than 100, will have their OB payment calculated using a base number of 100 OB delivery encounters.

(e) OMAP will calculate an additional projected cost of malpractice (liability) premiums to be included in the OB cost-based payment, outside of costs included and which have already been accounted for in the PPS medical encounter rate, as follows:

(A) For both an existing and new clinic, OMAP will calculate malpractice premiums that are based on the average costs for the current and next year based on the date the clinic applies for the OB APM delivery encounter rate, as projected by the RHC's malpractice carrier. Costs are the premiums the clinic or individual actually pays, accounting for any reductions or credits;

(B) For existing clinics, OMAP will determine the malpractice premiums reported for physicians and certified nurses performing OB deliveries when the RHC initially enrolled with OMAP and the PPS medical encounter rate was calculated. Premium amounts used in the initial PPS medical encounter rate calculation will be adjusted by the MEI for each subsequent year of enrollment, up to the year of written request for an OB APM delivery encounter rate. The premium(s) adjusted by MEI is an amount included in the current PPS medical encounter rate;

(C) For new clinics, OMAP will determine the actual malpractice premiums for OB physicians and certified nurses performing OB deliveries for the current year;

(D) OMAP will subtract the premiums calculated in section (5)(e)(B) or (C) of this rule, and accounted for in the calculation of the clinic's PPS medical encounter rate, from the average cost of OB malpractice premiums in section (5)(e)(A), to calculate the projected portion of OB malpractice premiums to be included in calculating the OB payment.

(f) OMAP will calculate the cost of physician on-call time for OB care by multiplying a clinic's adjusted OB on-call hours of coverage by the fixed rate of \$20.00 per hour. A clinic's adjusted OB on-call coverage hours will be calculated as follows:

(A) Reducing total clinic coverage hours per year by the clinic's daily office hours; and

(B) Reduced by physician vacation hours; and

(C) Calculated at 60 percent of adjusted on-call time.

(g) The OB payment will be the sum of the difference of averaged malpractice premiums and current actual premiums in section (5)(e) of this rule, and the cost of on-call coverage in section (5)(f), divided by the total number of OB care delivery encounters in section (5)(d).

(h) The OB APM delivery encounter rate is the sum of the OB payment in section (5)(g) of this rule and the PPS medical encounter rate.

(6) After OMAP has calculated the initial OB APM delivery encounter rate OMAP will inform the RHC.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 18-2005(Temp), f. 3-15-05, cert. ef. 3-18-05 thru 9-1-05; OMAP 26-2005, f. 4-20-05, cert. ef. 6-1-05; OMAP 48-2005(Temp), f. & cert. ef. 9-15-05 thru 2-15-06; OMAP 64-2005, f. 11-29-05, cert. ef. 1-1-06

Adm. Order No.: OMAP 65-2005

Filed with Sec. of State: 11-30-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05, 11-1-05

Rules Amended: 410-120-0000, 410-120-1200, 410-120-1210, 410-121-0147, 410-141-0000, 410-141-0060, 410-141-0070, 410-141-0080, 410-141-0120, 410-141-0160, 410-141-0220

Subject: The General Rules (Division 120) and Oregon Health Plan (OHP-Division 141) programs administrative rules govern the Office of Medical Assistance Programs' payment for services rendered to clients. The proposed amendments for Division 120, 121, and 141 administrative rules relate to changes in coverage based upon the Medicare Modernization Act (MMA) Part D Prescription coverage. MMA is a federal law creating new prescription drug benefits for Medicare eligible individuals effective January 1, 2006 that shifts prescription coverage previously covered under Medicaid to Medicare for fully dual eligible clients. OMAP amended rules as follows: 410-120-0000 and 410-141-0000 to add definitions of fully dual eligible and Medicare Part D; 410-120-1200 to add exclusion of Medicare part D drugs and classes of drugs to the medical assistance programs' exclusions and limitations; 410-120-1210 to add the OHP with limited drug benefit package changes necessary under MMA Part D for the fully dual eligible clients; 410-141-0060 and 410-141-0120 to replace "Dual Eligible" with "Fully Dual Eligible" for consistency with other program rules; 410-141-0070 and 410-121-0147 to add Medicare part D covered drugs to the list of OMAP exclusions.

OMAP filed a second Notice of Proposed Rulemaking for rules 410-120-0000, 410-120-1200, 410-120-1210. These proposed amendments further clarify previously proposed amendments related to changes in coverage based upon MMA, Part D Prescription coverage. Rule 410-120-0000 is further amended to clarify the definition of fully dual eligible to include those fully duals that are not enrolled in a Medicare part D plan. Rule 410-120-1200 is further amended to include related drug cost sharing as a part of the exclusion of Medicare Part D drugs and classes of drugs. Rule 410-120-1210 is further amended to clarify the following: that the Qualified Medicare Beneficiary (QMB) + OHP with limited drug benefit package and the OHP with limited drug benefit package are limited to those who are fully dual eligible for the purposes of Medicare Part D; that Medicare-Medicaid coordination of benefits excludes cost-sharing related to Medicare Part D; that OMAP's coverage includes drugs excluded from Medicare Part D and that are also covered by medical assistance programs; and that are subject to the same limitations applicable to covered prescription drugs. Rule 410-141-0000 is further amended to clarify definitions fully dual eligible and Medicare to be consistent with OAR 410 Division 120. OMAP also made necessary housekeeping corrections to all rules listed.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0000

Acronyms and Definitions

(1) AAA — Area Agency on Aging.

(2) Abuse — Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Office of Medical Assistance Programs (OMAP), or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to OMAP.

(3) Acupuncturist — A person licensed to practice acupuncture by the relevant State Licensing Board.

(4) Acupuncture Services — Services provided by a licensed Acupuncturist within the scope of practice as defined under state law.

(5) Acute — A condition, diagnosis or illness with a sudden onset and which is of short duration.

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(6) Acquisition Cost — Unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(7) Adequate Record Keeping — Documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual Provider rules.

(8) Administrative Medical Examinations and Reports — Examinations, evaluations, and reports, including copies of medical records, requested on the OMAP 729 form through the local Department of Human Services (DHS) branch office or requested or approved by OMAP to establish Client eligibility for a medical assistance program or for case-work planning.

(9) All Inclusive Rate — The nursing facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the Pharmaceutical Services and the Home Enteral/Parenteral Nutrition and IV Services Provider rules, except as specified in OAR 410-120-1340, Payment.

(10) Allied Agency — Local and regional governmental agencies and regional authorities that contract with DHS to provide the delivery of services to covered individual. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging, federally recognized American Indian tribes)

(11) Ambulance — A specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of DHS or the licensing standards of the state in which the Provider is located.

(12) Ambulatory Surgical Center (ASC) — A facility licensed as an ASC by DHS.

(13) American Indian/Alaska Native (AI/AN) — A member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(14) American Indian/Alaska Native clinic — Clinics recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid (CMS).

(15) Ancillary Services — Services supportive of or necessary to the provision of a primary service (e.g., anesthesiology is an ancillary service necessary for a surgical procedure).

(16) Anesthesia Services — Administration of anesthetic agents to cause loss of sensation to the body or body part.

(17) Atypical Provider — Entity able to enroll as a Billing Provider or performing Provider for medical assistance programs related non-health care services but which does not meet the definition of health care Provider for National Provider Identification (NPI) purposes.

(18) Audiologist — A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(19) Audiology — The application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(20) Automated Information System (AIS) — A computer system that provides information on Clients' current eligibility status from the Office of Medical Assistance Programs (OMAP) by computerized phone or Web-based response.

(21) Benefit Package — The package of covered health care services for which the Client is eligible.

(22) Billing Agent or Billing Service — Third party or organization that contracts with a Provider to perform designated services in order to facilitate an EDI transaction on behalf of the Provider.

(23) Billing Provider (BP) — A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from OMAP on behalf of a performing Provider and has been delegated the authority to obligate or act on behalf of the performing Provider.

(24) Buying Up — The practice of obtaining Client payment in addition to the OMAP or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up)

(25) By Report (BR) — Services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent

physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(26) Children, Adults and Families (CAF) — An office within DHS, responsible for administering self-sufficiency and child-protective programs;

(27) Children's Health Insurance Program (CHIP) — A federal and state funded portion of the Oregon Health Plan established by Title XXI of the Social Security Act and administered by OMAP.

(28) Chiropractor — A person licensed to practice chiropractic by the relevant State Licensing Board.

(29) Chiropractic Services — Services provided by a licensed Chiropractor within the scope of practice, as defined under State law and Federal regulation.

(30) Citizen/Alien-Waived Emergency Medical (CAWEM) — Aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency Services for CAWEM are defined in OAR 410-120-1200(3)(e).

(31) Claimant — a person who has requested a hearing.

(32) Client — A person who is currently receiving medical assistance (also known as a Recipient).

(33) Clinical Social Worker — A person licensed to practice clinical social work pursuant to State law.

(34) Contiguous Area — The area up to 75 miles outside the border of the State of Oregon.

(35) Contiguous Area Provider — A Provider practicing in a contiguous area.

(36) Copayments — The portion of a claim or medical, dental or pharmaceutical expense that a Client must pay out of their own pocket to a Provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment)

(37) Cost Effective — The lowest cost health care service or item that, in the judgment of OMAP staff or its contracted agencies, meets the medical needs of the Client.

(38) Current Dental Terminology (CDT) — A listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(39) Current Procedural Terminology (CPT) — The Physicians' Current Procedural Terminology is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care Providers.

(40) Date of Receipt of a Claim — The date on which OMAP receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of Receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(41) Date of Service — The date on which the Client receives medical services or items, unless otherwise specified in the appropriate Provider rules. For items that are mailed or shipped by the Provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(42) Dental Emergency Services — Dental Services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(43) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a Dentist.

(44) Dentist — A person licensed to practice dentistry pursuant to State law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(45) Denturist — A person licensed to practice denture technology pursuant to State law.

(46) Denturist Services — Services provided, within the scope of practice as defined under State law, by or under the personal supervision of a denturist.

(47) Dental Hygienist — A person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(48) Dental Hygienist with Limited Access Certification (LAC) — A person licensed to practice dental hygiene with LAC pursuant to State law.

(49) Department — DHS or its Office of Medical Assistance Programs.

(50) Department of Human Services (DHS) — The Oregon Department of Human Services or any of its programs or offices.

(51) Department Representative — A person who represents the Department in a hearing and presents the Department's position.

(52) Diagnosis Code — As identified in the ICD-CM, the primary diagnosis code is shown in all billing claims, unless specifically excluded

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in individual Provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(53) **Diagnosis Related Group (DRG)** — A system of classification of diagnoses and procedures based on the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

(54) **Durable Medical Equipment (DME) and Medical Supplies** — Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(55) **Electronic Data Interchange (EDI)** — The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, such other format as Oregon DHS will designate.

(56) **EDI Submitter** — The entity that establishes an electronic connection with Oregon DHS to submit or receive an electronic data transaction on behalf of a Provider.

(57) **Electronic Eligibility Verification Service (EEVS)** — Vendors of medical assistance eligibility information that have met the legal and technical specifications of OMAP in order to offer eligibility information to enrolled Providers of OMAP.

(58) **Emergency Department** — The part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(59) **Emergency Medical Services** — (This definition does not apply to Clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(3)(e)(B)). The health care and services provided for diagnosis and treatment of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of both the woman and her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. If an emergency medical condition is found to exist, emergency medical services necessary to stabilize the condition must be provided. This includes all treatment that may be necessary to assure, within reasonable medical probability, that no material deterioration of the patient's condition is likely to result from, or occur during, discharge of the Client or transfer of the Client to another facility.

(60) **Emergency Transportation** — Transportation necessary when a sudden, unexpected Emergency Medical Service creates a medical crisis requiring a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(61) **Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT; also Medichex)** — The Title XIX program of Early and Periodic Screening, Diagnosis and Treatment Services for eligible Clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help OMAP Clients and their parents or guardians effectively use them.

(62) **False Claim** — A claim that a Provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and such inaccurate or misleading information would result, or has resulted, in an overpayment.

(63) **Family Planning** — Services for Clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(64) **Federally Qualified Health Center (FQHC)** — A federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as a FQHC by the Centers for Medicare and Medicaid Services (CMS) upon recommendation of the U.S. Public Health Service.

(65) **Fee-for-Service Provider** — A medical Provider who is not reimbursed under the terms of an OMAP contract with a Prepaid Health Plan (PHP), also referred to as a managed care organization (MCO). A medical Provider participating in a PHP may be considered a Fee-for-Service Provider when treating Clients who are not enrolled in a PHP.

(66) **Fraud** — An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(67) **Fully Dual Eligible** — For the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare Clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by DHS for full medical assistance coverage.

(68) **General Assistance (GA)** — Medical Assistance administered and funded 100% with State of Oregon funds through the Oregon Health Plan.

(69) **Healthcare Common Procedure Coding System (HCPCS)** — A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. OMAP uses HCPCS codes; however, OMAP uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(70) **Health Maintenance Organization (HMO)** — A public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(71) **Hearing Aid Dealer** — A person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(72) **Home Enteral Nutrition** — Services provided in the Client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services Provider rules.

(73) **Home Health Agency** — A public or private agency or organization which has been certified by Medicare as a Medicare Home Health Agency and which is licensed by DHS as a Home Health Agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(74) **Home Health Services** — Part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the Client's home.

(75) **Home Intravenous (IV) Services** — Services provided in the Client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydration fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(76) **Home Parenteral Nutrition** — Services provided in the Client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(77) **Hospice** — a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(78) **Hospital** — A facility licensed by the Office of Public Health Systems as a general hospital which meets requirements for participation in the OHP under Title XVIII of the Social Security Act. Facilities licensed as Special Inpatient Care Facilities under the Office of Public Health System's definition of hospital are not considered hospitals by OMAP for reimbursement purposes; however, effective April 1, 2000, OMAP will reimburse a Special Inpatient Care Facility if the Centers for Medicare and Medicaid has certified the facility for participation in the Medicare Program as a Hospital. Out-of-state hospitals will be considered Hospitals for reimbursement purposes if they are licensed as an acute care or general hospital by the appropriate licensing authority within that state, and if they are enrolled as a Provider of hospital services with the Medicaid agency within that state.

(79) **Hospital-Based Professional Services** — Professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (OMAP 42) report for the Office of Medical Assistance Programs.

(80) **Hospital Laboratory** — A Laboratory providing professional technical Laboratory Services as outlined under Laboratory Services, in a Hospital setting, as either an Inpatient or Outpatient Hospital service whose costs are reported on the Hospital's cost report to Medicare and to OMAP.

(81) **ICD-9-CM** — The ninth revision of the International Classification of Diseases Clinical Modification, including volumes 1, 2, and 3, as revised annually.

(82) **Indian Health Program** — Any Indian Health Service facility, any Federally recognized Tribe or Tribal organization, or any Federally Qualified Health Clinic (FQHC) with a 638 designation.

(83) **Individual Adjustment Request** — Form OMAP 1036 used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(84) **Inpatient** — a hospital patient who is not an Outpatient.

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(85) Inpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an inpatient. (See Hospital Services rules for Inpatient covered services.)

(86) Institutional Level of Income Standards (ILIS) — Three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a Nursing Facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' Home and Community Based Waiver.

(87) Institutionalized — A patient admitted to a Nursing Facility or Hospital for the purpose of receiving nursing and/or hospital care for a period of 30 days or more.

(88) Laboratory — A facility licensed under ORS 438 and certified by the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, DHHS, as qualified to participate under Medicare, to provide Laboratory Services within or a part from a hospital. An entity is considered a Laboratory if materials are derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one Laboratory test, including waived tests for these purposes, it is considered under the Clinical Laboratory Improvement Act (CLIA), to be a Laboratory.

(89) Laboratory Services — Those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a Physician or appropriate licensed practitioner in an office or similar facility, Hospital, or independent Laboratory.

(90) Licensed Direct Entry Midwife — A practitioner licensed by the Oregon Health Division as a Licensed Direct Entry Midwife.

(91) Liability Insurance — Insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability insurance, uninsured and underinsured motorist insurance, homeowner's liability insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(92) Managed Care Organization (MCO) — Contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(93) Maternity Case Management — A program available to pregnant Clients. The purpose of Maternity Case Management is to extend prenatal services to include non-medical services, which address social, economic and nutritional factors. For more information refer to the Medical-Surgical Services rules.

(94) Medicaid — A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by the Department of Human Services.

(95) Medical Assistance Eligibility Confirmation — Verification through the Automated Information System (AIS), an authorized DHS representative, an authorized electronic eligibility vendor (EEVS) or through presentation of a valid Medical Care Identification that a Client has an open assistance case, which includes medical benefits.

(96) Medical Services — Care and treatment provided by a licensed medical Provider directed at preventing, diagnosing, treating or correcting a medical problem.

(97) Medical Transportation — Transportation to or from covered Medical Services.

(98) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an Oregon Health Plan Client or a Provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies which can be safely provided to an OMAP Client or PCM Member in the PHP's or Primary Care Manager's judgment.

(99) Medicare — A federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for inpatient services in a Hospital or skilled Nursing Facility, home health care, and Hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other Medical Services and supplies;

(c) Prescription drug coverage (Part D) — Covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). (See OAR 410, division 121 for limitations)

(100) Medichex for Children and Teens — See Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

(101) National Provider Identification — Federally directed Provider number mandated for use on HIPAA covered transactions; individuals, Provider Organizations and Subparts of Provider Organizations that meet the definition of health care Provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(102) Naturopath — A person licensed to practice naturopathy pursuant to State law.

(103) Naturopathic Services — Services provided within the scope of practice as defined under State law.

(104) Non Covered Services — Services or items for which OMAP is not responsible for payment. Non-covered services are identified in:

(a) OAR 410-120-1200, Medical Assistance Benefits: Excluded Services and Limitations; and

(b) 410-120-1210, Benefit packages;

(c) 410-141-0480, Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) The individual OMAP Provider rules.

(105) Nurse Anesthetist, C.R.N.A. — A registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(106) Nurse Practitioner — A person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to State law.

(107) Nurse Practitioner Services — Services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(108) Nursing Facility — A facility licensed and certified by the DHS Seniors and People with Disabilities as defined in 411-070-0005.

(109) Nursing Services — Health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(110) Nutritional Counseling — Counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(111) Occupational Therapist — A person licensed by the State Board of Examiners for Occupational Therapy.

(112) Occupational Therapy — The functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(113) Office of Medical Assistance Programs (OMAP) — An Office within DHS; OMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP — Title XXI), and several other programs.

(114) Office of Mental Health and Addiction Services (OMHAS) — An Office within the Oregon Department of Human Services administering mental health and addiction programs and services.

(115) Optometric Services — Services provided, within the scope of practice of optometrists as defined under State law.

(116) Optometrist — A person licensed to practice optometry pursuant to State law.

(117) Oregon Medical Professional Review Organization (OMPRO) — OMPRO is the Oregon Professional Review Organization for Medicare and contracts with OMAP to provide Hospital utilization review and other services for the medical assistance programs. A Professional Review

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Organization is an organization established under federal law by the Department of Health and Human Services for the purpose of utilization review and quality assurance.

(118) Oregon Youth Authority (OYA) — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(119) Out-of-State Providers — Any Provider located outside the borders of Oregon:

(a) Contiguous area Providers are those located no more than 75 miles from the border of Oregon;

(b) Non-contiguous area Providers are those located more than 75 miles from the borders of Oregon.

(120) Outpatient — a Hospital patient who:

(a) Is treated and released the same day or is admitted to the Hospital and discharged before midnight and is not listed on the following day's census, excluding a patient who:

(A) Is admitted and transferred to another acute care Hospital on the same day;

(B) Expires on the day of admission; or

(C) Is born in the Hospital.

(b) Is admitted for ambulatory surgery, to a birthing center, a treatment or observation room, or a short-term stay bed;

(c) Receives observation services provided by a Hospital, including the use of a bed and periodic monitoring by Hospital nursing or other staff for the purpose of evaluation of a patient's medical condition for a maximum of 48 hours; or

(d) Receives routine preparation services and recovery for diagnostic services provided in a Hospital Outpatient department.

(121) Outpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an Outpatient. (See Hospital rules for Outpatient covered services)

(122) Overdue Claim — A valid claim that is not paid within 45 days of the date it was received.

(123) Overpayment — Payment(s) made by OMAP to a Provider in excess of the correct OMAP payment amount for a service. Overpayments are subject to repayment to OMAP.

(124) Overuse — Use of medical goods or services at levels determined by OMAP medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(125) Panel — The Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(126) Payment Authorization — Authorization granted by the responsible DHS agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(127) Pharmaceutical Services — Services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(128) Pharmacist — A person licensed to practice pharmacy pursuant to state law.

(129) Physical Capacity Evaluation — An objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(130) Physical Therapist — A person licensed by the relevant State licensing authority to practice physical therapy.

(131) Physical Therapy — Treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(132) Physician — A person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government.

(133) Physician Assistant — A person licensed as a Physician Assistant in accordance with ORS 677. Physician Assistants provide Medical Services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(134) Physician Services — Services provided, within the scope of practice as defined under state law, by or under the personal supervision of a physician.

(135) Podiatric Services — Services provided within the scope of practice of podiatrists as defined under state law.

(136) Podiatrist — A person licensed to practice podiatric medicine pursuant to state law.

(137) Post-Payment Review — Review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(138) Practitioner — A person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(139) Premium Sponsorship — Premium donations made for the benefit of one or more specified Office of Medical Assistance Programs (OMAP) Clients (See 410-120-1390).

(140) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, or mental health organization that contracts with OMAP and/or OMHAS on a case managed, prepaid, capitated basis under the Oregon Health Plan. PHP's may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(141) Primary Care Physician — A Physician who has responsibility for supervising, coordinating and providing initial and primary care to patients, initiating referrals for consultations and specialist care, and maintaining the continuity of patient care.

(142) Primary Care Provider (PCP) — Any enrolled medical assistance Provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified Clients. PCPs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of Medically Appropriate Client care.

(143) Prior Authorization (PA) — Payment Authorization for specified medical services or items given by OMAP staff, or its contracted agencies prior to provision of the service. A Physician referral is not a Prior Authorization.

(144) Prioritized List of Health Services — Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of 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 Prioritized List governs medical assistance programs' health services and benefit packages pursuant to these General Rules (OAR 410-120-0000 et seq. and OAR 410-141-0480 through 410-141-0520).

(145) Private Duty Nursing Services — Nursing services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's Physician to an individual who is not in a health care facility.

(146) Provider — An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing Provider, or bills, obligates and receives reimbursement on behalf of a performing Provider of services, also termed a Billing Provider. The term Provider refers to both Performing Providers and Billing Providers unless otherwise specified.

(147) Provider Organization — a group practice, facility, or organization that is:

(a) An employer of a Provider, if the Provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the Provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the Provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with DHS, and payments are made to the group practice, facility or organization.

(e) If such entity solely submits billings on behalf of Providers and payments are made to each Provider, then the entity is an agent. (See Subparts of Provider Organization)

(148) Public Health Clinic — A clinic operated by county government.

(149) Public Rates — The charge for services and items that Providers, including Hospitals and Nursing Facilities, made to the general public for the same service on the same date as that provided to OMAP Clients.

(150) Qualified Medicare Beneficiary (QMB) — A Medicare beneficiary, as defined by the Social Security Act and its amendments.

(151) Qualified Medicare and Medicaid Beneficiary (QMM) — A Medicare Beneficiary who is also eligible for OMAP coverage.

(152) Radiological Services — Those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed

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practitioner in an office or similar facility, hospital, or independent radiological facility.

(153) Recipient — A person who is currently eligible for medical assistance (also known as a Client).

(154) Recoupment — An accounts receivable system that collects money owed by the Provider to OMAP by withholding all or a portion of a Provider's future payments.

(155) Referral — The transfer of total or specified care of a Client from one Provider to another. As used by OMAP, the term Referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of Clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or OMAP.

(156) Remittance Advice (RA) — The automated notice a Provider receives explaining payments or other claim actions. It is the only notice sent to Providers regarding claim actions.

(157) Request for Hearing — A clear expression, in writing, by an individual or representative that the person wishes to appeal a Department decision or action and wishes to have the decision considered by a higher authority.

(158) Retroactive Medical Eligibility — Eligibility for medical assistance granted to a Client retroactive to a date prior to the Client's application for medical assistance.

(159) Sanction — An action against Providers taken by OMAP in cases of Fraud, misuse or Abuse of OMAP requirements.

(160) School Based Health Service — A health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a Physician or other licensed Practitioner.

(161) Seniors and People with Disabilities (SPD) — An Office of the Oregon Department of Human Services responsible for the administration of programs for seniors and people with disabilities.

(162) Service Agreement — An agreement between the OMAP and a specified Provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified Client. Service Agreements do not preclude the requirement for a Provider to enroll as a Provider.

(163) Sliding Fee Schedule — A fee schedule with varying rates established by a Provider of health care to make services available to indigent and low-income individuals. The Sliding Fee Schedule is based on ability to pay.

(164) Social Worker — A person licensed by the Board of Clinical Social Workers to practice clinical social work.

(165) Speech-Language Pathologist — A person licensed by the Oregon Board of Examiners for Speech Pathology.

(166) Speech-Language Pathology Services — The application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(167) Spend-Down — The amount the Client must pay for medical expenses each month before becoming eligible for medical assistance under the Medically Needy Program. The spend-down is equal to the difference between the Client's total countable income and Medically Needy program income limits.

(168) State Facility — A hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(169) Subparts (of a Provider Organization) — For NPI application, Subparts of a health care Provider Organization would meet the definition of health care Provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(170) Subrogation — Right of the State to stand in place of the Client in the collection of Third Party Resources.

(171) Supplemental Security Income (SSI) — A program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(172) Surgical Assistant — A person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(173) Suspension — A Sanction prohibiting a Provider's participation in DHS medical assistance programs by deactivation of the Provider's OMAP assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(174) Targeted Case Management (TCM) — Activities that will assist the Client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services often provided by Allied Agency Providers.

(175) Termination — A sanction prohibiting a Provider's participation in OMAP's programs by canceling the Provider's OMAP assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by OMAP at the time of termination.

(176) Third Party Resource (TPR) — A medical or financial resource which, under law, is available and applicable to pay for medical services and items for an OMAP Client.

(177) Transportation — See Medical Transportation.

(178) Type A Hospital — A Hospital identified by the Office of Rural Health as a Type A Hospital.

(179) Type B AAA Unit — A Type B Area Agency on Aging funded by Oregon Project Independence (OPI), Title III — Older Americans Act, and Title XIX of the Social Security Act.

(180) Type B Hospital — A Hospital identified by the Office of Rural Health as a Type B Hospital.

(181) Usual Charge (UC) — The lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The Provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The Provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the Provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources are to be considered.

(182) Utilization Review (UR) — The process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(183) Valid Claim — An invoice received by OMAP or the appropriate Department office for payment of covered health care services rendered to an eligible Client which:

(a) Can be processed without obtaining additional information from the Provider of the goods or services or from a Third Party Resource; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(184) Vision Services — Provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; 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 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; 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. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; 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 67-2004, f. 9-14-04, cert. ef. 10-1-04; 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 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-120-1200

Excluded Services and Limitations

(1) Certain services or items are not covered under any program or for any group of eligible Clients. If the Client accepts financial responsibility for a non-covered service, payment is a matter between the Provider and the Client subject to the requirements of OAR 410-120-1280.

(2) The Office of Medical Assistance Programs (OMAP) will make no payment for any expense incurred for any of the following services or items:

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(a) That are not expected to significantly improve the basic health status of the Client as determined by OMAP staff, or its contracted entities (e.g., OMAP's Medical Director, medical consultants, dental consultants or Peer Review Organizations (PROs) also known as Quality Improvement Organizations (QIOs));

(b) That are not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury;

(c) That are determined not medically or dentally appropriate by OMAP staff or authorized representatives, including OMPRO or any contracted utilization review organization.

(d) That are not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his or her scope of practice or licensure;

(e) That are for routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the Client. Examples include exams for employment or insurance purposes;

(f) That are provided by friends or relatives of eligible Clients or members of his or her household, except:

(A) When the friend, relative or household member is a health professional, acting in a professional capacity; or

(B) When the friend, relative or household member is directly employed by the Client under the Department of Human Services (DHS) Seniors & People with Disabilities (SPD) Home and Community Based Waiver or the SPD administrative rules, OAR 411-034-000 through 411-034-0090, governing Personal Care Services covered by the State Plan; or

(C) When the friend, relative or household member is directly employed by the Client under the Children, Adults and Families (CAF) administrative rules, OAR 413-090-0100 through 413-090-0220, for services to children in the care and custody of the Department who have special needs inconsistent with their ages. A family member of a minor Client (under the age of 18) must not be legally responsible for the Client in order to be a Provider of personal care services.

(g) That are for services or items provided to a Client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under OMAP administrative rules;

(h) When the need for purchase, repair or replacement of materials or equipment is caused by adverse actions of Clients to personally owned goods or equipment or to items or equipment that OMAP rented or purchased;

(i) That are related to a non-covered service; some exceptions are identified in the individual Provider rules. If OMAP determines the provision of a service related to a non-covered service is cost-effective, the related medical service may, at OMAP's discretion and with OMAP's Prior Authorization, be covered;

(j) That are considered experimental or investigational, including clinical trials and demonstration projects, or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy;

(k) That are identified in the appropriate program rules including the Hospital rules, Revenue Codes Section, as Non-Covered Services.

(l) That are requested by or for a Client whom OMAP has determined to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services;

(m) That are for copying or preparing records or documents excepting those Administrative Medical Reports requested by the branch offices or OMAP for casework planning or eligibility determinations;

(n) Whose primary intent is to improve appearance;

(o) That are similar or identical to services or items that will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the Client will be essentially the same;

(p) That are for the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence, except as specified by the Prioritized List of Health Services (OAR 410-141-0520).

(q) Items or services which are for the convenience of the Client and are not medically or dentally appropriate;

(r) The collection, processing and storage of autologous blood or blood from selected donors unless a physician certifies that the use of autologous blood or blood from a selected donor is medically appropriate and surgery is scheduled;

(s) Educational or training classes that are not Medically Appropriate (Lamaze classes, for example);

(t) Outpatient social services except Maternity Case Management services and other social services described as covered in the individual Provider rules;

(u) Plasma infusions for treatment of Multiple Sclerosis;

(v) Post-mortem exams or burial costs, or other services subsequent to the death of a Client;

(w) Radial keratotomies;

(x) Recreational therapy;

(y) Telephone calls, including but not limited to telephone conferences between physicians or between a physician or other practitioner and a Client or representative of the Client, except for telephone calls for the purpose of tobacco cessation counseling, as described in OAR 410-130-0190, and Maternity Case Management as described in OAR 410-130-0587;

(z) Transsexual surgery or any related services or items;

(aa) Weight loss programs, including, but not limited to Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss;

(bb) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered;

(cc) Immunizations prescribed for foreign travel;

(dd) Services that are requested or ordered but not provided (i.e., an appointment which the Client fails to keep or an item of equipment which has not been provided to the Client);

(ee) DUII-related services already covered by the Intoxicated Driver Program Fund as directed by ORS 813.270(1) and (5);

(ff) Transportation to meet a Client's personal choice of a Provider;

(gg) Pain center evaluation and treatment;

(hh) Alcoholics Anonymous (AA) and other self help programs;

(ii) Medicare Part D covered prescription drugs or classes of drugs, and any cost sharing for those drugs, for Medicare-Medicaid Fully Dual Eligible Clients, even if the Fully Dual Eligible Client is not enrolled in a Medicare Part D plan. See OAR 410-120-1210 for Benefit Package.

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, Renumbered from 461-013-0030; 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 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; 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 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-120-1210

Medical Assistance Benefit Packages and Delivery System

(1) Some medical assistance Clients have limited benefits. The text in the box marked "Benefit Package Messages," on the Medical Care Identification, describe the package of medical benefits the Recipient is eligible to receive.

(2) Names of the Office of Medical Assistance Programs (OMAP) Benefit Packages, effective February 1, 2003, and the Clients eligible to receive the various packages, are identified as follows:

(a) The Oregon Health Plan (OHP) Plus Benefit Package is available to Clients who are categorically eligible for medical assistance as defined in federal regulations and in the OHP waiver granted on October 15, 2002. A Client is categorically eligible for medical assistance if he or she is eligible under a mandatory, selected, optional Medicaid program or the Children's Health Insurance Program and is also within the income and other eligibility criteria adopted by the Department of Human Services (DHS);

(b) The OHP Standard Benefit Package is available to Clients eligible for OHP through the Medicaid expansion waiver granted on October 15,

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2002. These Clients are adults and childless couples who are also within the income and other eligibility criteria adopted by DHS. The Department identifies these Clients through the program acronym, OHP-OPU;

(c) Qualified Medicare Beneficiary (QMB)-Only Clients are Medicare beneficiaries who have limited income but do not meet the income standard for full medical assistance coverage. QMB Clients have coverage through Medicare Parts A and B for most covered services;

(d) Qualified Medicare Beneficiary (QMB) + OHP with limited drug Clients covered by the QMB-OHP with limited drug Benefit Package are Medicare beneficiaries that have met the income standard and other eligibility criteria adopted by DHS for full medical assistance coverage, and who are Fully Dual Eligible for purposes of Medicare Part D; DHS identifies these Clients through the Benefit Package identifier BMM;

(e) Clients covered by the OHP with limited drug Benefit Package are Medicare beneficiaries that have met the income standard and other eligibility criteria adopted by (DHS) for full medical assistance coverage, and who are Fully Dual Eligible for purposes of Medicare Part D; DHS identifies these Clients through the Benefit Package identifier BMD;

(f) The Citizen/Alien-Waived Emergency Medical (CAWEM) Clients are certain eligible, non-qualified aliens that are not eligible for other Medicaid programs pursuant to Oregon Administrative Rules (OAR) 461-135-1070. The Medical Care Identification that the Client is issued indicates coverage. The CAWEM Benefit Package is limited to services listed in OAR 410-120-1210(3)(e).

(3) The benefit limitations and exclusions listed here are in addition to those described in OAR 410-120-1200 and in individual program Provider rules. The benefits and limitations included in each OHP benefit package follow:

(a) OHP Plus coverage includes:

(A) Services above the funding line on the Health Services Commission's (HSC) Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520);

(B) Ancillary services (OAR 410-141-0480);

(C) Chemical dependency services provided through local alcohol and drug treatment Providers;

(D) Mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(E) Hospice;

(F) Post Hospital Extended Care benefit, up to a 20-day stay in a Nursing Facility for non-Medicare OMAP Clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires Prior Authorization by Pre-Admission Screening (OAR 411-070-0043), or by the Fully Capitated Health Plan (FCHP) for Clients enrolled in an FCHP;

(G) Cost sharing may apply to some covered services.

(b) OHP Standard benefits adhere to the following provisions:

(A) OHP Standard coverage, subject to sections (B) and (C) of this section includes:

(i) Services above the funding line on the HSC Prioritized List (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services (OAR 410-141-0480);

(iii) Outpatient chemical dependency services provided through local alcohol and drug treatment Providers;

(iv) Outpatient mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post Hospital Extended Care benefit, up to a 20-day stay in a nursing facility for non-Medicare OMAP Clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires Prior Authorization by Pre-Admission Screening (OAR 411-070-0043) or by the Fully Capitated Health Plan (FCHP) for Clients enrolled in an FCHP.

(B) The following services have limited coverage for the OHP Standard benefit package (Refer to the cited OAR chapters and divisions for details):

(i) Selected dental (OAR chapter 410 division 123);

(ii) Selected Durable Medical Equipment and medical supplies (OAR chapter 410, division 122 and 130);

(iii) Selected home enteral/parenteral services (OAR chapter 410, division 148);

(iv) Selected Hospital services (OAR chapter 410, division 125);

(v) Other limitations as identified in individual OMAP program administrative rules.

(C) The following services are not covered under the OHP Standard Benefit Package. Refer to the cited OAR chapters and divisions for details:

(i) Acupuncture services, except when provided for chemical dependency treatment (OAR chapter, 410 division 130);

(ii) Chiropractic and osteopathic manipulation services (OAR chapter 410, division 130);

(iii) Hearing aids and related services (i.e., exams for the sole purpose of determining the need for or the type of hearing aid), (OAR chapter 410, division 129);

(iv) Home Health Services (OAR chapter 410, division 127), except when related to limited EPIV services (OAR chapter 410, division 148);

(v) Non-emergency Medical Transportation (OAR chapter 410, division 136);

(vi) Occupational Therapy services (OAR chapter 410, division 131);

(vii) Physical Therapy services (OAR chapter 410, division 131);

(viii) Private Duty Nursing Services (OAR chapter 410, division 132), except when related to limited EPIV services;

(ix) Speech and Language Therapy services (OAR chapter 410, division 129);

(x) Vision Services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR chapter 410, division 140);

(xi) Other limitations as identified in individual OMAP program administrative rules.

(c) The QMB-Only Benefit Package provides only services that are also covered by Medicare:

(A) Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, but no more than the Medicare allowable;

(B) Providers may bill QMB Clients for services that are not covered by Medicare. Providers may not bill QMB Clients for the deductible and coinsurance amounts due for services that are covered by Medicare.

(d) QMB + OHP with limited drug Benefit Package coverage includes any service covered by Medicare, except that drugs or classes of drugs covered by Medicare Part D Prescription Drug are only covered by Medicare. Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, except as limited in (E) below. This package also covers:

(A) Services above the funding line on the HSC Prioritized List (OAR 410-141-0480 through 410-141-0520);

(B) Mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(C) Chemical dependency services provided through a local alcohol and drug treatment Provider;

(D) Ancillary services (OAR 410-141-0480);

(E) Cost sharing may apply to some covered services, however, cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the Benefit Package;

(F) OMAP will continue to coordinate benefits for drugs covered under Medicare Part B, subject to Medicare's benefit limitations and OMAP Provider rules;

(G) OMAP will cover drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR 410 division 121 for specific limitations). The drugs include but are not limited to:

(i) Benzodiazepines;

(ii) Over-the-Counter (OTC) drugs;

(iii) Barbiturates.

(e) OHP with limited drug Benefit Package for Fully Dual Eligible Clients includes any service covered by Medicare, except that drugs or classes of drugs covered by Medicare Part D Prescription Drug are only covered by Medicare. Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, except as limited in (E) below. This package also covers:

(A) Services above the funding line on the HSC Prioritized List (OAR 410-141-0480 through 410-141-0520);

(B) Mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(C) Chemical dependency services provided through a local alcohol and drug treatment Provider.

(D) Ancillary services (OAR 410-141-0480);

(E) Cost sharing may apply to some covered services, however cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the Benefit Package;

(F) OMAP will continue to coordinate benefits for drugs covered under Medicare Part B, subject to Medicare's benefit limitations and OMAP Provider rules;

(G) OMAP will cover drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to

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applicable limitations for covered prescription drugs (Refer to OAR 410 division 121 for specific limitations). The drugs include but are not limited to:

- (i) Benzodiazepines;
- (ii) Over-the-Counter (OTC) drugs;
- (iii) Barbiturates.

(f) Citizen/Alien-Waived Emergency Medical Assistance (CAWEM) services are limited to:

(A) Emergency labor and delivery services or services to treat emergency medical. CAWEM services are strictly defined by 42 CFR 440.255 (the definition does not apply a prudent layperson standard);

(B) A CAWEM Client is eligible for services only after sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(C) The following services are not covered for CAWEM Clients, even if they are seeking emergency services:

- (i) Prenatal or postpartum care;
- (ii) Sterilization;
- (iii) Family Planning;
- (iv) Preventive care;
- (v) Organ transplants and transplant-related services;
- (vi) Chemotherapy;
- (vii) Hospice;
- (viii) Home Health;
- (ix) Private Duty Nursing;
- (x) Dialysis;
- (xi) Dental Services provided outside of an Emergency Department Hospital setting;

- (xii) Outpatient drugs or over-the-counter products;
- (xiii) Non-emergency Medical Transportation;
- (xiv) Therapy services;
- (xv) Durable Medical Equipment and medical supplies;
- (xvi) Rehabilitation services.

(4) OMAP services are delivered through one of several means:
(a) Prepaid Health Plan (PHP):

(A) These Clients are enrolled in a PHP for their medical, dental and mental health care;

(B) Most non-emergency services are obtained from the PHP or require a referral from the PHP that is responsible for the provision and reimbursement for the medical, dental or mental health service;

(C) Inpatient hospitalization services that are not the responsibility of a Physician Care Organization (PCO) are governed by the Hospital rules (OAR 410 division 125);

(D) The name and phone number of the PHP appears on the Medical Care Identification.

(b) Primary Care Managers:

(A) These Clients are enrolled with a Primary Care Manager (PCM) for their medical care;

(B) Most non-emergency services provided to Clients enrolled with a PCM require referral from the PCM.

(c) Fee-For-Service (FFS):

(A) These Clients are not enrolled in a PHP or assigned to a PCM;

(B) Subject to limitations and restrictions in individual program rules, the Client can receive health care from any OMAP-enrolled Provider that accepts FFS Clients. The Provider will bill OMAP directly for any covered service and will receive a fee for the service provided.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-121-0147

Exclusions and Limitations

The following items are not covered for payment by the Office of Medical Assistance Programs (OMAP):

- (1) Drug Products for diagnosis below the funded line on the Health Services Commission Prioritized List;
- (2) Home pregnancy kits;
- (3) Fluoride for individuals over 18 years of age;
- (4) Expired drug products;
- (5) Drug Products from Non-Rebatable Manufacturers;
- (6) Drug products that are not assigned a National Drug Code (NDC) number, and are not approved by the Federal Drug Administration (FDA);
- (7) Drug products dispensed for Citizen/Alien-Waived Emergency Medical client benefit type;

(8) Desi drugs;

(9) Medicare Part D covered drugs or classes of drugs for fully dual eligible clients;

(10) Drug Products and drug product quantities which do not meet OMAP guidelines.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 34-1993(Temp), f. & cert. ef. 12-1-93; HR 11-1994, f. 2-25-94, cert. ef. 2-27-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 22-1997, f. & cert. ef. 10-1-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-141-0000

Definitions

(1) Action — In the case of a Prepaid Health Plan (PHP):

(a) The denial or limited authorization of a requested covered service, including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by OMAP;

(e) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For an OMAP Member in a single FCHP or MHO Service Area, the denial of a request to obtain covered services outside of the FCHP or MHO's Participating Provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(2) Administrative Hearing — A DHS hearing related to an Action, including a denial, reduction, or termination of benefits which is held when requested by the OHP Client or OMAP Member. A hearing may also be held when requested by an OHP Client or OMAP Member who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(3) Advance Directive — A form that allows a person to have another person make health care decisions when he/she cannot make the decision and tells a doctor that the person does not want any life sustaining help if he/she is near death.

(4) Aged — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities for receipt of medical assistance because of age.

(5) Americans with Disabilities Act (ADA) — Federal law promoting the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service delivery, and facility accessibility.

(6) Alternative Care Settings — Sites or groups of practitioners which provide care to OMAP Members under contract with the PHP. Alternative Care Settings include but are not limited to urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, outpatient surgicenters.

(7) Ancillary Services — Those medical services under the Oregon Health Plan not identified in the definition of a Condition/Treatment Pair under the OHP Benefit Package, but Medically Appropriate to support a service covered under the OHP benefit package. A list of ancillary services and limitations is identified in OAR 410-141-0520, Prioritized List of Health Services, or specified in the Ancillary Services Criteria Guide.

(8) Appeal — A request for review of an "Action" as defined in this section.

(9) Automated Information System (AIS) — A computer system that provides information on the current eligibility status for clients under the Medical Assistance Program.

(10) Blind — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities for receipt of medical assistance because of a condition or disease that causes or has caused blindness.

(11) Capitated Services — Those Covered Services that a PHP or Primary Care Manager agrees to provide for a Capitation Payment under an OMAP Oregon Health Plan contract or agreement.

(12) Capitation Payment:

(a) Monthly prepayment to a PHP for the provision of all Capitated Services needed by OHP Clients who are enrolled with the PHP;

(b) Monthly prepayment to a Primary Care Manager to provide Primary Care Management Services for an OHP Client who is enrolled with the PCM. Payment is made on a per OHP Client, per month basis.

(13) Centers for Medicare and Medicaid Services (CMS) — The federal agency under the Department of Health and Human Services, responsible for approving the waiver request to operate the Oregon Health Plan Medicaid Demonstration Project.

(14) CFR — Code of Federal Regulations.

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(15) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the “Chemical Dependency Placement, Continued Stay, and Discharge Criteria.”

(16) Chemical Dependency Organization (CDO) — a Prepaid Health Plan that provides and coordinates chemical dependency outpatient, intensive outpatient and opiate substitution treatment services as Capitated Services under the Oregon Health Plan. All chemical dependency services covered under the Oregon Health Plan are covered as Capitated Services by the CDO.

(17) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the “Chemical Dependency Placement, Continued Stay, and Discharge Criteria.”

(18) Children’s Health Insurance Program (CHIP) — A Federal and State funded portion of the Medical Assistance Program established by Title XXI of the Social Security Act and administered in Oregon by the Department of Human Services, Office of Medical Assistance Programs (see Medical Assistance).

(19) Children Receiving CAF Child Welfare or OYA Services — Individuals who are receiving medical assistance under ORS 414.025(2)(f), (i), (j), (k) and (o), 418.034, and 418.187 to 418.970. These individuals are generally children in the care and/or custody of Children, Adults and Families Services, Department of Human Services or Oregon Youth Authority who are in placement outside of their homes.

(20) Claim — (1) A bill for services, (2) a line item of a service, or (3) all services for one recipient within a bill.

(21) Clinical Record — The Clinical Record includes the medical, dental, or mental health records of an OHP Client or OMAP Member. These records include the PCP’s record, the inpatient and outpatient hospital records and the ENCC, Complaint and Disenrollment for cause records which may reside in the PHP’s administrative offices.

(22) Cold Call Marketing — Any unsolicited personal contact by a PHP with a Potential Member for the purpose of Marketing as defined in this rule.

(23) Comfort Care — The provision of medical services or items that give comfort and/or pain relief to an individual who has a Terminal Illness. Comfort care includes the combination of medical and related services designed to make it possible for an individual with Terminal Illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness. Comfort Care includes but is not limited to care provided through a hospice program (see Hospice rules), pain medication, and palliative services including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. Comfort Care includes nutrition, hydration and medication for disabled infants with life-threatening conditions that are not covered under Condition/Treatment Pairs. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable Comfort Care is provided consistent with Section 4751 OBRA 1990 — Patient Self Determination Act and ORS 127 relating to health care decisions as amended by the Sixty-Seventh Oregon Legislative Assembly, 1993. Comfort Care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness and intended to prolong life.

(24) Community Mental Health Program (CMHP) — The organization of all services for persons with mental or emotional disorders and developmental disabilities operated by, or contractually affiliated with, a local Mental Health Authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the DHS Office of Mental Health and Addiction Services.

(25) Comorbid Condition — A medical condition/diagnosis (i.e., illness, disease and/or disability) coexisting with one or more other current and existing conditions/diagnoses in the same patient.

(26) Complaint — An OMAP Member’s or OMAP Member’s Representative’s expression of dissatisfaction to a PHP or Participating Provider about any matter other than an Action, as “Action” is defined in this Section.

(27) Community Standard — Typical expectations for access to the health care delivery system in the OMAP Member’s or PCM Member’s community of residence. Except where the Community Standard is less than sufficient to ensure quality of care, OMAP requires that the health care delivery system available to OMAP Members in Prepaid Health Plans and to PCM Members with Primary Care Managers take into consideration the Community Standard and be adequate to meet the needs of OMAP and PCM Members.

(28) Condition/Treatment Pair — Diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9 CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the DHS Office of Mental Health and Addiction Services Medicaid Procedure Codes and Reimbursement Rates, which, when paired by the Health Services Commission, constitute the line items in the Prioritized List of Health Services. Condition/Treatment Pairs may contain many diagnoses and treatments. The Condition/Treatment Pairs are listed in OAR 410-141-0520, Prioritized List of Health Services.

(29) Continuing Treatment Benefit — A benefit for OHP Clients who meet criteria for having services covered that were either in a course of treatment or were scheduled for treatment on the day immediately prior to the date of conversion to the OHP Benefit Package of covered services and that treatment is not covered under the OHP Benefit Package of covered services.

(30) Co-payment — The portion of a covered service that an OMAP Member must pay to a provider or a facility. This is usually a fixed amount that is paid at the time one or more services are rendered.

(31) Contract — The contract between the State of Oregon, acting by and through its Department of Human Services (DHS), Office of Medical Assistance Programs (OMAP) and a Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Physician Care Organization (PCO), or a Chemical Dependency Organization (CDO), or between the Office of Mental Health and Addiction Services (OMHAS) and a Mental Health Organization (MHO) for the provision of covered services to eligible OMAP Members for a Capitation Payment. Also referred to as a Service Agreement.

(32) Covered Services — are Medically Appropriate health services that are funded by the Legislature and described in ORS 414.705 to 414.750; OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System; OAR 410-141-0120, Oregon Health Plan Prepaid Health Plan Provision of Health Care Services; OAR 410-141-0520, Prioritized List of Health Services; and OAR 410-141-0480, Oregon Health Plan Plus Benefit Package of Covered Services; except as excluded or limited under OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients and OAR 410 division 120.

(33) Dentally Appropriate — Services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the Oregon Health Plan Member or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to an OMAP Member.

(34) Dental Care Organization (DCO) — A Prepaid Health Plan that provides and coordinates capitated dental services. All dental services covered under the Oregon Health Plan are covered as Capitated Services by the DCO; no dental services are paid by OMAP on a fee-for-service basis for Oregon Health Plan Clients enrolled with a DCO provider.

(35) Dental Case Management Services — Services provided to ensure that eligible OMAP Members obtain dental services including a comprehensive, ongoing assessment of the dental and medical needs related to dental care of the Member plus the development and implementation of a plan to ensure that eligible OMAP Members obtain Capitated Services.

(36) Dental Emergency Services — Dental services may include but are not limited to severe tooth pain, unusual swelling of the face or gums, and an avulsed tooth.

(37) Dental Practitioner — A practitioner who provides dental services to OMAP Members under an agreement with a DCO, or is a Fee-For-Service Health Care Practitioner. Dental practitioners are licensed and/or certified by the state in which they practice, as applicable, to provide services within a defined scope of practice.

(38) Department of Human Services (DHS) — DHS is made up of three program areas: Children, Adults and Families; Health Services; and Seniors and People with Disabilities. They are supported by the Director’s Office; Administrative Services; and Finance and Policy Analysis. The Office of Medical Assistance Programs and the Office of Mental Health and Addiction Services are part of the Health Services Cluster.

(39) Diagnostic Services — Those services required to diagnose a condition, including but not limited to radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

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(40) Disabled — Individuals who meet eligibility criteria established by the DHS Seniors and People with Disabilities for receipt of Medical Assistance because of a disability.

(41) Disenrollment — The act of discharging an Oregon Health Plan Client from a Prepaid Health Plan's or Primary Care Manager's responsibility. After the effective date of Disenrollment an Oregon Health Plan Client is no longer required to obtain Capitated Services from the Prepaid Health Plan or Primary Care Manager, nor be referred by the Prepaid Health Plan for Medical Case Managed Services or by the Primary Care Manager for PCM Case Managed Services.

(42) Emergency Medical Condition — a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An "Emergency Medical Condition" is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a Health Care Professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence.

(43) Emergency Services — Covered Services furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an Emergency Medical Condition.

(44) Enrollment — Oregon Health Plan Clients, subject to OAR 410-141-0060 — Oregon Health Plan Managed Care Enrollment Requirements, become OMAP Members of a Prepaid Health Plan or PCM Members of a Primary Care Manager that contracts with OMAP to provide Capitated Services. An OHP Client's Enrollment with a PHP indicates that the OMAP Member must obtain or be referred by the PHP for all Capitated Services and referred by the PHP for all Medical Case Managed Services subsequent to the effective date of Enrollment. An Oregon Health Plan Client's Enrollment with a Primary Care Manager indicates that the PCM Member must obtain or be referred by the Primary Care Manager for preventive and primary care and referred by the Primary Care Manager for all PCM Case Managed Services subsequent to the effective date of Enrollment.

(45) Enrollment Area — Client enrollment is based on the client's residential address and zip code. The address is automatically assigned a county code or Federal Information Processing Standard (FIPS) code by the system, which indicates to the DHS worker that Plan(s) are in the area.

(46) Enrollment Year — A twelve-month period beginning the first day of the month of Enrollment of the Oregon Health Plan Client in a PHP and, for any subsequent year(s) of continuous Enrollment, beginning that same day in each such year(s). The Enrollment Year of Oregon Health Plan Clients who re-enroll within a calendar month of Disenrollment shall be counted as if there were no break in Enrollment.

(47) End Stage Renal Disease (ESRD) — End stage renal disease is defined as that stage of kidney impairment that appears irreversible and requires a regular course of dialysis or kidney transplantation to maintain life. In general, 5% or less of normal kidney function remains. If the person is 36 or more months post-transplant, the individual is no longer considered to have ESRD.

(48) Exceptional Needs Care Coordination (ENCC) — A specialized case management service provided by Fully Capitated Health Plans to OMAP Members who are Aged, Blind or Disabled, consistent with OAR 410-141-0405, Oregon Health Plan Prepaid Health Plan Exceptional Needs Care Coordination (ENCC). ENCC includes:

(a) Early identification of those OMAP Members who are Aged, Blind or Disabled who have disabilities or complex medical needs;

(b) Assistance to ensure timely access to providers and Capitated Services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of Capitated Services and discharge planning; and

(e) Aid with coordinating community support and social service systems linkage with medical care systems, as necessary and appropriate.

(49) Family Health Insurance Assistance Program (FHIAP) — A program in which the State subsidizes premiums in the commercial market for uninsured individuals and families with income below 185% of the FPL. FHIAP is funded with federal and states funds through Title XIX, XXI or both.

(50) Family Planning Services — Services for clients of childbearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(51) Fee-for-Service Health Care Providers — Health care providers who bill for each service provided and are paid by OMAP for services as described in OMAP provider rules. Certain services are covered but are not provided by Prepaid Health Plans or by Primary Care Managers. The client may seek such services from an appropriate Fee-For-Service provider. Primary Care Managers provide primary care services on a fee-for-service basis and might also refer PCM Members to specialists and other providers for fee-for-service care. In some parts of the state, the State may not enter into contracts with any managed care providers. OHP Clients in these areas will receive all services from Fee-For-Service providers.

(52) FPL — Federal Poverty Level.

(53) Free-Standing Mental Health Organization (MHO) — The single MHO in each county that provides only mental health services and is not affiliated with a Fully Capitated Health Plan for that service area. In most cases this "carve-out" MHO is a county Community Mental Health Program or a consortium of Community Mental Health Programs, but may be a private behavioral health care company.

(54) Fully Capitated Health Plan (FCHP) — Prepaid Health Plans that contract with OMAP to provide capitated services under the Oregon Health Plan. The distinguishing characteristic of FCHPs is the coverage of hospital inpatient services.

(55) Fully Dual Eligible — For the purposes of Medicare Part D coverage, Medicare Clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by DHS for full medical assistance coverage, including those not enrolled in a Medicare Part D plan.

(56) Grievance System — The overall system that includes Complaints and Appeals handled at the PHP level and access to the state fair hearing process. (Possible subjects for Grievances include, but are not limited to, the quality of care or services provided and aspects of interpersonal relationships such as rudeness of a Provider or employee, or failure to respect the OMAP Member's rights.)

(57) Health Care Professionals — Persons with current and appropriate licensure, certification, or accreditation in a medical, mental health or dental profession, which include but are not limited to: Medical Doctors (including Psychiatrists), Dentists, Osteopathic Physicians, Psychologists, Registered Nurses, Nurse Practitioners, Licensed Practical Nurses, Certified Medical Assistants, Licensed Physicians Assistants, Qualified Mental Health Professionals (QMHPs), and Qualified Mental Health Associates (QMHA's), Dental Hygienists, Denturists, and Certified Dental Assistants. These professionals may conduct health, mental health or dental assessments of OMAP members and provide Screening Services to OHP Clients within their scope of practice, licensure or certification.

(58) Health Insurance Portability and Accountability Act (HIPAA) of 1996 — HIPAA is a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(59) Health Maintenance Unit (HMU) — The OMAP unit responsible for adjustments to enrollments, retroactive Disenrollment and enrollment of newborns.

(60) Health Plan New/Noncategorical Client (HPN) — A person who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet eligibility requirements in OAR 461-136-1100(2), in addition to all other OHP eligibility requirements to become an Oregon Health Plan Client.

(61) Health Services Commission — An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be served.

(62) Hospice Services — A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare and/or accredited by the Oregon Hospice Association, is listed in the Hospice Program Registry, and has a valid provider agreement.

(63) Hospital Hold — A hospital hold is a process that allows a hospital to assist an individual who is admitted to the hospital for an inpatient hospital stay to secure a date of request when the individual is unable to apply for the Oregon Health Plan due to inpatient hospitalization. OHP clients shall be exempted from mandatory enrollment with an FCHP, if clients become eligible through a hospital hold process and are placed in the Adults/Couples category.

(64) Line Items — Condition/Treatment Pairs or categories of services included at specific lines in the Prioritized List of Services developed by the Health Services Commission for the Oregon Health Plan Medicaid Demonstration Project.

(65) Local and Regional Allied Agencies include the following: local Mental Health Authority; Community Mental Health Programs; local DHS offices; Commission on Children and Families; Oregon Youth Authority;

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Department of Corrections; Housing Authorities; local health departments, including WIC Programs; local schools; special education programs; law enforcement agencies; adult and juvenile criminal justices; developmental disability services; chemical dependency providers; residential providers; state hospitals, and other PHPs.

(66) Marketing — Any communication from a PHP to a Medicaid recipient who is not enrolled in that PHP which can reasonably be interpreted as an attempt to influence the recipient:

- (a) To enroll in that particular PHP;
- (b) To either disenroll or not to enroll with another PHP.

(67) Marketing Materials — Any medium produced by, or on behalf of, a PHP that can reasonably be interpreted as intended for Marketing as defined in this rule.

(68) Medicaid — A federal and state funded portion of the Medical Assistance Program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department of Human Services.

(69) Medical Assistance Program — A program for payment of health care provided to eligible Oregonians. Oregon's Medical Assistance Program includes Medicaid services including the OHP Medicaid Demonstration, and the Children's Health Insurance Program (CHIP). The Medical Assistance Program is administered by the Office of Medical Assistance Programs (OMAP), of the Department of Human Services. Coordination of the Medical Assistance Program is the responsibility of the Office of Medical Assistance Programs.

(70) Medical Care Identification — The preferred term for what is commonly called the "medical card." It is a letter-sized document issued monthly to Medical Assistance Program clients to verify their eligibility for services and enrollment in PHPs.

(71) Medical Case Management Services — Services provided to ensure that OMAP Members obtain health care services necessary to maintain physical and emotional development and health. Medical Case Management Services include a comprehensive, ongoing assessment of medical and/or dental needs plus the development and implementation of a plan to obtain needed medical or dental services that are Capitated Services or non-capitated services, and follow-up, as appropriate, to assess the impact of care.

(72) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

- (a) Consistent with the symptoms of a health condition or treatment of a health condition;
- (b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;
- (c) Not solely for the convenience of an Oregon Health Plan Client or a provider of the service or medical supplies; and
- (d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an OMAP Member or PCM Member in the PHP's or Primary Care Manager's judgment.

(73) Medicare — The federal health insurance program for the Aged and Disabled administered by the Centers for Medicare and Medicaid Services under Title XVIII of the Social Security Act.

(74) Medicare HMO — A capitated health plan that meets specific referral lines and contracts with CMS to provide Medicare benefits to Medicare enrollees.

(75) Mental Health Assessment — The determination of an OMAP Member's need for mental health services. A Qualified Mental Health Professional collects and evaluates data pertinent to a Member's mental status, psychosocial history and current problems through interview, observation and testing.

(76) Mental Health Case Management — Services provided to OMAP Members who require assistance to ensure access to benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the OMAP Member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring OMAP Members to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services. ENCC Services are separate and distinct from Mental Health Case Management.

(77) Mental Health Organization (MHO) — A Prepaid Health Plan under contract with the Office of Mental Health and Addiction Services that provides mental health services as capitated services under the Oregon Health Plan. MHOs can be Fully Capitated Health Plans, community mental health programs or private behavioral organizations or combinations thereof.

(78) Non-Capitated Services — Those OHP-covered services which are paid for on a fee-for-service basis and for which a capitation payment has not been made to a PHP.

(79) Non-covered services — Services or items for which the Medical Assistance Program is not responsible for payment. Services may be covered under the Oregon Medical Assistance Program, but not covered under the Oregon Health Plan. Non-covered services for the Oregon Health Plan are identified in:

- (a) OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients;
- (b) Exclusions and limitations described in OAR 410-120-1200; and
- (c) The individual provider administrative rules.

(80) Non-Participating Provider — A provider who does not have a contractual relationship with the Prepaid Health Plan, i.e. is not on their panel of providers.

(81) Office of Medical Assistance Programs (OMAP) — The Office of the Department of Human Services responsible for coordinating Medical Assistance Programs, including the OHP Medicaid Demonstration, in Oregon and the Children's Health Insurance Program (CHIP). OMAP writes and administers the state Medicaid rules for medical services, contracts with providers, maintains records of client eligibility and processes and pays OMAP providers.

(82) Office of Mental Health and Addiction Services (OMHAS) — The Department of Human Services office responsible for the administration of the state's policy and programs for mental health, chemical dependency prevention, intervention, and treatment services.

(83) OMAP Member — An Oregon Health Plan Client enrolled with a Prepaid Health Plan.

(84) Ombudsman Services — Services provided by DHS to Aged, Blind and Disabled Oregon Health Plan Clients by DHS Ombudsman Staff who may serve as the Oregon Health Plan Client's advocate whenever the Oregon Health Plan Client, Representative, a physician or other medical personnel, or other personal advocate serving the Oregon Health Plan Client, is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider under the Oregon Health Plan. Ombudsman Services include response to individual complaints about access to care, quality of care or limits to care; and response to complaints about Oregon Health Plan systems.

(85) Oregon Health Plan (OHP) — The Medicaid demonstration project which expands Medicaid eligibility to eligible Oregon Health Plan Clients. The Oregon Health Plan relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(86) Oregon Health Plan (OHP) Plus Benefit Package — A benefit package available to eligible Oregon Health Plan clients as described in OAR 410-120-1210, Medical Assistance Benefits: Excluded Services and Limitations and in OAR 410-120-0520, Prioritized List of Health Services.

(87) Oregon Health Plan (OHP) Standard Benefit Package — A benefit package available to eligible Oregon Health Plan clients who are not otherwise eligible for Medicaid (including families, adults and couples) as described in OAR 410-120-1210, Medical Assistance Benefits: Excluded Services and Limitations and in OAR 410-141-0520, Prioritized List of Health Services.

(88) Oregon Health Plan Client — An individual found eligible by DHS to receive services under the Oregon Health Plan. The individual is not yet enrolled with a PHP, but may or may not be enrolled with a Primary Care Manager. The OHP categories eligible to enroll in Prepaid Health Plans are defined as follows:

- (a) Temporary Assistance to Needy Families (TANF) are categorically eligible with income under current eligibility rules;
- (b) Children's Health Insurance Program (CHIP) — children under one year of age who have income under 170% FPL and do not meet one of the other eligibility classifications;
- (c) Poverty Level Medical (PLM) Adults under 100% Federal Poverty Level (FPL) are OHP recipients who are pregnant women with income under 100% of FPL;
- (d) PLM Adults over 100% FPL are OHP recipients who are pregnant women with income between 100% and 170% of the FPL;
- (e) PLM children under one year of age have family income under 133% FPL or were born to mothers who were eligible as PLM Adults at the time of the child's birth;
- (f) PLM or CHIP children one through five years of age who have family income under 170% FPL and do not meet one of the other eligibility classifications;
- (g) PLM or CHIP children six through eighteen years of age who have family income under 170% FPL and do not meet one of the other eligibility classifications;

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(h) OHP Adults and Couples are OHP recipients aged 19 or over and not Medicare eligible, with income below 100% FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP Families are OHP recipients, aged 19 or over and not Medicare eligible, with income below 100% of FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) Recipients are OHP Clients who are eligible by virtue of their eligibility under the Oregon General Assistance program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare Eligibles are OHP recipients with concurrent Medicare eligibility with income under current eligibility rules;

(l) AB/AD without Medicare Eligibles are OHP recipients without Medicare with income under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare Eligibles are OHP recipients with concurrent Medicare Part A or Medicare Parts A & B eligibility with income under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare Eligibles are OHP recipients without Medicare with income under current eligibility rules;

(p) CAF Children are OHP recipients who are children with medical eligibility determined by Children, Adults and Families or the Oregon Youth Authority receiving OHP under ORS 414.025(2)(f), (I), (j), (k) and (o), 418.034 and 418.187 to 418.970. These individuals are generally in the care and/or custody of the Children, Adults and Families or the Oregon Youth Authority who are in placement outside of their homes.

(89) Oregon Youth Authority — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(90) Participating Provider — An individual, facility, corporate entity, or other organization which supplies medical, dental, chemical dependency services, or mental health services or medical and dental items and that has agreed to provide those services or items to OMAP Members under an agreement or contract with a PHP and to bill in accordance with the signed agreement or contract with a PHP.

(91) PCM Case Managed Services include the following: Preventive Services, primary care services and specialty services, including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, Rural Health Clinics, Migrant and Community Health Clinics, Federally Qualified Health Centers, County Health Departments, Indian Health Service Clinics and Tribal Health Clinics, Community Mental Health Programs, Mental Health Organizations; inpatient hospital services; and outpatient hospital services except laboratory, X-ray, and maternity management services.

(92) PCM Member — An Oregon Health Plan Client enrolled with a Primary Care Manager.

(93) PHP Coordinator — the DHS OMAP employee designated by OMAP as the liaison between OMAP and the PHP.

(94) Physician Care Organization (PCO) — Prepaid Health Plan that contracts with OMAP to provide partially capitated health services under the Oregon Health Plan. The distinguishing characteristic of a PCO is the exclusion of inpatient hospital services.

(95) Post Hospital Extended Care Benefit — A 20-day benefit for non-Medicare OMAP Members enrolled in a FCHP who meet Medicare criteria for a post-hospital skilled nursing placement.

(96) Post Stabilization Services — covered services, related to an Emergency Medical Condition that are provided after an OMAP Member is stabilized in order to maintain the stabilized condition or to improve or resolve the OMAP Member's condition.

(97) Potential OMAP Member — An OHP client who is subject to mandatory enrollment in managed care, or may voluntarily elect to enroll in a managed care program, but is not yet enrolled with a specific PHP.

(98) Practitioner — A person licensed pursuant to State law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(99) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with OMAP and/or OMHAS on a case managed, prepaid, capitated basis under the Oregon Health Plan. Prepaid Health Plans may be Dental Care Organizations (DCOs), Fully Capitated Health Plans (FCHPs), Mental Health Organizations (MHOs), Physician Care Organizations (PCOs) or Chemical Dependency Organizations (CDOs).

(100) Preventive Services — Those services as defined under Expanded Definition of Preventive Services for Oregon Health Plan clients

in OAR 410-141-0480, The Oregon Health Plan Benefit Package of covered services, and OAR 410-141-0520, Prioritized List of Health Services.

(101) Primary Care Management Services — Primary Care Management Services are services provided to ensure PCM Members obtain health care services necessary to maintain physical and emotional development and health. Primary Care Management Services include a comprehensive, ongoing assessment of medical needs plus the development, and implementation of a plan to obtain needed medical services that are preventive or primary care services or PCM Case Managed Services and follow-up, as appropriate, to assess the impact of care.

(102) Primary Care Manager (PCM) — A physician (MD or DO), nurse practitioner, physician assistant; or naturopath with physician back-ups, who agrees to provide Primary Care Management Services as defined in rule to PCM Members. Primary Care Managers may also be hospital primary care clinics, Rural Health Clinics, Migrant and Community Health Clinics, Federally Qualified Health Centers, County Health Departments, Indian Health Service Clinics or Tribal Health Clinics. The PCM provides Primary Care Management Services to PCM Members for a Capitation Payment. The PCM provides preventive and primary care services on a fee-for-service basis.

(103) Primary Care Dentist (PCD) — A Dental Practitioner who is responsible for supervising, coordinating initial and primary dental care within their scope of practice for OMAP Members. Primary Care Dentists initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(104) Primary Care Provider (PCP) — A practitioner who has responsibility for supervising, coordinating initial and primary care within their scope of practice for OMAP Members. Primary care providers initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of medically or dental appropriate care.

(105) Prioritized List of Health Services — The listing of condition and treatment pairs developed by the Health Services Commission for the purpose of implementing the Oregon Health Plan Demonstration Project. See OAR 410-141-0520, Prioritized List of Health Services, for the listing of condition and treatment pairs.

(106) Proof of Indian Heritage — Proof of Native American and/or Alaska Native descent as evidenced by written identification that shows status as an "Indian" in accordance with the Indian Health Care Improvement Act (P.L. 94-437, as amended). This written proof supports his/her eligibility for services under programs of the Indian Health Service — services provided by Indian Health Service facilities, tribal health clinics/programs or urban clinics. Written proof may be a tribal identification card, a certificate of degree of Indian blood, or a letter from the Indian Health Service verifying eligibility for health care through programs of the Indian Health Service.

(107) Provider — An individual, facility, institution, corporate entity, or other organization which supplies medical, dental or mental health services or medical and dental items.

(108) Quality Improvement — Quality improvement is the effort to improve the level of performance of a key process or processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality Improvement (as used in these rules) includes the goals of quality assurance, quality control, quality planning and quality management in health care where "quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge."

(109) Representative — A person who can make Oregon Health Plan related decisions for Oregon Health Plan Clients who are not able to make such decisions themselves. A Representative may be, in the following order of priority, a person who is designated as the Oregon Health Plan Client's health care representative, a court-appointed guardian, a spouse, or other family member as designated by the Oregon Health Plan client, the Individual Service Plan Team (for developmentally disabled clients), a DHS case manager or other DHS designee.

(110) Rural — A geographic area 10 or more map miles from a population center of 30,000 people or less.

(111) Seniors and People with Disabilities (SPD) — The Cluster within DHS responsible for providing services such as:

(a) Assistance with the cost of long-term care through the Medicaid Long Term Care Program and the Oregon Project Independence (OPI) Program;

(b) Cash assistance grants for persons with long-term disabilities through General Assistance and the Oregon Supplemental Income Program (OSIP); and

(c) Administration of the federal Older Americans Act.

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(112) Service Area — The geographic area in which the PHP has identified in their Contract or Agreement with DHS to provide services under the Oregon Health Plan.

(113) Stabilize — no material deterioration of the Emergency Medical Condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility.

(114) Urgent Care Services — Covered Services that are Medically Appropriate and immediately required in order to prevent a serious deterioration of an OMAP Member's health that results from an unforeseen illness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(115) Terminal Illness — An illness or injury in which death is imminent irrespective of treatment, where the application of life-sustaining procedures or the artificial administration of nutrition and hydration serves only to postpone the moment of death.

(116) Triage — Evaluations conducted to determine whether or not an emergency condition exists, and to direct the OMAP Member to the most appropriate setting for Medically Appropriate care.

(117) Urban — A geographic area less than 10 map miles from a population center of 30,000 people or more.

(118) Urgent Care Services — covered services required in order to prevent a serious deterioration of an OMAP Member's or PCM Member's health that results from an unforeseen illness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(119) Valid Claim — An invoice received by the PHP for payment of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules; and

(c) A Valid Claim means a Claim received by a PHP for payment of Covered Services rendered to an OMAP client which (1) Can be processed without obtaining additional information from the Provider of the service or from a third party; and (2) Has been received within the time limitations prescribed in OHP Rules. A Valid Claim does not include a Claim from a Provider who is under investigation for fraud or abuse, or a Claim under review for Medical Appropriateness. A Valid Claim is synonymous with the federal definition of a Clean Claim as defined in 42 CFR 447.45(b).

(120) Valid Pre-Authorization — A request received by the PHP for approval of the provision of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 13-2002, f. & cert. ef. 4-1-02; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-141-0060

Oregon Health Plan Managed Care Enrollment Requirements

(1) Enrollment of an Oregon Health Plan (OHP) Client, excluding the New/Noncategorical Client (HPN) and Children's Health Insurance Program (CHIP) clients in Prepaid Health Plans (PHPs) shall be mandatory unless exempted from Enrollment by the Department of Human Services (DHS), or unless the OHP Client resides in a Service Area where there is inadequate capacity to provide access to Capitated Services for all OHP Clients through PHPs or Primary Care Managers (PCMs). PHPs include Fully Capitated Health Plans (FCHPs), Dental Care Organizations (DCOs) and Mental Health Organizations (MHOs), Physician Care Organizations (PCOs), and Chemical Dependency Organizations (CDOs).

(2) Enrollment of the New/Noncategorical Client (HPN) and Children's Health Insurance Program (CHIP) Client in PHPs shall be mandatory unless exempted from Enrollment by DHS under the term in 410-141-0060(4). Selection of PHPs in accordance with this rule is a condition of eligibility for HPN and CHIP Clients. If, upon reapplication, an HPN and CHIP Clients do not select PHPs in accordance with this rule, PHPs will be selected for the HPN and CHIP Client by DHS. This selection will be made based on the PHPs in which the HPN and CHIP Clients were previously enrolled.

(3) OHP Clients, except the HPN and CHIP Clients shall be enrolled with PHPs or PCMs according to the following criteria:

(a) Areas with sufficient physical health service capacity through a combination of FCHPs, PCOs, and PCMs shall be called mandatory FCHP/PCO/PCM Service Areas. An OHP Client shall select a FCHP or PCO unless exempted from Enrollment in a FCHP and PCO, in which case they shall choose a PCM in a mandatory FCHP/PCO/PCM Service Area;

(b) Service areas with sufficient physical health service capacity through PCMs alone shall be called mandatory PCM Service Areas. An OHP Client shall select a PCM in a mandatory PCM Service Area;

(c) Service Areas without sufficient physical health service capacity through FCHPs, PCOs and PCMs shall be called voluntary FCHP/PCO/PCM Service Areas. An OHP Client may choose to select a FCHP, PCO or PCM in voluntary FCHP/PCO/PCM Service Areas if the FCHP, PCO or PCM is open for Enrollment, or may choose to remain in the Medicaid Fee-for-Service (FFS) physical health care delivery system;

(d) Service Areas with sufficient dental care service capacity through DCOs shall be called mandatory DCO Service Areas. An OHP Client shall select a DCO in a mandatory DCO Service Area;

(e) Service Areas without sufficient dental care service capacity through DCOs shall be called voluntary DCO Service Areas. An OHP Client may choose to select a DCO in a voluntary DCO Service Area if the DCO is open for Enrollment, or may choose to remain in the Medicaid FFS dental care delivery system;

(f) Service Areas with sufficient mental health service capacity through MHOs shall be called mandatory MHO Service Areas. An OHP Client shall select an MHO in a mandatory MHO Service Area;

(g) Service Areas without sufficient mental health service capacity through MHOs shall be called voluntary MHO Service Areas. An OHP Client may choose to select an MHO in voluntary MHO Service Areas if the MHO is open for Enrollment, or may choose to remain in the Medicaid FFS mental health care delivery system;

(h) When a Service Area changes from mandatory to voluntary, the OMAP Member will remain with their PHP for the remainder of their eligibility period, unless the OMAP Member meets the criteria stated in OAR 410-141-0060(4), or as provided by OAR 410-141-0080.

(4) The following are exemptions to mandatory Enrollment in PHPs which allow OHP Clients, including HPN and CHIP Clients, to enroll with a PCM or remain in the Medicaid FFS delivery systems for physical, dental and/or mental health care:

(a) The OHP Client is covered under a major medical insurance policy, such as a Medicare supplemental policy, Medicare employer group policy or other third party resource (TPR) which covers the cost of services to be provided by a PHP, (excluding dental insurance. An OHP Client shall be enrolled with a DCO even if they have a dental TPR). The OHP Client shall enroll with a PCM if the insurance policy is not a private HMO;

(b) The OHP Client has an established relationship with an OMAP enrolled Practitioner who is not a member of the PHP's Participating Provider panel the OHP Client would be enrolled in, and the PHP cannot negotiate a treatment plan or reimbursement arrangement with the Practitioner that is consistent with the PHP's contracting practices to provide for continuity of care, and it would be detrimental to the health of the OHP Client as determined by DHS to change Practitioners:

(A) When the Practitioner is a Primary Care Practitioner (PCP) enrolled with OMAP as a PCM, the OHP Client shall enroll with this Practitioner as a PCM Member;

(B) Exemptions from mandatory Enrollment in PHPs for this reason may be granted for a period of four months. Extensions may be granted by DHS upon request, subject to review of unique circumstances. A 12-month exemption may be granted if the reason for the exemption is not likely to change or is due to a chronic or permanent condition or disability;

(C) OHP clients shall be exempted from mandatory Enrollment with an FCHP or PCO, if the OHP Client became eligible through a hospital hold process and are placed in the Adults/Couples category. The OHP Client shall remain FFS for the first six (6) months of eligibility unless a change occurs with their eligibility or the category. At which time, the exemption shall be removed and the OHP Client shall be enrolled into an open FCHP or PCO. The exemption shall not effect the mandatory Enrollment requirement into a DCO or MHO.

(c) The OHP Client is a Native American or Alaska Native with Proof of Indian Heritage and chooses to receive services from an Indian Health Service facility or tribal health clinic;

(d) The OHP Client is a child in the legal custody of either the Oregon Youth Authority (OYA) or Children, Adults and Families Services (CAFS) (SOSCF services), and the child is expected to be in a substitute care placement for less than 30 calendar days, unless one of the following conditions exist:

(A) There is no fee-for-service access; or

(B) There is continuity of care issues.

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(e) The OHP Client is in the third trimester of her pregnancy when first determined eligible for OHP, or at redetermination, and she wishes to continue obtaining maternity services from a Practitioner who is not a Participating Provider with an FCHP or PCO in the Service Area:

(A) In order to qualify for such exemption at the time of redetermination, the OHP Client must not have been enrolled with an FCHP or PCO during the three months preceding redetermination;

(B) If the OMAP Member moves out of the PHP's Service Area during the third trimester, the OMAP Member may be exempted from Enrollment in the new Service Area for continuity of care if the OMAP Member wants to continue Obstetric-care with her previous physician, and that physician is within the travel time or distance indicated in 410-141-0220(1)(a) Oregon Health Plan PHP Accessibility;

(C) If the Practitioner is a PCM, the OMAP Member shall enroll with that Practitioner as a PCM Member;

(D) If the Practitioner is not enrolled with OMAP as a PCM, then the OMAP Member may remain in the Medicaid FFS delivery system until 60 days after the birth of her child. After the 60-day period, the OHP Client must enroll in a FCHP or PCO.

(f) The OHP Client has End Stage Renal Disease (ESRD). The OHP Client shall not enroll in an FCHP or PCO but shall enroll with a PCM unless exempt for some other reason listed in section (4) of this rule;

(g) The OHP Client has been accepted by the Medically Fragile Children's Unit of the Office of Mental Health and Addiction Services (OMHAS);

(h) The OHP Client is a Medicare beneficiary and is in a hospice program shall not enroll in an FCHP or PCO that is also a Medicare Cost HMO. The OHP Client may enroll in either an FCHP or PCO that does not have a Medicare Cost HMO or with a PCM unless exempt for some other reason listed in section (4) of this rule;

(i) The OHP Client is enrolled in Medicare and the only FCHP or PCO in the Service Area is a Medicare HMO. The OHP Client may be exempted from Enrollment in the FCHP or PCO if the OHP Client chooses not to enroll;

(j) If an OMAP Member is enrolled in a program participating in the Intensive Treatment Service Pilot Project, the OMAP Member shall remain enrolled in the MHO he/she was enrolled in prior to the placement;

(k) Other just causes as determined by DHS, at its sole discretion which include the following factors:

(A) The cause is beyond the control of the OHP Client;

(B) The cause is in existence at the time that the OHP Client first becomes eligible for OHP;

(C) Enrollment would pose a serious health risk; and

(D) The lack of reasonable alternatives.

(l) A woman eligible for the Breast and Cervical Cancer Medical (BCCM) Program, (refer to BCCM rules established by Children, Adult and Families Services), shall not enroll in an FCHP, PCO, DCO or MHO. A woman in the BCCM Program shall remain in the Medicaid fee-for-service delivery system.

(5) The primary person in the household group and benefit group as defined in OAR 461-110-0110, 461-110-0210, and 461-110-0720, respectively, shall select PHPs or PCMs on behalf of all OHP Clients in the benefit group. PHP or PCM selection shall occur at the time of application for the OHP in accordance with section (1) of this rule:

(a) All OHP Clients in the benefit group shall enroll in the same PHP for each benefit type (physical, dental or mental health care) unless exempted under the conditions stated above in section (4). If PCM selection is an option, OHP Clients in the benefit group may select different PCMs;

(b) If the OHP Client is not able to choose PHPs or PCMs on his or her own, the Representative of the OHP Client shall make the selection. The hierarchy used for making Enrollment decisions shall be in descending order as defined under Representative:

(A) If the OHP form 7208M, Medicare Advantage election form is signed by someone other than the OHP Client, the OHP Client's Representative must complete and sign an Addendum. The Addendum is incorporated as part of the 7208M and is located on page four (4) of the form:

(i) If the FCHP or PCO does not receive the 7208M within 10 calendar days after the date of Enrollment, the FCHP or PCO shall send a letter to the OMAP Member with a copy sent to the Seniors and People with Disabilities (SPD) branch manager. The letter shall:

(I) Explain the need for the completion of the 7208M;

(II) Notify the OMAP Member, if the 7208M is not received within 30 days, the FCHP or PCO shall request Disenrollment; and

(III) Instruct the OMAP Member to contact their caseworker for other coverage alternatives.

(ii) If the FCHP or PCO has not received the 7208M at the end of 30 days, the FCHP or PCO shall notify OMAP's Health Management Unit

(HMU). HMU shall disenroll the OMAP Member effective the end of the month following the notification and notify the OMAP Member of the Disenrollment. HMU shall provide SPD with the OHP Client Disenrollment list.

(B) If the OHP Client is a Medicare beneficiary who is capable of making Enrollment decisions, the Representative shall not have authority to select FCHPs or PCOs which have corresponding Medicare HMO components.

(c) CAF or OYA shall select PHPs or a PCM for a child receiving CAF (SOSCF services) or OYA Services, with the exception of children in subsidized adoptions;

(d) Enrollment in a FCHP or PCO of an OHP Client who is receiving Medicare and who resides in a Service Area served by PHPs or PCMs shall be as follows:

(A) If the OHP Client selects a FCHP or PCO that has a corresponding Medicare HMO, the OHP Client shall also enroll in the Medicare HMO;

(B) If the OHP Client is enrolled as a private member of a Medicare HMO, the OHP Client may choose to remain enrolled as a private member or to enroll in the FCHP or PCO that corresponds to the Medicare HMO:

(i) If the OHP Client chooses to remain as a private member in the Medicare HMO, the OHP Client shall remain in the Medicaid FFS delivery system for physical health care services but shall select a DCO and MHO where available;

(ii) If the OHP Client chooses to discontinue the Medicare HMO enrollment and then, within 60 calendar days of disenrollment from the Medicare HMO, chooses the FCHP or PCO that corresponds to the Medicare HMO that was discontinued, the OHP Client shall be allowed to enroll in the FCHP or PCO even if the FCHP or PCO is not open for Enrollment to other OHP Clients;

(iii) A Fully Dual Eligible (FDE) OHP Client who has been exempted from Enrollment in an MHO shall not be enrolled in a FCHP or PCO that has a corresponding Medicare HMO unless the exemption was done for a provider who is on the FCHP's or PCO's panel.

(e) MHO Enrollment options shall be based on the OHP Client's county of residence, the FCHP or PCO selected by the OHP Client, and whether the FCHP or PCO selected serves as a MHO:

(A) If the OHP Client selects a FCHP or PCO that is not a MHO, then the OHP Client shall enroll in the MHO designated as the freestanding MHO for that county;

(B) If the OHP Client selects a FCHP or PCO that is a MHO, then the OHP Client shall receive the OHP mental health benefit through that FCHP or PCO.

(6) If the OHP Client resides in a mandatory Service Area and fails to select a DCO, MHO, PCO and/or FCHP or a PCM at the time of application for the OHP, OMAP may enroll the OHP Client with a DCO, MHO, PCO and/or FCHP or a PCM:

(a) The OHP Client shall be assigned to and enrolled with a DCO, MHO, and FCHP, PCO or PCM which meet the following requirements:

(A) Is open for Enrollment;

(B) Serves the county in which the OHP Client resides;

(C) Has Practitioners located within the Community Standard distance for average travel time for the OHP Client.

(b) Assignment shall be made first to a FCHP or PCO and second to a PCM;

(c) DHS shall send a notice to the OHP Client informing the OHP Client of the assignments and the right to change assignments within 30 calendar days of Enrollment. A change in assignment shall be honored if there is another DCO, MHO, and FCHP, PCO or PCM open for Enrollment in the county in which the OHP Client resides;

(d) Enrollments resulting from assignments shall be effective the first of the month or week after DHS enrolls the OHP Client and notifies the OHP Client of Enrollment and the name of the PHP or PCM: If Enrollment is initiated by a DHS worker on or before Wednesday, the date of Enrollment shall be the following Monday. If Enrollment is initiated by a DHS worker after Wednesday, the date of Enrollment shall be one week from the following Monday. Monthly Enrollment in a mandatory Service Area where there is only one FCHP, PCO, MHO or DCO shall be initiated by an auto-Enrollment program of DHS with effective dates the first of the month following the month-end cutoff. Monthly Enrollment in Service Areas where there is a choice of PHPs, shall be auto-Enrolled by computer algorithm.

(7) The provision of Capitated Services to an OMAP Member enrolled with a PHP or a PCM shall begin on the first day of Enrollment with the PHP or a PCM except for:

(a) A newborn whose mother was enrolled at the time of birth. The date of Enrollment shall be the newborn's date of birth;

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(b) Persons, other than newborns, who are hospitalized on the date enrolled. The date of Enrollment with a FCHP, PCO or MHO shall be the first possible Enrollment date after the date the OHP Client is discharged from inpatient hospital services and the date of Enrollment with a PCM shall be the first of the month for which Capitation Payment is made;

(c) For OMAP Members who are re-enrolled within 30 calendar days of Disenrollment. The date of Enrollment shall be the date specified by DHS that may be retroactive to the date of Disenrollment;

(d) Adopted children or children placed in an adoptive placement. The date of Enrollment shall be the date specified by DHS.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 8-1994(Temp), f. & cert. ef. 2-1-94; DEQ 24-1994, f. 5-31-94, cert. ef. 6-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 29-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 12-2002, f. & cert. ef. 4-1-02; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-141-0070

Oregon Health Plan Fully Capitated Health Plan (FCHP) and Physician Care Organization (PCO) Pharmaceutical Drug List Requirements

(1) Prescription drugs are a covered service based on the funded condition treatment pairs. The FCHPs and PCOs shall pay for prescription drugs, except:

(a) As otherwise provided, such as Class 7 & 11 medications (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Depakote, Lamictal and those drugs that the Office of Medical Assistance Programs (OMAP) specifically carved out from capitation according to subsections 8 through 11 of this rule; and

(c) Any applicable co-payments.

(d) Those eligible to be covered under Medicare Part D.

(2) FCHPs and PCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization. The drug list must:

(a) Include FDA-approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-the-counter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(3) FCHPs and PCOs shall provide their Participating Providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates the FCHP or PCO makes to their drug list within 30 days of a change which may include, but is not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(4) If a drug cannot be approved within the 24-hour time requirement for prior authorization of drugs and the medical need for the drug is immediate, FCHPs and PCOs must provide for the dispensing of at least a 72-hour supply of a drug that requires prior authorization.

(5) FCHPs and PCOs shall authorize the provision of a drug requested by the Primary Care Physician (PCP) or referral Provider, if the approved prescriber certifies medical necessity for the drug such as:

(a) The equivalent of the drug listed has been ineffective in the treatment; or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the OMAP Member.

(6) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded; payment is governed solely by OAR 410-121-0150.

(7) FCHPs and PCOs shall not authorize payment for any Drug Efficacy Study Implementation (DESI) Less-Than-Effective drugs which have reached the Federal Drug Administration Notice-of-Opportunity-for-Hearing stage. The DESI Less-Than-Effective list is available at OMAP's website address: http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/misc_files/desi1.pdf

(8) OMAP may exclude (commonly called "carve out") drugs from FCHP and PCO capitation that are FDA approved to treat a serious mental

health disorder, such as major depressive, bi-polar and schizophrenic disorders.

(9) In order for a drug to be considered for carve out from FCHP and PCO capitation for the January contract period, OMAP must receive the request for carve out from the FCHP or PCO no later than March 1 of the previous calendar year to be considered for carve out for the following January contract cycle. The request must include:

(a) The drug name;

(b) The FDA approved indications that include an FDA approved use to treat a severe mental health condition; and

(c) The reason that OMAP should consider this drug for carve out.

(10) OMAP determines whether or not to carve out a drug.

(11) OMAP will pay for a drug that is subject to carve out pursuant to the Pharmaceutical Services Rule, OAR 410 division 121. A FCHP or PCO may not reimburse providers for carved out drugs.

Stat. Auth.: ORS 409

Stats. Implemented: 414.065

Hist.: OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 57-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-141-0080

Oregon Health Plan (OHP) Disenrollment from Prepaid Health Plans (PHPs)

(1) OMAP Member Requests for Disenrollment:

(a) All Oregon Health Plan (OHP) OMAP Member-initiated requests for Disenrollment from a Prepaid Health Plan (PHP) must be initiated, orally or in writing, by the primary person in the benefit group enrolled with a PHP, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For OMAP Members who are not able to request Disenrollment on their own, the request may be initiated by the OMAP Member's Representative;

(b) Primary person or Representative requests for Disenrollment shall be honored:

(A) Without cause:

(i) After six months of OMAP Member's Enrollment. The effective date of Disenrollment shall be the first of the month following the Department's approval of Disenrollment;

(ii) Whenever an OMAP Member's eligibility is redetermined by the Department of Human Services (DHS) and the primary person requests Disenrollment without cause. The effective date of Disenrollment shall be the first of the month following the date that the OMAP Member's eligibility is redetermined by the Department.

(B) With cause:

(i) At any time;

(ii) OMAP Members who disenroll from a Medicare Health Maintenance Organization (HMO) shall also be Disenrolled from the corresponding Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). The effective date of Disenrollment shall be the first of the month that the OMAP Member's Medicare HMO Disenrollment is effective;

(iii) OMAP Members who are receiving Medicare and who are enrolled in a FCHP or PCO that has a corresponding Medicare HMO/Medicare Advantage component may disenroll from the FCHP or PCO at any time if they also request Disenrollment from the Medicare HMO. The effective date of Disenrollment from the FCHP or PCO shall be the first of the month following the date of request for Disenrollment;

(iv) PHP does not, because of moral or religious objections, cover the service the OMAP Member seeks;

(v) The OMAP Member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the OMAP Members' Primary Care Provider or another Provider determines that receiving the services separately would subject the OMAP Member to unnecessary risk; or

(vi) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the Contract, or lack of access to Participating Providers experienced in dealing with the OMAP Member's health care needs. Examples of sufficient cause include but are not limited to:

(I) The OMAP Member moves out of the PHP's Service Area;

(II) It would be detrimental to the OMAP Member's health to remain enrolled in the PHP;

(III) The OMAP Member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program or urban clinic and the Fee-For-Service (FFS) delivery system;

(IV) Continuity of care that is not in conflict with any section of 410-141-0060 or 410-141-0080.

(C) If the following conditions are met:

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(i) The applicant is in the third trimester of her pregnancy and has just been determined eligible for OHP, or the OHP Client has just been re-determined eligible and was not enrolled in a FCHP or PCO within the past 3 months; and

(ii) The new FCHP or PCO the OMAP Member is enrolled with does not contract with the OMAP Member's current OB Provider and the OMAP Member wishes to continue obtaining maternity services from that Non-Participating OB Provider; and

(iii) The request to change FCHPs, PCOs or return to FFS is made prior to the date of delivery.

(c) In addition to the Disenrollment constraints listed in (b), above, OMAP Member Disenrollment requests are subject to the following requirements:

(A) The OMAP Member shall join another PHP, unless the OMAP Member resides in a Service Area where Enrollment is voluntary, or the OMAP Member meets the exemptions to Enrollment as stated in 410-141-0060(4);

(B) If the only PHP available in a mandatory Service Area is the PHP from which the OMAP Member wishes to disenroll, the OMAP Member may not disenroll without cause;

(C) The effective date of Disenrollment shall be the end of the month in which Disenrollment was requested unless retroactive Disenrollment is approved by OMAP;

(D) If the Department fails to make a Disenrollment determination by the first day of the second month following the month in which the OMAP Member files a request for Disenrollment, the Disenrollment is considered approved.

(2) Prepaid Health Plan requests for Disenrollment:

(a) Causes for Disenrollment:

(A) OMAP may Disenroll OMAP Members for cause when requested by the PHP subject to ADA requirements and approval by the Centers for Medicare and Medicaid Services (CMS), if a Medicare member Disenrolled in a FCHP's or PCO's Medicare HMO/M+C. Examples of cause include, but are not limited to the following:

(i) Missed appointments. The number of missed appointments is to be established by the Provider or PHP. The number must be the same as for commercial members or patients. The Provider must document they have attempted to ascertain the reasons for the missed appointments and to assist the OMAP Member in receiving services. This rule does not apply to Medicare members who are enrolled in a FCHP's or PCO's Medicare HMO/Medicare Advantage;

(ii) OMAP Member's behavior is disruptive, unruly, or abusive to the point that his/her Enrollment seriously impairs the Provider's ability to furnish services to either the OMAP Member or other members, except as excluded in (b)(B)(vii);

(iii) OMAP Member commits or threatens an act of physical violence directed at a medical Provider or property, the Provider's staff, or other patients, or the PHP's staff;

(iv) OMAP Member commits fraudulent or illegal acts such as: permitting use of his/her medical ID card by others, altering a prescription, theft or other criminal acts committed in any Provider or PHP's premises. The PHP shall report any illegal acts to law enforcement authorities or to the office for Children, Adults and Families (CAF) Fraud Unit as appropriate;

(v) OHP Clients who have been exempted from mandatory Enrollment with a FCHP or PCO, due to the OHP Client's eligibility through a hospital hold process and placed in the Adults/Couples category as required under 410-141-0060(4)(b)(C);

(vi) OMAP Member fails to pay co-payment(s) for Covered Services as described in OAR 410-120-1230 and/or 410-120-1235.

(B) OMAP Members shall not be disenrolled solely for the following reasons:

(i) Because of a physical or mental disability;

(ii) Because of an adverse change in the OMAP Member's health;

(iii) Because of the OMAP Member's utilization of services, either excessive or lack thereof;

(iv) Because the OMAP Member requests a hearing;

(v) Because the OMAP Member has been diagnosed with End Stage Renal Disease (ESRD);

(vi) Because the OMAP Member exercises his/her option to make decisions regarding his/her medical care with which the PHP disagrees;

(vii) Because of uncooperative or disruptive behavior resulting from the OMAP Member's special needs (except when continued Enrollment seriously impairs the PHP's ability to furnish services to either this OMAP Member or other members.

(C) Requests by the PHP for Disenrollment of specific OMAP Members shall be submitted in writing to their PHP Coordinator for approval. The PHP must document the reasons for the request, provide

written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below must be followed prior to requesting Disenrollment of an OMAP Member (except in cases of threats or acts of physical violence, and fraudulent or illegal acts). In cases of threats or acts of physical violence, OMAP will consider an oral request for Disenrollment, with written documentation to follow: In cases of fraudulent or illegal acts, the PHP must submit written documentation for review by the OMAP PHP Coordinators:

(i) There shall be notification from the Provider to the PHP at the time the problem is identified. The notification must describe the problem and allow time for appropriate intervention by the PHP. Such notification shall be documented in the OMAP Member's Clinical Record. The PHP shall conduct Provider education regarding the need for early intervention and the services they can offer the Provider;

(ii) The PHP shall contact the OMAP Member either verbally or in writing, depending on the severity of the problem, to develop an agreement regarding the issue(s). If contact is verbal, it shall be documented in the OMAP Member's record. The PHP shall inform the OMAP Member that his/her continued behavior may result in Disenrollment from the PHP;

(iii) The PHP shall provide individual education, counseling, and/or other interventions in a serious effort to resolve the problem;

(iv) The PHP shall contact the OMAP Member's DHS caseworker regarding the problem and, if needed, involve the caseworker and other appropriate agencies' caseworkers in the resolution;

(v) If the severity of the problem and intervention warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and/or coordinate a case conference. Involvement of Provider, caseworker, OMAP Member, family, and other appropriate agencies is encouraged. If necessary, the PHP shall obtain an authorization for release of information from the OMAP Member for the Providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it must be documented in the OMAP Member's record;

(vi) If a Primary Care Provider (PCP) terminates the Provider/patient relationship, the PHP shall attempt to locate another PCP on their panel who will accept the OMAP Member as their patient. If needed, the PHP shall obtain an authorization for release of information from the OMAP Member in order to share the information necessary for a new Provider to evaluate if they can treat the OMAP Member. All terminations of Provider/patient relationships shall be according to the PHP's policies and must be consistent with PHP or PCP's policies for commercial members.

(D) If the problem persists, the PHP may request Disenrollment of the OMAP Member by submitting a written request to Disenroll the OMAP Member to the PHP's OMAP PHP Coordinator, with a copy to the OMAP Member's caseworker. Documentation with the request shall include the following:

(i) The reason the PHP is requesting Disenrollment; a summary of the PHP's efforts to resolve the problem and other options attempted before requesting Disenrollment;

(ii) Documentation should be objective, with as much specific details and direct quotes as possible when problems involve disruptive, unruly, abusive or threatening behaviors;

(iii) Where appropriate, background documentation including a description of the OMAP Member's age, diagnosis, mental status (including their level of understanding of the problem and situation), functional status (their level of independence) and social support system;

(iv) Where appropriate, separate statements from PCPs, caseworker and other agencies, Providers or individuals involved;

(v) If reason for the request is related to the OMAP Member's substance abuse treatment, the PHP shall notify the OHP Coordinator in the Office of Mental Health and Addiction Services;

(vi) If the OMAP Member is disabled, the following documentation shall also be submitted as appropriate:

(I) A written assessment of the relationship of the behavior to the disability including: current medical knowledge or best available objective evidence to ascertain the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(II) An interdisciplinary team review that includes a mental health professional and/or behavioral specialists to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(III) If warranted, a clinical assessment that the behavior will not respond to reasonable clinical or social interventions;

(IV) Documentation of any accommodations that have been attempted;

(V) Any additional information or assessments requested by the OMAP PHP Coordinators.

(E) Requests will be reviewed according to the following process:

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(i) If there is sufficient documentation, the request will be evaluated by a team of PHP Coordinators who may request additional information from Ombudsman, mental health or other agencies as needed;

(ii) If there is not sufficient documentation, the PHP Coordinator will notify the PHP what additional documentation is required before the request can be considered;

(iii) The PHP Coordinators will review the request and notify the PHP of the decision within ten working days of receipt. Written decisions, including reasons for denials, will be sent to the PHP within 15 working days from receipt of request;

(iv) If the request is approved, the Disenrollment date is 30 days after the date of approval, except as provided in (F) and (G) below. The PHP must send the OMAP Member a letter within 14 days after the request was approved, with a copy to the OMAP Member's DHS caseworker and OMAP's Health Management Unit (HMU), except in cases where the OMAP Member is also enrolled in a FCHP's or PCO's Medicare HMO/M+C. The letter must give the Disenrollment date, the reason for Disenrollment, and the notice of OMAP Member's right to file a Complaint (as specified in 410-141-0260 through 410-141-0266) and to request an Administrative Hearing;

(v) In cases where the OMAP Member is also enrolled in a FCHP's or PCO's Medicare HMO/M+C, the letter shall be sent after the approval by CMS and the date of Disenrollment shall be the date of Disenrollment as approved by CMS. If CMS does not approve the Disenrollment, the OMAP Member shall not be disenrolled from the PHP's OHP Plan;

(vi) If the OMAP Member requests a hearing, the OMAP Member will continue to be disenrolled until a hearing decision reversing that Disenrollment has been mailed to the OMAP Member and the PHP;

(vii) The PHP Coordinator will determine when Enrollment in another PHP or with a PCM is appropriate. The PHP Coordinator will contact the OMAP Member's DHS caseworker to arrange Enrollment;

(viii) When the Disenrollment date has been determined, HMU sends a letter to the OMAP Member with a copy to the OMAP Member's DHS caseworker and the PHP. The letter shall inform the OMAP Member of the requirement to be enrolled in another PHP.

(F) If the PHP Coordinator approves a PHP's request for Disenrollment because the OMAP Member threatens or commits an act of physical violence directed at a medical Provider, the Provider's staff, or other patients, the following procedures shall apply:

(i) OMAP shall inform the OMAP Member of the Disenrollment decision in writing, including the right to request an Administrative Hearing;

(ii) The OMAP Member shall be Disenrolled as of the date of the PHP's request for Disenrollment;

(iii) All OMAP Members in the OMAP Member's benefit group, as defined in OAR 461-110-0720, may be Disenrolled if the PHP requests;

(iv) OMAP may require the OMAP Member and/or the benefit group to obtain services from FFS Providers or a PCM until such time as they can be enrolled in another PHP;

(v) At the time of Enrollment into another PHP, OMAP shall notify the new PHP that the OMAP Member and/or benefit group were previously Disenrolled from another PHP at that PHP's request.

(G) If the PHP Coordinator approves the PHP's request for Disenrollment because the OMAP Member commits fraudulent or illegal acts as stated in 410-141-0080(2)(a), the following procedures shall apply:

(i) The PHP shall inform the OMAP Member of the Disenrollment decision in writing, including the right to request an Administrative Hearing;

(ii) The OMAP Member shall be Disenrolled as of the date of the PHP's request for Disenrollment;

(iii) At the time of Enrollment into another PHP, OMAP shall notify the new PHP that the OMAP Member and/or benefit group were previously Disenrolled from another PHP at that PHP's request;

(iv) If an OMAP Member who has been Disenrolled for cause is reenrolled in the PHP, the PHP may request a Disenrollment review by the PHP's PHP Coordinator. An OMAP Member may not be Disenrolled from the same PHP for a period of more than 12 months. If the OMAP Member is reenrolled after the 12-month period and is again Disenrolled for cause, the Disenrollment will be reviewed by DHS for further action.

(b) Other reasons for the PHP's requests for Disenrollment include the following:

(A) If the OMAP Member is enrolled in the FCHP or MHO on the same day the OMAP Member is admitted to the hospital, the FCHP or MHO shall be responsible for said hospitalization. If the OMAP Member is enrolled after the first day of the inpatient stay, the OMAP Member shall be Disenrolled, and the date of Enrollment shall be the next available Enrollment date following discharge from inpatient hospital services;

(B) The OMAP Member has surgery scheduled at the time their Enrollment is effective with the PHP, the Provider is not on the PHP's

Provider panel, and the OMAP Member wishes to have the services performed by that Provider;

(C) The Medicare member is enrolled in a Medicare Cost Plan and was receiving Hospice Services at the time of Enrollment in the PHP;

(D) The OMAP Member had End Stage Renal Disease at the time of Enrollment in the PHP;

(E) Excluding the DCO, the PHP determines that the OMAP Member has a third party insurer. If after contacting The Health Insurance Group, the Disenrollment is not effective the following month, PHP may contact HMU to request Disenrollment;

(F) If a PHP has knowledge of an OMAP Member's change of address, PHP shall notify DHS. DHS will verify the address information and Disenroll the OMAP Member from the PHP, if the OMAP Member no longer resides in the PHP's Service Area. OMAP Members shall be Disenrolled if out of the PHP's Service Area for more than three (3) months, unless previously arranged with the PHP. The effective date of Disenrollment shall be the date specified by OMAP and OMAP will recoup the balance of that month's Capitation Payment from the PHP;

(G) The OMAP Member is an inmate who is serving time for a criminal offense or confined involuntarily in a State or Federal prison, jail, detention facility, or other penal institution. This does not include OMAP Members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The PHP is responsible for identifying the OMAP Members and providing sufficient proof of incarceration to HMU for review of the Disenrollment request. OMAP will approve requests for Disenrollment from PHPs for OMAP Members who have been incarcerated for at least fourteen (14) calendar days and are currently incarcerated. FCHPs are responsible for inpatient services only during the time an OMAP Member was an inmate;

(H) The OMAP Member is in a state psychiatric institution.

(3) OMAP Initiated Disenrollments:

(a) OMAP may initiate and Disenroll OMAP Members as follows:

(A) If OMAP determines that the OMAP Member has sufficient third party resources such that health care and services may be cost effectively provided on a FFS basis, OMAP may Disenroll the OMAP Member. The effective date of Disenrollment shall be the end of the month in which OMAP makes such a determination. OMAP may specify a retroactive effective date of Disenrollment if the OMAP Member's third party coverage is through the PHP, or in other situations agreed to by the PHP and OMAP;

(B) If the OMAP Member moves out of the PHP's Service Area(s), the effective date of Disenrollment shall be the date specified by OMAP and OMAP will recoup the balance of that month's Capitation Payment from the PHP;

(C) If the OMAP Member is no longer eligible under the Oregon Health Plan Medicaid Demonstration Project or Children's Health Insurance Program, the effective date of Disenrollment shall be the date specified by OMAP;

(D) If the OMAP Member dies, the effective date of Disenrollment shall be the end of the month following the date of death;

(E) When a non-Medicare contracting PHP is assumed by another PHP that is a Medicare Advantage Plan, OMAP Members with Medicare shall be Disenrolled from the existing PHP. The effective date of Disenrollment shall be the day prior to the month the new PHP assumes the existing PHP;

(F) If OMAP determines that Contractor's OMAP Member has enrolled with their Employer Sponsored Insurance (ESI) through FHIAP the effective date of the Disenrollment shall be the OMAP Member's effective date of coverage with FHIAP.

(b) Unless specified otherwise in these rules or in the OMAP notification of Disenrollment to the PHP, all Disenrollments are effective the end of the month after the request for Disenrollment is approved by OMAP;

(c) OMAP shall inform the OMAP Members of the Disenrollment decision in writing, including the right to request an Administrative Hearing. Oregon Health Plan Clients may request an OMAP hearing if they dispute a Disenrollment decision by OMAP;

(d) If the OHP Client requests a hearing, the OHP Client will continue to be Disenrolled until a hearing decision reversing that Disenrollment has been mailed to the OHP Client.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 11-1997, f. 3-28-97, cert. ef. 4-1-97; HR 14-1997, f. & cert. ef. 7-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 61-2003, 9-5-03,

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cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-141-0120

Oregon Health Plan Prepaid Health Plan Provision of Health Care Services

CAF: Children, Adults and Families
CMS: Centers for Medicare and Medicaid Services
DHS: Department of Human Services
FCHP: Fully Capitated Health Plans
MHO: Mental Health Organization
OHP: Oregon Health Plan
OMAP: Office of Medical Assistance Programs
OMHAS: Office of Mental Health and Addiction Services
PCO: Physician Care Organization
PCP: Primary Care Provider
PHP: Prepaid Health Plan

(1) PHPs shall have written policies and procedures that ensure the provision of all Medically and Dentally Appropriate covered services, including Urgent Care Services and Emergency Services, Preventive Services and Ancillary Services, in those categories of services included in Contract or agreements with OMAP and/or OMHAS, respectively. PHPs shall communicate these policies and procedures to Providers, regularly monitor Providers' compliance with these policies and procedures, and take any corrective action necessary to ensure Provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) PHPs shall ensure that all Participating Providers providing covered services to OMAP Members are credentialed upon initial contract with the PHP and recertified no less frequently than every three years thereafter. The credentialing and recertification process shall include review of any information in the National Practitioners Databank and a determination, based on the requirements of the discipline or profession, that Participating Providers have current licensure in the state in which they practice, appropriate certification, applicable hospital privileges and appropriate malpractice insurance. This process shall include a review and determination based on the activity and results of a professional quality improvement review. PHPs may elect to contract for or to delegate responsibility for this process. PHPs shall accept both the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recertification Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPI) on November 14, 2000, thereby implementing ORS 442.807. PHPs shall retain responsibility for delegated activities, including oversight of processes:

(A) PHPs shall ensure that covered services are provided within the scope of license or certification of the Participating Provider or facility, and within the scope of the Participating Provider's contracted services and that Participating Providers are appropriately supervised according to their scope of practice;

(B) PHPs shall provide training for PHP staff and Participating Providers and their staff regarding the delivery of covered services, OHP Administrative Rules, and the PHP's administrative policies;

(C) PHPs shall maintain records documenting academic credentials, training received, licenses or certifications of staff and facilities used, and reports from the National Practitioner Data Bank;

(D) PHPs shall not refer OMAP Members to or use Providers who have been terminated from the Oregon Medical Assistance Program or excluded as Medicare/Medicaid Providers by CMS and/or by any lawful conviction by a Court for which the Provider could be excluded under 42 CFR 1001.101. PHPs shall not accept billings for services to OMAP Members provided after the date of such Provider's conviction or termination.

(b) FCHPs, PCOs, DCOs and CDOs shall have written procedures that provide newly enrolled OMAP Members with information about which Participating Providers are currently not accepting new patients (except for staff models);

(c) FCHPs, PCOs, DCOs and CDOs shall have written procedures that allow and encourage a choice of a PCP or clinic for physical health, and dental health services by each OMAP Member. These procedures shall enable an OMAP Member to choose a participating PCP or clinic (when a choice is available for PCPs or clinics) to provide services within the scope of practice to that OMAP Member;

(d) If the OMAP Member does not choose a PCP within 30 calendar days from the date of Enrollment, the FCHP or PCO must ensure the OMAP Member has an ongoing source of primary care appropriate to his or her needs by formally designating a Practitioner or entity. FCHPs and PCOs that assign OMAP Members to PCPs or clinics shall document the unsuccessful efforts to elicit the OMAP Member's choice before assigning an OMAP Member to a PCP or clinic. FCHPs and PCOs who assign PCPs before 30 calendar days after Enrollment, must notify the OMAP Member

of the assignment and allow the OMAP Member 30 calendar days after assignment to change the assigned PCP or clinic.

(2) In order to make advantageous use of the system of public health services available through county health departments and other publicly supported programs and to ensure access to public health services through contract under ORS Chapter 414-153:

(a) Unless cause can be demonstrated to OMAP's satisfaction why such an agreement is not feasible, FCHPs and PCOs shall execute agreements with publicly funded Providers for payment of point-of-contact services in the following categories:

- (A) Immunizations;
- (B) Sexually transmitted diseases; and
- (C) Other communicable diseases.

(b) OMAP Members may receive the following services from appropriate Non-Participating Medicaid Providers. If the following services are not referred by the FCHP or PCO in accordance with the FCHP's or PCO's referral process (except as provided for under 410-141-0420 Billing and Payment under the Oregon Health Plan), OMAP is responsible for payment of such services:

- (A) Family planning services; and
- (B) Human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) prevention services.

(c) FCHPs and PCOs are encouraged to execute agreements with publicly funded Providers for authorization of and payment for services in the following categories:

- (A) Maternity case management;
- (B) Well-child care;
- (C) Prenatal care;
- (D) School-based clinic services;
- (E) Health services for children provided through schools and Head Start programs; and

(F) Screening services to provide early detection of health care problems among low-income women and children, migrant workers and other special population groups.

(d) Recognizing the social value of partnerships between county health departments, other publicly supported programs, and health Providers, FCHPs and PCOs are encouraged to involve publicly supported health care and service programs in the development and implementation of managed health care programs through inclusion on advisory and/or planning committees;

(e) FCHPs and PCOs shall report to OMAP on their status in executing agreements with publicly funded Providers and on the involvement of publicly supported health care and service programs in the development and implementation of their program on an annual basis.

(3) FCHPs and PCOs shall ensure a newly enrolled OMAP Member receives timely, adequate and appropriate health care services necessary to establish and maintain the health of the OMAP Member. An FCHP's liability covers the period between the OMAP Member's Enrollment and Disenrollment with the FCHP, unless the OMAP Member is hospitalized at the time of Disenrollment. In such an event, an FCHP is responsible for the inpatient hospital services until discharge or until the OMAP Member's PCP or designated Practitioner determines the care is no longer Medically Appropriate.

(4) A PCO's liability covers the period between the OMAP Member's Enrollment and Disenrollment with the PCO, unless the OMAP Member is hospitalized at the time of Disenrollment. In such an event, the PCO is not responsible for the inpatient hospital services by definition and the inpatient hospital services will be the responsibility of OMAP.

(5) The OMAP Member shall obtain all Covered Services, either directly or upon referral, from the PHP responsible for the service from the date of Enrollment through the date of Disenrollment.

(6) FCHPs and PCOs with a Medicare HMO component and MHOs have significant and shared responsibility for Capitated Services, and shall coordinate benefits for shared OMAP Members to ensure that the OMAP Member receives all Medically Appropriate services covered under respective Capitation Payments. If the Fully Dual Eligible OMAP Member is enrolled in a FCHP or PCO with a Medicare HMO component the following apply:

(a) Mental health services covered by Medicare shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO;

(b) Mental health services that are not covered by the FCHP or PCO that are covered by the MHO shall be obtained from the MHO or upon referral by the MHO.

(7) PHPs shall coordinate services for each OMAP Member who requires services from agencies providing health care services not covered under the Capitation Payment. The PCP shall arrange, coordinate, and monitor other medical and mental health, and/or dental care for that OMAP

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Member on an ongoing basis except as provided for in Section (7)(c) of this rule:

(a) PHPs shall establish and maintain working relationships with Local or Allied Agencies, Community Emergency Service Agencies, and local Providers;

(b) PHPs shall refer OMAP Members to the Offices of the Department of Human Services and Local and Regional Allied Agencies which may offer services not covered under the Capitation Payment;

(c) FCHPs and PCOs shall not require OMAP Members to obtain the approval of a PCP in order to gain access to mental health and alcohol and drug assessment and evaluation services. OMAP Members may refer themselves to MHO services.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065 & 442.807

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96;

HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 50-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP

65-2005, f. 11-30-05, cert. ef. 1-1-06

410-141-0160

Oregon Health Plan Prepaid Health Plan (PHP) Coordination and Continuity of Care

(1) PHPs shall have written policies, procedures, and monitoring systems that ensure the provision of Medical Case Management Services, delivery of primary care to and coordination of health care services for all OMAP Members:

(a) PHPs are to coordinate and manage Capitated Services and Non-Capitated Services, and ensure that referrals made by the PHP's Providers to other Providers for covered services are noted in the appropriate OMAP Member's Clinical Record;

(b) PHPs shall ensure OMAP Members receiving Exceptional Needs Care Coordination (ENCC) services for the Aged, Blind, Disabled, and special needs, as described in 410-141-0405, are noted in the appropriate OMAP Member's record. ENCC is a service available through Fully Capitated Health Plans (FCHPs) or Physician Care Organizations (PCOs) that is separate from and in addition to Medical Case Management Services;

(c) These procedures must ensure that each OMAP Member has an ongoing source of primary care appropriate to his or her needs and a Practitioner or entity formally designated as primarily responsible for coordinating the health care services furnished to the OMAP Member in accordance with OAR 410-141-0120;

(d) FCHPs and PCOs shall communicate these policies and procedures to Providers, regularly monitor Providers' compliance with these policies and procedures and take any corrective action necessary to ensure Provider compliance. FCHPs and PCOs shall document all monitoring and corrective action activities:

(A) PHPs shall develop and maintain a formal referral system consisting of a network of consultation and referral Providers, including applicable Alternative Care Settings, for all services covered by Contracts/agreements with OMAP and/or OMHAS. PHPs shall ensure that access to and quality of care provided in all referral settings is monitored. Referral services and services received in Alternative Care Settings shall be reflected in the OMAP Member's Clinical Record. PHPs shall establish and follow written procedures for Participating and Non-Participating Providers in the PHP's referral system. Procedures shall include the maintenance of records within the referral system sufficient to document the flow of referral requests, approvals and denials in the system;

(B) The OMAP Member shall obtain all covered services, either directly or upon referral, from the PHP or PCM responsible for the service from the date of Enrollment through the date of Disenrollment, except when the OMAP Member is enrolled in a Medicare HMO or Medicare Advantage FCHP or PCO:

(i) FCHPs or PCOs with a Medicare HMO component or Medicare Advantage and MHOs have significant and shared responsibility for prepaid services, and shall coordinate benefits for the OMAP Member to ensure that the OMAP Member receives all Medically Appropriate services covered under respective Capitation Payments;

(ii) If the OMAP Member is enrolled in a FCHP or PCO with a Medicare HMO component or Medicare Advantage, then Medicare covered mental health services shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO, respectively. Mental health services that are not covered by the FCHP or PCO, but are covered by the MHO, shall be obtained from the MHO or upon referral by the MHO.

(C) PHPs shall have written procedures for referrals which ensure adequate prior notice of the referral to referral Providers and adequate documentation of the referral in the OMAP Member's Clinical Record;

(D) PHPs shall designate a staff member who is responsible for the arrangement, coordination and monitoring of the PHP's referral system;

(E) PHPs shall ensure that any staff member responsible for denying or reviewing denials of requests for referral is a Health Care Professional;

(F) PHPs shall have written procedures that ensure that relevant medical, mental health, and/or dental information is obtained from referral Providers, including telephone referrals. These procedures shall include:

(i) Review of information by the referring Provider;

(ii) Entry of information into the OMAP Member's Clinical Record;

(iii) Monitoring of referrals to ensure that information, including information pertaining to ongoing referral appointments, is obtained from the referral Providers, reviewed by the referring Practitioner, and entered into the Clinical Record.

(G) PHPs shall have written procedures to orient and train their staff, participating Practitioners and their staff, and the staff in Alternative Care Settings, and urgent and emergency care facilities in the appropriate use of the PHP's referral, alternative care, and urgent and emergency care systems. Procedures and education shall ensure use of appropriate settings of care;

(H) PHPs shall have written procedures which ensure that an appropriate staff person responds to calls from other Providers requesting approval to provide care to OMAP Members who have not been referred to them by the PHP. If the person responding to the call is not a Health Care Professional, the PHP shall have established written protocols that clearly describe when a Health Care Professional needs to respond to the call. These procedures and protocols shall be reviewed by the PHP for appropriateness. The procedures shall address notification of acceptance or denial and entry of information into the PCP's Clinical Record;

(I) FCHPs and PCOs shall have written policies and procedures to ensure information on all emergency department visits is entered into the OMAP Member's appropriate PCP's Clinical Record. FCHPs and PCOs shall communicate this policy and procedure to Providers, monitor Providers' compliance with this policy and procedure, and take corrective action necessary to ensure compliance;

(J) If an OMAP Member is hospitalized in an inpatient or outpatient setting for a covered service, PHPs shall ensure that:

(i) A notation is made in the OMAP Member's appropriate PCP's Clinical Record of the reason, date, and expected duration of the hospitalization;

(ii) Upon discharge, a notation is made in the OMAP Member's appropriate PCP's Clinical Record of the actual duration of the hospitalization and follow-up plans, including appointments for Provider visits; and

(iii) Pertinent reports from the hospitalization are entered in the OMAP Member's appropriate PCP's Clinical Record. Such reports shall include, as applicable, the reports of consulting Practitioners physical history, psycho-social history, list of medications and dosages, progress notes, and discharge summary.

(2) For OMAP Members living in residential facilities or homes providing ongoing care, PHPs shall work with the appropriate staff person identified by the facility to ensure that the OMAP Member has timely and appropriate access to covered services and to ensure coordination of care provided by the PHP and care provided by the facility or home. PHPs shall make provisions for a PCP or the facility's "house doctor or dentist" to provide care to OMAP Members who, due to physical, emotional, or medical limitations, cannot be seen in a PCP office.

(3) For OMAP Members living in residential facilities or homes providing ongoing care, FCHPs and PCOs shall provide medications in a manner that is consistent with the appropriate medication dispensing system of the facility, which meets state dispensing laws. FCHPs and PCOs shall provide emergency prescriptions on a 24-hour basis.

(4) For OMAP Members who are discharged to Post Hospital Extended Care, the FCHP shall notify the appropriate DHS office at the time of admission to the skilled nursing facility (SNF) and begin appropriate discharge planning. The FCHP is not responsible for the Post Hospital Extended Care Benefit unless the OMAP Member was a member of the FCHP during the hospitalization preceding the nursing facility placement. The FCHP shall notify the nursing facility and the OMAP Member no later than two full working days prior to discharge from Post Hospital Extended Care. For OMAP Members who are discharged to Medicare Skilled Care, the appropriate DHS office shall be notified at the time the FCHP learns of the admission. The FCHP shall initiate appropriate discharge planning at the time of the notification to the DHS office.

(5) PHPs shall coordinate the services the PHP furnishes to OMAP Members with the services the OMAP Member receives from any other PHP (FCHP, PCO, DCO, CDO, or MHO) in accordance with OAR 410-141-0120(6). PHPs shall ensure that in the process of coordinating care, each OMAP Member's privacy is protected in accordance with the privacy requirements of 45 CFR parts 160 and 164 subparts A and E to the extent that they are applicable.

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(6) When an OMAP Member's care is being transferred from one PHP to another or for OHP Clients transferring from fee-for-service to a PHP, the PHP shall make every reasonable effort within the laws governing confidentiality to coordinate transfer of the OHP Client into the care of a PHP Participating Provider.

(7) PHPs shall make attempts to contact targeted OMAP population(s) by mail, telephone, in person or through the DHS agency within the first three months of Enrollment to assess medical, mental health or dental needs, appropriate to the PHP. The PHP shall, after reviewing the assessment, refer the OMAP Member to his/her PCP or other resources as indicated by the assessment. Targeted OMAP population(s) shall be determined by the PHP and approved by OMAP.

(8) MHOs shall establish working relationships with the Local Mental Health Authorities (LMHAs) and Community Mental Health Programs (CMHPs) operating in the Service Area for the purposes of maintaining a comprehensive and coordinated mental health delivery system and to help ensure OMAP Member access to mental health services which are not provided under the Capitation Payment.

(9) MHOs shall ensure that OMAP Members receiving services from extended or long term psychiatric care programs (e.g., secure residential facilities, PASSAGES projects, state hospital) will receive follow-up services as Medically Appropriate to ensure discharge within five working days of receiving notification of discharge readiness.

(10) MHOs shall coordinate with Community Emergency Service Agencies (e.g., police, courts and juvenile justice, corrections, and the LMHAs and CMHPs) to promote an appropriate response to OMAP Members experiencing a mental health crisis.

(11) MHOs shall use a multi-disciplinary team service planning and case management approach for OMAP Members requiring services from more than one public agency. This approach shall help avoid service duplication and assure timely access to a range and intensity of service options that provide individualized, Medically Appropriate care in the least restrictive treatment setting (e.g., clinic, home, school, community).

(12) MHOs shall consult with, and provide technical assistance to, FCHPs and PCOs to help assure that mental health conditions of OMAP Members are identified early so that intervention and prevention strategies can begin as soon as possible.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

410-141-0220

Oregon Health Plan Prepaid Health Plan Accessibility

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure access to all covered services for all OMAP Members. PHPs shall communicate these policies and procedures to Participating Providers, regularly monitor Participating Providers' compliance with these policies and procedures, and take any corrective action necessary to ensure Participating Provider compliance. PHPs shall document all monitoring and corrective action activities. PHPs shall not discriminate between OMAP Members and non-OMAP members as it relates to benefits and covered services to which they are both entitled:

(a) PHPs shall have written policies and procedures which ensure that for 90% of their OMAP Members in each Service Area, routine travel time or distance to the location of the PCP does not exceed the Community Standard for accessing health care Participating Providers. The travel time or distance to PCPs shall not exceed the following, unless otherwise approved by OMAP:

(A) In urban areas — 30 miles, 30 minutes or the Community Standard, whichever is greater;

(B) In rural areas — 60 miles, 60 minutes or the Community Standard, whichever is greater.

(b) PHPs shall maintain and monitor a network of appropriate Participating Providers sufficient to ensure adequate service capacity to provide availability of, and timely access to, Medically Appropriate covered services for OMAP Members:

(A) PHPs shall have an access plan that establishes standards for access, outlines how capacity is determined and establishes procedures for monthly monitoring of capacity and access, and for improving access and managing risk in times of reduced Participating Provider capacity. The access plan shall also identify populations in need of interpreter services and populations in need of accommodation under the Americans with Disabilities Act;

(B) PHPs shall make the services it provides including: specialists, pharmacy, hospital, vision and ancillary services, as accessible to OMAP

Members in terms of timeliness, amount, duration and scope as those services are to non-OMAP persons within the same Service Area. If the PHP is unable to provide those services locally, it must so demonstrate to OMAP and shall provide reasonable alternatives for OMAP Members to access care that must be approved by OMAP. PHPs shall have a monitoring system that will demonstrate to OMAP or OMHAS, as applicable, that the PHP has surveyed and monitored for equal access of OMAP Members to referral Providers pharmacy, hospital, vision and ancillary services;

(C) PHPs shall have written policies and procedures and a monitoring system to ensure that OMAP Members who are Aged, Blind, or Disabled or who are children receiving CAF (SOSCF services) or OYA services have access to primary care, dental care, mental health Providers and referral, as applicable. These Providers shall have the expertise to treat, take into account and accommodate the full range of medical, dental or mental health conditions experienced by these OMAP Members, including emotional, disturbance and behavioral responses, and combined or multiple diagnoses.

(2) PHPs and Primary Care Managers (PCMs) Enrollment Standards:

(a) PHPs and PCMs shall remain open for Enrollment unless DHS has closed Enrollment because the PHP or PCM has exceeded their Enrollment limit or does not have sufficient capacity to provide access to services as mutually agreed upon by OMAP or OMHAS, as appropriate, and the PHP or PCM;

(b) PHPs Enrollment may also be closed by OMAP or OMHAS, as appropriate due to sanction provisions;

(c) PHPs and PCMs shall accept all OHP Clients, regardless of health status at the time of Enrollment, subject to the stipulations in Contracts/agreements with DHS to provide covered services or Primary Care management services;

(d) PHPs and PCMs may confirm the Enrollment status of an OHP Client by one of the following:

(A) The individual's name appears on the monthly or weekly Enrollment list produced by OMAP;

(B) The individual presents a valid Medical Care Identification that shows he or she is enrolled with the PHP or PCM;

(C) The Automated Information System (AIS) verifies that the individual is currently eligible and enrolled with the PHP or PCM;

(D) An appropriately authorized staff member of DHS states that the individual is currently eligible and enrolled with the PHP or PCM.

(e) PHPs shall have open Enrollment for 30 continuous calendar days during each twelve-month period of October through September, regardless of the PHPs Enrollment limit. The open Enrollment periods for consecutive years may not be more than 14 months apart.

(3) If a PHP is assumed by another PHP, OMAP Members shall be automatically enrolled in the succeeding PHP. The OMAP Member will have 30 calendar days to request Disenrollment from the succeeding PHP. If the succeeding PHP is a Medicare HMO, those OMAP Members who are Medicare beneficiaries shall not be automatically enrolled but shall be offered Enrollment in the succeeding PHP.

(4) If a PHP engages in an activity, such as the termination of a Participating Provider or Participating Provider group which has significant impact on access in that Service Area and necessitates either transferring OMAP Members to other Providers or the PHP withdrawing from part or all of a Service Area, the PHP shall provide DHS at least 90 calendar days written notice prior to the planned effective date of such activity:

(a) A PHP may provide less than the required 90 calendar days notice to DHS upon approval by DHS when the PHP must terminate a Participating Provider or Participating Provider group due to problems that could compromise OMAP Member care, or when such a Participating Provider or Participating Provider group terminates its contract with the PHP and refuses to provide the required 90 calendar days notice;

(b) If DHS must notify OMAP Members of a change in Participating Providers or PHPs, the PHP shall provide DHS with the name, prime number, and address label of the OMAP Members affected by such changes at least 30 calendar days prior to the planned effective date of such activity. The PHP shall provide OMAP Members with at least 30 calendar-days notice of such changes.

(5) PHPs shall have written policies and procedures that ensure scheduling and rescheduling of OMAP Member appointments are appropriate to the reasons for, and urgency of, the visit:

(a) PHPs shall have written policies and procedures and a monitoring system to assure that OMAP Members have access to appointments according to the following standards:

(A) FCHPs and PCOs:

(i) Emergency Care — The OMAP Member shall be seen immediately or referred to an emergency department depending on the OMAP Member's condition;

(ii) Urgent Care — The OMAP Member shall be seen within 48 hours; and

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(iii) Well Care — The OMAP Member shall be seen within 4 weeks or within the Community Standard.

(B) DCOs:

(i) Emergency Care — The OMAP Member shall be seen or treated within 24-hours;

(ii) Urgent Care — The OMAP Member shall be seen within one to two weeks depending on OMAP Member's condition; and

(iii) Routine Care — The OMAP Member shall be seen for routine care within an average of eight (8) weeks and within twelve (12) weeks or the community standard, whichever is less, unless there is a documented special clinical reason which would make access longer than 12 weeks appropriate.

(C) MHOs and CDO's:

(i) Emergency Care — OMAP Member shall be seen within 24-hours or as indicated in initial screening;

(ii) Urgent Care — OMAP Member shall be seen within 48 hours or as indicated in initial screening;

(iii) Non-Urgent Care — OMAP Member shall be seen for an intake assessment within 2 weeks from date of request.

(b) PHPs shall have written policies and procedures to schedule patients and provide appropriate flow of OMAP Members through the office such that OMAP Members are not kept waiting longer than non-OMAP Member patients, under normal circumstances. If OMAP Members are kept waiting or if a wait of over 45 minutes from the time of a scheduled appointment is anticipated, OMAP Members shall be afforded the opportunity to reschedule the appointment. PHPs must monitor waiting time for clients at least through Complaint and Appeal reviews, OMAP termination reports, and OMAP Member surveys to determine if waiting times for clients in all settings are appropriate;

(c) PHPs shall have written procedures and a monitoring system for timely follow-up with OMAP Member(s) when Participating Providers have notified the PHP that the OMAP Member(s) have failed to keep scheduled appointments. The procedures shall address determining why appointments are not kept, the timely rescheduling of missed appointments, as deemed Medically or Dentally Appropriate, documentation in the Clinical Record or non-clinical record of missed appointments, recall or notification efforts, and outreach services. If failure to keep a scheduled appointment is a symptom of the OMAP Member's diagnosis or disability or is due to lack of transportation to the PHP's Participating Provider office or clinic, PHPs shall provide outreach services as Medically Appropriate;

(d) PHPs shall have policies and procedures that ensure Participating Providers will attempt to contact OMAP Members if there is a need to cancel or reschedule the OMAP Member's appointment and there is sufficient time and a telephone number available;

(e) PHPs shall have written policies and procedures to Triage the service needs of OMAP Members who walk into the PCP's office or clinic with medical, mental health or dental care needs. Such Triage services must be provided in accordance with OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

(f) OMAP Members with non-emergent conditions who walk into the PCP's office or clinic should be scheduled for an appointment as appropriate to the OMAP Member's needs or be evaluated for treatment within two hours by a medical, mental health or dental Provider.

(6) PHPs shall have written policies and procedures that ensure the maintenance of 24-hour telephone coverage (not a recording) either on site or through call sharing or an answering service, unless this requirement is waived in writing by OMAP and/or OMHAS because the PHP submits an alternative plan that will provide equal or improved telephone access:

(a) Such policies and procedures shall ensure that telephone coverage provides access to 24-hour care and shall address the standards for PCPs or clinics callback for emergency, urgent, and routine issues and the provision of interpretive services after office hours;

(b) FCHPs and PCOs shall have an adequate on-call PCP or clinic backup system covering internal medicine, family practice, OB/Gyn, and pediatrics, as an operative element of FCHP's and PCO's after-hours care;

(c) Such policies and procedures shall ensure that relevant information is entered into the appropriate Clinical Record of the OMAP Member regardless of who responds to the call or the time of day the call is received. PHPs shall monitor for compliance with this requirement;

(d) Such policies and procedures shall include a written protocol specifying when a medical, mental health or dental Provider must be consulted. When Medically Appropriate, all such calls shall be forwarded to the on-call PCP who shall respond immediately to calls which may be emergent in nature. Urgent calls shall be returned appropriate to the OMAP Member's condition, but in no event more than 30 minutes after receipt. If information is inadequate to determine if the call is urgent, the call shall be returned within 60 minutes;

(e) Such policies and procedures shall ensure that all persons answering the telephone (both for the PHP and the PHP's Participating Providers) have sufficient communication skills and training to reassure OMAP Members and encourage them to wait for a return call in appropriate situations. PHPs shall have written procedures and trained staff to communicate with hearing impaired OMAP Members via TDD/TTY;

(f) PHPs shall monitor compliance with the policies and procedures governing 24-hour telephone coverage and on-call PCP coverage, take corrective action as needed, and report findings to the PHP's Quality Improvement committee;

(g) PHPs shall monitor such arrangements to ensure that the arrangements provide access to 24-hour care. PHPs shall, in addition, have telephone coverage at PHP's administrative offices that will permit access to PHPs' administrative staff during normal office hours, including lunch hours.

(7) PHPs shall develop written policies and procedures for communicating with, and providing care to OMAP Members who have difficulty communicating due to a medical condition or who are living in a household where there is no adult available to communicate in English or where there is no telephone:

(a) Such policies and procedures shall address the provision of qualified interpreter services by phone, in person, in PHP administrative offices, especially those of OMAP Member services and Complaint and Grievance representatives and in emergency rooms of contracted hospitals;

(b) PHPs shall provide or ensure the provision of qualified interpreter services for covered medical, mental health or dental care visits, including home health visits, to interpret for OMAP Members with hearing impairment or in the primary language of non-English speaking OMAP Members. Such interpreters shall be linguistically appropriate and be capable of communicating in English and the primary language of the OMAP Member and be able to translate clinical information effectively. Interpreter services shall be sufficient for the Provider to be able to understand the OMAP Member's complaint; to make a diagnosis; respond to OMAP Member's questions and concerns; and to communicate instructions to the OMAP Member;

(c) PHPs shall ensure the provision of care and interpreter services which are culturally appropriate, i.e., demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect of those on the medical care of the OMAP Member;

(d) PHPs shall have written policies and procedures that ensure compliance with requirements of the Americans with Disabilities Act of 1990 in providing access to covered services for all OMAP Members and shall arrange for services to be provided by Non-Participating referral Providers when necessary;

(A) PHPs shall have a written plan for ensuring compliance with these requirements and shall monitor for compliance;

(B) Such a plan shall include procedures to determine whether OMAP Members are receiving accommodations for access and to determine what will be done to remove existing barriers and/or to accommodate the needs of OMAP Members;

(C) This plan shall include the assurance of appropriate physical access to obtain covered services for all OMAP Members including, but not limited to, the following:

(i) Street level access or accessible ramp into facility;

(ii) Wheelchair access to lavatory;

(iii) Wheelchair access to examination room; and

(iv) Doors with levered hardware or other special adaptations for wheelchair access.

(e) PHPs shall ensure that Participating Providers, their facilities and personnel are prepared to meet the special needs of OMAP Members who require accommodations because of a disability;

(A) PHPs shall have a written plan for meeting the needs of OMAP Members;

(B) PHPs shall monitor Participating Providers for compliance with the access plan and take corrective action, when necessary.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 38-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06

Adm. Order No.: OMAP 66-2005(Temp)

Filed with Sec. of State: 12-13-2005

Certified to be Effective: 1-1-06 thru 6-28-06

Notice Publication Date:

ADMINISTRATIVE RULES

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 reference the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered January 1, 2006 through December 31, 2006. This document is necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and is referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients. The statute is based upon the budget period that coordinates with the managed care and OMAP contracts. The effective date of the contracts coincides with the effective date of the reimbursement rate documents, therefore, OMAP temporarily amended the rule effective January 1, 2006.

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:

(A) 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;

(B) 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)(A) and for outpatient service rates for subsection (3)(b)(B), 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;

(d) January 1, 2006, is effective for dates of service January 1, 2006 through December 31, 2006.

(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

Department of Human Services, Director's Office Chapter 407

Adm. Order No.: DHSD 1-2005(Temp)

Filed with Sec. of State: 11-28-2005

Certified to be Effective: 11-28-05 thru 5-26-06

Notice Publication Date:

Rules Adopted: 407-050-0000, 407-050-0005, 407-050-0010

Subject: Establishes the parties that are authorized to make Medicare Part D decisions for clients of the Department of Human Services.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-050-0000

Purpose

These rules set forth parameters concerning who can make decisions and take action on behalf of individuals who are incapable of making their own Medicare Part D decisions. The decisions and actions include choosing a Medicare Part D prescription drug plan or a Medicare Advantage Plan and filing drug coverage exceptions and appeals, and pursue grievances with Medicare Part D plan sponsors and the federal Centers for Medicare and Medicaid Services (CMS). These rules only pertain to those individuals who receive benefits or services, which are provided by, operated by, authorized or funded by Oregon Department of Human Services. Those acting under the authority of this rule must do so with the express purpose of meeting the pharmaceutical needs of the individual receiving the assistance.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640

Stats. Implemented: ORS 409.010, 410.250, 410.280, 410.020, 411.060, 426.490 & 430.630

Hist.: DHSD 1-2005(Temp), f. & cert. ef. 11-28-05 thru 5-26-06

407-050-0005

Definitions

(1) "Authorized Representative" for purposes of these rules means one of the following, as determined in accordance with these rules:

(a) Closest Available Relative;

(b) Friend or Advocate;

(c) Department Case Manager or designee named by the Department office responsible for enrollment;

(d) Owner, operator, or employee of a Department licensed or certified residential service, nursing home, or foster home, or a Brokerage funded by the Department to provide Developmental Disability Support services.

(2) "Closest Available Relative" means a person who is related by blood, marriage, or adoption, and has a personal relationship to the Part D-eligible Individual. It is a person who is aware of the Part D-eligible Individual's values and beliefs, and is available to make the needed decisions. It does not refer to physical proximity.

(3) "Department" means Department of Human Services.

(4) "Department Case Manager" means an employee of the Department, the Department's designee, Community Developmental Disability Program, Community Mental Health Program or the local Area Agency on Aging that provides case management services to the Part D eligible person.

(5) "Enroll and enrollment" means the act of enrolling a Part D-eligible Individual into a Medicare Part D Prescription Drug Plan (PDP) or Medicare Advantage Plan (MA or MA-PD) or changing plans.

(6) "Friend or Advocate" means a person known to the Part D-eligible Individual and who is interested in the welfare of the individual and will advocate appropriately on behalf of the individual.

(7) "Incapable" means that the Part D-eligible Individual's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make Medicare Part D decisions.

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(8) "Individual Designee" means an individual appointed verbally, in writing or by any means of communication by the Part D-eligible Individual for the purpose of making enrollment or post-enrollment decisions on behalf of the Part D-eligible Individual.

(9) "Medicare Part D Decision" means a decision to enroll or disenroll in a Medicare Part D plan, or any post-enrollment decision, as those terms are used in these rules.

(10) "Medicare Part D Plan, Medicare Prescription Drug Plan, Medicare Advantage Plan" all mean a program under contract with the federal Centers for Medicare & Medicaid Services (CMS) to provide prescription drug insurance to people enrolled in the Medicare program.

(11) "Part D-eligible Individual" means an individual who is eligible to receive Medicare Part D drug benefits and who also receives benefits or services, which are provided by, operated by, or authorized or funded by the Oregon Department of Human Services.

(12) "Personal Representative" means:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481, or 419C.555 with authority to make medical, health care or fiscal 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.

(c) Attorney-in-fact authorized to make Medicare decisions.

(d) Any other entity authorized in state or federal law or by order of a court of competent jurisdiction.

(13) "Post-enrollment actions/decision" means determining whether and how to do any of the following within the Part D program:

(a) File a grievance;

(b) Submit a complaint to the quality improvement organization;

(c) Request and obtaining a coverage determination, including exception requests and requests for expedited procedures;

(d) File and request an appeal and direct any part of the appeals process; and,

(e) Disenroll from a Medicare Part D Plan.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640

Stats. Implemented: ORS 409.010, 410.250, 410.280, 410.020, 411.060, 426.490 & 430.630

Hist.: DHSD 1-2005(Temp), f. & cert. ef. 11-28-05 thru 5-26-06

407-050-0010

Authorized Decision Makers

(1) These rules only pertain to those Part D-eligible Individuals who receive benefits or services, which are provided by, operated by, or authorized or funded by Oregon Department of Human Services. Those acting under the authority of this rule must do so with the express purpose of assisting the Part D-eligible Individual to obtain the Part D drug benefit that will appropriately meet the pharmaceutical needs and protect their health and safety.

(2) These rules only apply to those persons who can make decisions and take action on behalf of Part D-eligible Individuals for Medicare Part D decisions.

(3) A Part D-eligible Individual or their Individual Designee must be allowed to make all Medicare Part D Decisions unless the Part D-eligible Individual is incapable.

(4) If the Part D-eligible Individual is incapable and has a Personal Representative, the Personal Representative must be allowed to make all Medicare Part D Decisions.

(5) If the Part D-eligible Individual is incapable and has an Individual Designee, the Individual Designee must be allowed to make Part D Decisions within the scope of their authority as a designee of the Part D-eligible Individual.

(6) If the Part D-eligible Individual is incapable and does not have an Individual Designee or Personal Representative, these rules authorize the first available person from the following list to be an Authorized Representative for the Part D-eligible Individual solely for the purpose of making Medicare Part D Decision, in order of priority:

(a) Closest Available Relative;

(b) Friend or Advocate;

(c) Department Case Manager or designee named by the Department office responsible for enrollment;

(d) Owner, operator, or employee of a Department licensed or certified residential service, nursing home, or foster home, or a Brokerage funded by the Department to provide Developmental Disability Support services.

(7) The person acting under authority of OAR 407-050-0010(6)(c) or (d) must provide the Part D-eligible Individual a written copy of the enrollment or disenrollment decision that includes a statement that if he or she does not agree with the decision, he or she may change the decision or request the assistance of a different person. In addition to providing the written information, this information may also be provided to the Part D-

eligible Individual orally or in a manner that will effectively communicate with the individual.

(8) Medicare Part D decisions by a person acting under authority of subsection (6) of these rules must be clearly guided by the Part D-eligible Individual's expressed wishes or in the Part D-eligible Individual's best interest in the drug benefit that will appropriately meet their pharmaceutical needs.

(9) An individual may not act as a Authorized Representative under subsection (6) of these rules or Individual Designee under subsection (5) of these rules if the individual:

(a) Receives monetary remuneration or any other compensation from a pharmacy or a Part D plan based on Part D plan enrollment or post-enrollment activities;

(b) Makes Part D decisions for the benefit of a facility, pharmacy, or a plan; or

(c) Is an agent of a Medicare Part D Plan.

(10) Part D Decisions for individuals residing in either an IMD or ICF/MR, will be governed by OAR 309-114-0000 through 309-114-0025.

(11) Nothing in this rule implies or authorizes an individual to act on behalf of another individual as a Health Care Representative as defined in OAR 309-041-1500.

(12) These rules do not impair or supersede the existing laws relating to:

(a) The right of a person has to make his or her own decisions;

(b) Health Care Representatives;

(c) Protective proceedings; or

(d) Powers of Attorney.

(13) The intent of these rules is to encourage ongoing review of these Part D Decisions during regularly scheduled service planning. Nothing in these rules should be construed to limit regular review procedures that may include prescription drug needs of the Part D-eligible Individual and their coverage under a Medicare Part D plan.

(14) If a dispute exists over whom should be the Authorized Representative or over a decision made by an Authorized Representative, the Part D-eligible Individual's service planning team must review the Part D Decision and make modifications as necessary.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 411.116, 426.500 & 430.640

Stats. Implemented: ORS 409.010, 410.250, 410.280, 410.020, 411.060, 426.490 & 430.630

Hist.: DHSD 1-2005(Temp), f. & cert. ef. 11-28-05 thru 5-26-06

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

Adm. Order No.: PH 17-2005

Filed with Sec. of State: 11-25-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 10-1-05

Rules Amended: 333-008-0020

Subject: Changes the fee structure for applications and renewals for the Oregon Medical Marijuana Program.

Effective December 1, 2005, new application fees increase from \$55.00 to \$100.00; and renewal fees increase from \$55.00 to \$100.00. For those individuals who can demonstrate current, valid eligibility in the Oregon Health Plan, or receipt of current Supplemental Security Income monthly benefits, the new or renewal application fee remains \$20.00.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-008-0020

Registration Application and Verification

(1) The Department shall create registration application forms and issue them to requesting physicians, applicants, or designated primary caregivers.

(2) Except as provided in subsection (4) of this section, the Department shall issue a registry identification card to any person who pays a new or renewal application fee as set forth in subsections (2)(a) and (2)(b) of this section and who provides to the Department a completed application as set forth in subsections (2)(c) and (2)(d) of this section.

(a) Effective December 1, 2005, the following fees will be charged: \$100.00 (one hundred dollars) for a new application; \$100.00 (one hundred dollars) for a renewal application; or, \$20 (twenty dollars) for either a new or renewal application by any patient who can demonstrate current eligibility in the Oregon Health Plan or who can demonstrate being a recipient of current Supplemental Security Income monthly benefits.

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(A) Eligibility in the Oregon Health Plan is demonstrated by providing a current, valid eligibility determination statement from the Department's Office of Medical Assistance Programs. To qualify for a reduced fee, a copy of the patient's current eligibility statement must be provided at the time the patient submits an application. The Department will verify the patient's Oregon Health Plan eligibility with the Office of Medical Assistance Programs.

(B) Eligibility for Supplemental Security Income is demonstrated by providing a copy of a receipt of a current monthly benefit. To qualify for a reduced fee, a copy of a receipt of a current Supplemental Security Income monthly benefit must be provided at the time the patient submits an application. The Department will verify the patient's current Supplemental Security Income receipt of monthly benefits through the Department or with the Social Security Administration.

(b) The Department will notify any patient who submits a reduced fee for which the patient is not eligible and will give the patient 14 days from the date of notice to pay the correct fee or to submit a current, valid eligibility determination statement for the Oregon Health Plan, or to submit a copy of a receipt for current Supplemental Security Income monthly benefit, as applicable. The Department will not suspend processing of the patient's application pending receipt of an eligibility statement. The Department will not grant application fee refunds for any eligibility determination made on or after the issue date of the patient's registry identification card.

(c) To supply a completed application, the patient must provide to the Department either: (1) completed copies of all patient application, attending physician declaration, and parent/legal guardian (if applicable) forms; or (2) legible written statements that include all information required on the Department's forms. A copy of the relevant portions of the patient's medical record may serve as written documentation from the attending physician as long as it states that the patient has been diagnosed with a debilitating medical condition; the medical use of marijuana may mitigate the symptoms or effects of the patient's debilitating medical condition; and contains the physician's signature and the date the medical record was made.

(d) In addition to the information required in ORS 475.309(2), the patient and the designated primary caregiver (if applicable) must provide a copy of current, legible photographic identification (i.e., Oregon driver's license, Oregon identification card, or Voter Registration card plus another current, legible photographic identification). The designated primary caregiver (if applicable) must also supply his or her address and date of birth. The patient must provide the Department with the address of the site where marijuana will be manufactured or produced, and indicate whether the property is under the control of the patient or the designated primary caregiver of the patient.

(3) Optional information may be added to application forms at the discretion of the Department if such information serves the best interest of the patient and assists agencies in the implementation of the Act. Optional information need not be provided by the patient, attending physician, or designated primary caregiver, and failure to provide optional information will have no bearing on the approval or denial of a registry identification card.

(4) The Department shall issue a registry identification card to a person who is under eighteen years of age if the person submits the materials required under subsection (2) of this section, and one of the person's parents or legal guardians signs and has notarized a written declaration that states:

(a) The person's attending physician has explained to the person and to one of the person's parents or legal guardians the possible risks and benefits of the medical use of marijuana;

(b) The parent or legal guardian consents to the use of marijuana by the person for medical purposes;

(c) The parent or legal guardian agrees to serve as the person's designated primary caregiver; and

(d) The parent or legal guardian agrees to control the acquisition of marijuana and the dosage and frequency of use by the person.

(5) The Department will verify information on all initial registration applications or written documentation.

(a) The Department will contact each patient and designated primary caregiver (if appropriate) by telephone or by mail to confirm that the information provided is accurate. In cases where the patient is less than eighteen years old, the Department will also contact the parent or legal guardian to verify the information. In cases where proof of identity is uncertain, the Department may require a face-to-face meeting with the patient or designated primary caregiver and/or the production of additional identification materials for verification purposes.

(b) The Department will verify with the Oregon Board of Medical Examiners that the attending physician is licensed to practice in the state and is in good standing. The Department will also contact each attending physician to confirm that the information provided is accurate and valid,

and that the physician is an "attending physician" as defined by 333-008-0010(1).

(6) Upon annual renewal of a registration application, the Department will verify all new information, but may use its discretion in determining the need to verify information that has not changed.

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

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

Adm. Order No.: SSP 16-2005

Filed with Sec. of State: 12-1-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 5-1-05, 11-1-05

Rules Amended: 461-170-0010, 461-170-0020, 461-170-0101, 461-170-0102, 461-170-0103, 461-170-0104

Subject: Rules 461-170-0010, 461-170-0020, 461-170-0101, 461-170-0102, 461-170-0103 and 461-170-0104 are being amended to change the term semi-annual reporting system to simplified reporting system (SRS). This report system is used in the Food Stamp program only.

Rule 461-170-0101 is also being amended to remove groups consisting of only elderly and disabled people with no earned income from the list of filing groups who may not participate in SRS. The rule is further being amended to add filing groups containing person(s) who are in MRS for another program to the list of those filing groups who may not participate in SRS.

Rule 461-170-0102 is also being amended to clarify that households in which all members are elderly or disabled and have no earned income will not be required to complete an interim change report while they are participating in SRS.

Rule 461-170-0103 is also being amended to clarify when the Department acts on information reported through computer matches.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-170-0010

Reporting Changes; When Changes Must be Reported

(1) When a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) Changes reported outside the monthly reporting system (MRS) or simplified reporting system (SRS) must be reported within 10 days of occurring. A change of income is considered to occur as follows:

(A) For earned income, the change occurs upon the client's receipt of the first paycheck from a new job, on the client's receipt of the first paycheck reflecting a change in the rate of pay, or on the last day of employment in the case of a job separation.

(B) For unearned income, the change occurs the day the client receives the new or changed payment.

(b) Changes required to be reported through the MRS must be reported on the Monthly Report Change form designated by the Department and according to MRS requirements. Non-income changes must be reported according to OAR 461-170-0015.

(c) Clients using Averaging with Periodic Review (APR) must report changes according to OAR 461-170-0015 and 461-170-0020. For clients using APR who report changes in amount of income outside the Periodic Review form, act on the change as soon as notice requirements allow.

(d) Clients using the SRS must report changes according to OAR 461-170-0020.

(2) For all programs, changes are considered reported effective the date the information is received by a DHS office.

(3) Changes reported for one program are considered reported for all programs in which the client participates.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-194, f. & cert. ef. 9-1-94; 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;

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AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; 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 16-2005, f. & cert. ef. 12-1-05

461-170-0020

Changes That Must be Reported; FS, MAA, MAF, SAC, TANF

(1) Clients in the FS, MAA, MAF, SAC, and TANF programs are required to report all applicable changes described in this rule.

(2) Clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (7) or (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in employment, including getting, changing, quitting, or losing a job.

(b) A change in source of income.

(c) A change in earned income of more than \$100 a month, except a change due to an annual adjustment in the Oregon minimum wage.

(d) A change in unearned income of more than \$50, except a change in a public assistance grant.

(3) Clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) The acquisition or change in ownership of non-excluded vehicles.

(b) The sale or receipt of resources that cause total resources to exceed program resource limits.

(4) In the MAA, MAF, SAC, and TANF programs, clients must report a member of the filing group becoming pregnant. The report must be received by the Department not later than the 10th day after the client becomes aware of the pregnancy.

(5) In the MAA, MAF, SAC, and TANF programs, clients must report each of the following changes within 10 days of occurrence:

(a) A change in the members of the household group and any resulting change in income.

(b) A change in residence.

(c) A change in who pays the shelter costs if the costs were or will be paid by a non-custodial parent.

(6) In the FS program, clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in residence and the shelter costs in the new residence.

(b) A change in members of the filing group and any resulting change in income.

(c) A change in the legal obligation to pay child support.

(7) Clients in the monthly reporting system (MRS) must report changes in income as required by the rules applicable to the Monthly Change Report.

(8) In the FS program, clients in the simplified reporting system (SRS) must report:

(a) By the 10th day of the month following the month of occurrence, when:

(A) Monthly income exceeds the countable income limit in the FS program; or

(B) Their mailing address changes.

(b) On the interim change report, all other changes not covered by subsection (8)(a) of this rule.

(9) In the FS program, clients participating in the transitional benefit alternative (TBA) are not required to report changes.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.105

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05

461-170-0101

Semiannual Reporting System (SRS); FS

(1) OAR 461-170-0101 to 461-170-0104 establish and explain the simplified reporting system (SRS) used in the Food Stamp program.

(2) Clients certified to receive food stamps for six months or longer may participate in SRS.

(3) Unless there is no earned income and all members of a filing group are elderly or persons with a disability (under OAR 461-110-0110),

a filing group may participate in SRS if the certification period is no longer than six months and the group:

(a) Contains a migrant or seasonal farm worker; or

(b) Contains only homeless individuals.

(4) A filing group may not participate in SRS and is removed from SRS if the group:

(a) Includes a person who is in the monthly reporting system for another program; or

(b) Contains a person who is receiving benefits from the ERDC program.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05

461-170-0102

Required Reports for the Semiannual Reporting System (SRS) — Interim Change Report; FS

(1) During the sixth month of a certification period, a client participating in SRS and certified for food stamps for longer than six months must submit to the Department, on a form designated by the Department, an interim change report of household circumstances, unless the household has no earned income and all members are elderly or persons with a disability (under OAR 461-110-0110).

(2) The required interim change report is considered complete when it is received by the Department by the last day of the sixth month of the certification period and:

(a) The client completely and accurately answers all questions necessary to determine eligibility and benefit amounts;

(b) The client provides all required verification; and

(c) The form contains the signature of the primary person or the authorized representative.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 16-2005, f. & cert. ef. 12-1-05

461-170-0103

Actions Resulting From Changes in Household Circumstances; Simplified Reporting System (SRS); FS

Benefits may be changed for a client using SRS — based on information obtained other than through the interim change report — only as follows:

(1) The benefit level will be increased if the information demonstrates the client is eligible for greater benefits.

(2) The benefits will be closed or reduced only if one of the following applies:

(a) The household requests a closure of benefits.

(b) The action is based on information that is verified upon receipt. Information is considered verified upon receipt if:

(A) It is not questionable and the person making the report has first-hand knowledge of the information reported; or

(B) Verification is provided with the reported change.

(c) The client reports information that results in loss of eligibility for the FS program.

(3) The Department acts on information reported through computer matches when the interim change report is processed, when the client is recertified, or when the monthly match with the Employment Department generates an Unemployment Compensation (UC) hold.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05

461-170-0104

Effect of Failure to Submit Complete Interim Change Report; Simplified Reporting System (SRS); FS

(1) If the Department does not receive a complete interim change report by the last day of the sixth month of the certification period, benefits for the seventh month of the certification period are suspended. If the interim change report is not received during the month of suspension, the client is ineligible for that month.

(2) If a completed interim change report is received by the last day of the seventh month, it is used to determine eligibility and benefit level for the seventh and remaining months of the certification period in SRS.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 16-2005, f. & cert. ef. 12-1-05

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

Adm. Order No.: SPD 15-2005(Temp)

Filed with Sec. of State: 11-16-2005

Certified to be Effective: 11-16-05 thru 5-15-06

Notice Publication Date:

Rules Amended: 411-031-0020, 411-031-0050

Subject: Amendment to rule 411-031-0050 is needed as SPD and its paid care providers have federal mandates to protect the confidentiality of the individuals being served. As providers, Homecare Workers have access to privileged, confidential client information but have not previously been asked to sign a confidentiality agreement. This omission is being rectified by the rule amendment. In addition, the confidentiality violations are being added to the rule governing reasons for termination. Homecare Workers who violate the confidentiality of their employers (client's) will now be subject to termination.

Additionally, in their 2005-2007 collective bargaining with the Home Care Commission, SEIU Local 503, OPEU (the Homecare Workers' Union negotiated to change the terminology used in Oregon Administrative Rules for provider enrollment termination. Currently the terms used include "Immediate Suspension" even though the action taken is not a temporary suspension. This has led to confusion. The new terms used will be "Immediate Termination" instead of "Immediate Suspension" and "Termination Pending Appeal" to describe the traditional form of provider enrollment termination where the Homecare Worker has ten days to appeal before the action would take place.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-031-0020

Definitions

(1) "Activities of Daily Living" (ADL) means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities may include eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Adult Protective Services" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in 411-020-0000 through 411-020-0050.

(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) "Burden of proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(5) "Business days" means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(6) "Case Manager" means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(7) "Client" means the individual eligible for in-home services.

(8) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(9) "Companionship Services" means those services which are designated by the Department of Labor as meeting the personal needs of a client and which are exempt from federal and state minimum wage laws.

(10) "Contracted In-Home Care" means a service provided through a contractor, which consists of minimal or substantial assistance with activities of daily living and self-management tasks.

(11) "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.

(12) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(13) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(14) "Fiscal Improprieties" means the Homecare Worker committed financial misconduct involving the client's money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the Homecare Worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(15) "General Household Work" means, according to federal law, housecleaning, chore services, and other household tasks.

(16) "Homecare Worker" (HCW) means a provider, as described in OAR 411-031-0020 and 411-031-0040, who is directly employed by the client and provides either hourly or live-in services to eligible clients. The term Homecare Worker includes providers in the Spousal Pay Program. Independent Choices Program providers and Personal Care Attendants enrolled through Developmental Disability Services or Mental Health Services are excluded from the term Homecare Worker.

(17) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, which are provided at regularly scheduled times.

(18) "Imminent Danger" means there is reasonable cause to believe a person's life or physical well-being is in danger if no intervention is initiated immediately.

(19) "In-Home Services" means those services that assist a client to stay in his/her own home.

(20) "Lack of skills, knowledge and ability to adequately or safely perform the required work" means the Homecare Worker does not possess the skills to perform services needed by Department clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. They may be unable or unwilling to maintain client confidentiality. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(21) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in Homecare Worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under the Companionship Services definition outlined in this rule. To ensure continuity of care for the client, live-in service plans must include at least one HCW providing 24-hour availability for a minimum of five (5) days in a calendar week.

(22) "Minimal Assistance" means the client is able to perform a majority of a task, but requires some assistance.

(23) "Office of Administrative Hearings" means the panel established within the Employment Department under section 9, chapter 849, Oregon Laws, 1999, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(24) "Oregon Project Independence" (OPI) means the program of in-home services defined in OAR chapter 411, division 032.

(25) "Preponderance of the evidence" means that one party's evidence is more convincing than the other party's.

(26) "Provider" means the individual who actually renders the service.

(27) "Provider enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a provider number.

(28) "Provider number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through the Department.

(29) "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.

(30) "Seniors and People with Disabilities (SPD)" means the part of the Department of Human Services responsible for the administration of programs to seniors and people with disabilities. Many of the services are provided to clients through local Area Agency on Aging (AAA) offices.

(31) "Services are not provided as required," means the Homecare Worker does not provide the services to the client as described in the service plan authorized by the Department.

(32) "Twenty-Four Hour Availability" means the availability and responsibility of a Homecare Worker to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-

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four hour period. These services are provided by a live-in Homecare Worker and are exempt from federal and state minimum wage and overtime requirements.

(33) "Unacceptable conduct at work" means the Homecare Worker has repeatedly engaged in one or more of the following behaviors: delay in their arrival to work or absences from work not prior-scheduled with the client, which are either unsatisfactory to the client or which neglect the client's care needs; or inviting unwelcome guests or pets into the client's home, which results in the client's dissatisfaction or inattention to the client's required care needs.

(34) "Unacceptable criminal history" means that a criminal history check and fitness determination have been conducted pursuant to Administrative Rules 410, division 007, finding the Homecare Worker unfit.

(35) "Violation of a drug-free workplace" means there was a substantiated complaint against the Homecare Worker being intoxicated by alcohol or drugs while responsible for the care of the client, while in the client's home, or while transporting the client, or manufacturing or distributing drugs while providing authorized services to the client or while in the client's home.

(36) "Violations of Protective Service and abuse rules" means the Homecare Worker violated protective service and abuse rules as described in 411-020-0002, Section 1. Abuse includes physical assault, use of inappropriate or derogatory language, financial exploitation, inappropriate sexual advances, neglect of care, and denying medical care or treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06

411-031-0050

Administrative Review and Hearing Rights

This rule establishes the appeal and hearing rights for Homecare Workers when the Department suspends or terminates the HCW's provider enrollment.

(1) Exclusions to Appeal and Hearings Rights:

(a) The following are excluded from this administrative review and hearing rights process:

(A) Terminations based on criminal history. The Homecare Worker has the right to a hearing within OAR 410-007-0200 through 410-007-0380.

(B) Homecare Workers that have not worked in the last twelve months. The provider enrollment may become inactivated but will not be terminated. To activate the provider enrollment number, the HCW must complete an application and criminal history clearance.

(C) Homecare Workers that fail to complete a criminal history recheck.

(D) Homecare Workers that are denied a provider enrollment number at the time of initial application.

(E) Homecare Workers not currently providing services to any clients whose provider enrollment is inactivated while an investigation is being completed.

(F) Homecare Workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal programs.

(b) These rules only apply to Homecare Workers as defined in OAR 411, division 031. These rules do not include any other providers enrolled, licensed or otherwise registered by the Department of Human Services.

(2)(a) Violations Resulting in Termination of Provider Enrollment:

(b) The Department may terminate the Homecare Worker's provider enrollment when a Homecare Worker:

(A) Violates the requirement to maintain a drug-free work place;

(B) Has an unacceptable criminal history as defined in OAR chapter 410, division 007;

(C) Lacks the skills, knowledge, and ability to adequately or safely perform the required work;

(D) Violates protective service and abuse rules, as defined in OAR chapter 411, division 020;

(E) Commits fiscal improprieties;

(F) Fails to provide services as required;

(G) Engages in unacceptable conduct at work; or

(H) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal health care programs.

(3) Immediate Termination: The Department may immediately terminate a provider enrollment on the date the violation is discovered, prior to

the outcome of the administrative review when an alleged violation presents imminent danger to current or future clients. The Homecare Worker may file an appeal of this decision directly to DHS Central Office.

(4) Termination Pending Appeal: When a violation does not present imminent danger to current or future clients, the provider enrollment will not be terminated during the first ten business days of the Administrative Review appeal period. If the Homecare Worker appeals in writing prior to the deadline for appeal, the enrollment will not be terminated until the conclusion of the Administrative Review.

(5) Termination if No Appeal Filed: The decision of the reviewer will become final if the Homecare Worker does not appeal within ten business days of the notice of the decision. Once the time period for appeal has expired, the reviewer or designee will terminate the provider enrollment.

(6) Burden of Proof: The Department of Human Services has the burden of proving the allegations of the complaint by a preponderance of the evidence. Evidence submitted for the administrative hearing is governed by OAR 137-003-0050.

(7) Administrative Review Process: The Administrative Review process allows an opportunity for the SPD/AAA program manager or DHS Central Office to review and reconsider the decision to terminate the Homecare Worker's provider enrollment. The appeal may include the provision of new information or other actions that may result in the Department changing its decision.

(a) When the Department decides to terminate the Homecare Worker's provider enrollment, the Department will issue a written notice that will include:

(A) An explanation of the reason(s) for termination of the provider enrollment;

(B) The alleged violation as listed in OAR 411-031-0050; and

(C) The Homecare Worker's appeal rights, including the right to union representation, and where to file the appeal.

(b) For terminations based on substantiated protective services complaint, the letter may only contain the limited information allowed by law. Complainants, witnesses, and the name(s) of the alleged victim(s) must not be disclosed.

(c) Informal Conference: At the first level of appeal, an informal conference, (described in OAR 461-025-0325), if requested by the Homecare Worker, will be scheduled with the Homecare Worker and any union representative. The Program Manager, or designee, will meet with the Homecare Worker, review the facts, and explain why the agency decision was made. The informal conference may be held by telephone.

(d) The Homecare Worker must specify in the request for review the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice, must receive the request for review within ten (10) business days of the decision affecting the worker. If the Homecare Worker decides to file an appeal, they must file their appeal in the following order:

(A) The Program Manager (or designee) at the local office;

(B) DHS Central Office;

(C) Office of Administrative Hearings:

(i) A Homecare Worker can file a request for a hearing with the Office of Administrative Hearings if all levels of administrative review have been exhausted, and the Homecare Worker continues to dispute the Department's decision. The request can be filed through the local office with the Office of Administrative Hearings, as described in OAR 137, division 003. The request for the hearing must be filed within 30 calendar days of the written notice from DHS Central Office.

(ii) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings will determine whether the Departments' decision to terminate the provider enrollment number is affirmed or reversed. The ALJ will issue a Final Order with the decision to all appropriate parties.

(iii) No additional hearing rights have been granted to Homecare Workers by this rule, other than the right to a hearing on the Department's decision to terminate the Homecare Worker's provider enrollment number.

(e) In the first two steps of the administrative review process, a written response of the outcome of the review will be sent to the Homecare Worker within ten business days of the review date.

(f) If the Administrative Review determines that the decision to immediately terminate the provider enrollment was unjustified, the reviewer or designee will have the provider number restored to active status. The written response will notify the Homecare Worker that the provider enrollment will be restored.

(8) Request for Extension to Deadline: The Department or the Homecare Worker may request an extension of the 10-day deadline for circumstances beyond their control, if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 410.070, 409.050 & 410.090

Stats. Implemented: ORS 410.070

ADMINISTRATIVE RULES

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; Administrative correction 7-20-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06

Adm. Order No.: SPD 16-2005(Temp)

Filed with Sec. of State: 11-23-2005

Certified to be Effective: 11-23-05 thru 5-22-06

Notice Publication Date:

Rules Amended: 411-320-0020, 411-320-0030, 411-320-0040, 411-320-0050, 411-320-0070, 411-320-0080, 411-320-0090, 411-320-0100, 411-320-0110, 411-320-0120, 411-320-0130, 411-320-0140, 411-320-0160, 411-320-0170

Subject: OAR Chapter 411, Division 320 is being amended for the following reasons: a) adding a definition for adaptive behavior and clarifying language for consistency and understanding; b) restoring Grievance Committee process for consumer grievances left out of last rule; and c) restoring specific rules of mental retardation and developmentally disabled eligibility left out of 8/2004 amendment.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-320-0020

Definitions

(1) "24-Hour residential program" means a comprehensive residential program licensed by the Department of Human Services under ORS 443.400(7) and (8), to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) "Abuse of a child" is defined in ORS 418.005, 419B.005, 418.015, 418.748 and 418.749. This includes but is not limited to:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury including, but not limited to, bruises, welts, burns, cuts, broken bones, sprains, bites that are deliberately inflicted;

(C) Neglect including, but not limited to, failure to provide food, shelter, medicine, to such a degree that a child's health and safety are endangered;

(D) Sexual abuse and sexual exploitation including, but not limited to, any sexual contact in which a child is used to sexually stimulate another person. This may include anything from rape to fondling to involving a child in pornography;

(E) Threat of harm including, but not limited to, any action, statement, written or non-verbal message that is serious enough to make a child believe he or she is in danger of being abused;

(F) Mental injury including, but not limited to, a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or

(G) Child selling including, but not limited to, buying, selling or trading for legal or physical custody of a child.

(b) Abuse of an adult. Except for those additional circumstances listed in OAR 411-320-0020(2)(c)(A)-(F) abuse of an adult means one or more of the following:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult; or

(E) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being.

(c) Abuse in other circumstances. When the Department directly operates any licensed 24-Hour Residential Program; or the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes but is not limited to, the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or tolerating or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services.

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate or unauthorized physical intervention that results in injury.

(i) A physical intervention is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a behavior support plan; or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A physical intervention is not authorized if:

(I) There is not a written physician's order when intervention is used as a health related protection; or

(II) It is applied without ISP Team approval as identified on the ISP or as described in a formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation that may include, but is not limited to, an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or the person's legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with program or another individual's funds, or the program becoming guardian or conservator.

(G) The definitions of abuse described in OAR 411-320-0020(2)(b)(A)-(E) also apply to homes or facilities licensed to provide 24-Hour Residential Services for children with developmental disabilities or to agencies licensed or certified by the Department to provide Proctor Foster Care for children with developmental disabilities.

(H) The definitions of abuse described in OAR 411-320-0020(2)(c)(A)-(F) also apply to the staff of the CMHDDP or a Support Services Brokerage.

(3) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 410-009-0100 and any subsequent services or supports necessary to prevent further abuse.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event. Examples of accidents include, but are not limited to: incidents involving vehicles, bicycles or other modes of transportation that result in a collision or impact; falls, e.g., on ice, snow, water, stairs, uneven surfaces such as rugs, clutter, uneven ground; or other impact with an object, furniture, sports equipment, etc.

(5) "Adaptive Behavior" means the degree that an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include, but are not limited to: adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including but not limited to: walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker or other professional with a graduate degree and specific training and experience in individual assessment, administration and test interpretation of adaptive behavior scales for persons with developmental disabilities.

(b) "Significant impairment" in adaptive behavior means minus two standard deviations below the norm in two or more areas of functioning including but not limited to: communication, mobility, self-care, socialization, self-direction, functional academics or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrator" means the Assistant Director Department of Human Services and Administrator of Seniors and People with Disabilities, a cluster within the Department, or that person's designee.

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(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(10) "Care" means supportive services including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

(11) "Chemical restraints" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior or treatment plan.

(12) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(13) "Choice" means the individual's expression of preference, as well as the opportunity for an active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated through verbal, sign language, or other communication methods.

(14) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(15) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(16) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program (CMHDDP) that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under a County Financial Assistance Contract with the Department of Human Services.

(17) "Complaint" means an allegation of abuse of an individual; a grievance against a CDDP or CDDP subcontractor's contract, policies or procedures; or other significant problem or dissatisfaction with the CDDP or CDDP subcontractor that could impact individual(s) health and safety, or significantly impact community relations with the CDDP or the CDDP subcontractor.

(18) "Complaint investigation" means an investigation of any allegation that has been made to a proper authority that the program has taken an action that is alleged to be contrary to law, Oregon Administrative Rule or policy that is not covered by an abuse investigation or a grievance procedure.

(19) "Comprehensive Services" means a package of developmental disability services and supports, that includes one of the following living arrangements regulated by the Department: a 24-hour program, a foster home, a supported living program or comprehensive in-home supports for adults in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services, (with an annual plan for less than \$20,000), or Children's Intensive In-Home Services.

(20) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS 427 and imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(21) "Crisis or Diversion Services" means a short-term service(s) for up to 90 days provided to, or on behalf of, an adult to prevent civil court commitment under ORS 427.215 through 427.300 or a child to prevent out-of-home placement through the arrangement for or facilitation of the purchase or provision of goods and services, directly related to resolving a crisis, and provided to or on behalf of individuals eligible to receive such services.

(22) "Crisis plan" means the CDDP or Regional Crisis Program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under this rule.

(23) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department, that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(24) "Developmental disability" for the purpose of these rules, means a disability that originates in childhood that is likely to continue and significantly impacts adaptive behavior. Developmental Disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling condition that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18; and

(b) Originates in the brain; and has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a significant impairment in adaptive behavior; and

(d) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder or sensory impairment.

(25) "Entry" means admission to a Department funded developmental disability service provider.

(26) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(27) "Grievance" means a formal complaint by the individual or a person acting on his or her behalf about any aspect of the program or an employee of the program.

(28) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(29) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession and includes a health care facility.

(30) "Health care representative" means:

(a) A health care representative as defined in ORS 127.505(12); or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR 309-041-1500 through 309-041-1610.

(31) "Home" means the actual physical structure in which a child has been living.

(32) "Imminent Risk" means that within 60 days and without the use of Crisis Services, the adult will be civilly court-committed to the Department of Human Services under ORS 427, or the child will require out-of-home placement.

(33) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(34) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(35) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator or Support Specialist.

(36) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for an individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(37) "Individualized Education Plan" or "IEP" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student and a representative of the school district.

(38) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, agency representatives who provide service to the individual, (if appropriate for in-home supports), the guardian, if any, relatives of the individual, the Services Coordinator and any other persons who are well liked by the individual and requested by the individual to serve on the team.

(39) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community, resources that are used by and available to other persons in the community, and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community. (See ORS 427.005.)

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(40) "Legal representative" means the parent, if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.

(41) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.

(42) "Long Term Diversion Services" means new or enhanced services provided to an individual who is eligible for crisis/diversion services and is needed on a long-term or on-going basis to resolve the crisis.

(43) "Majority agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Representatives from service provider(s), families, the CDDP, or advocacy agencies are considered as one member of the ISP team for the purpose of reaching majority agreement.

(44) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact, while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(45) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(46) "Mechanical restraints" means any mechanical device material, object or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around and restricts freedom of movement or access to the individual's body.

(47) "Mental Retardation" means significantly sub-average general intellectual functioning defined as IQ's under 70 existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior. The adaptive behavior must be primarily related to the issues of mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Levels of mental retardation are:

(a) Mild Mental Retardation is used to describe the degree of retardation when intelligence test scores are 50 to 69. Individuals with IQ's in the 70-75 range can be considered as having mental retardation if there is significant impairment in adaptive behavior as described in 411-320-0020(5).

(b) Moderate Mental Retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe Mental Retardation is used to describe the degree of retardation when intelligence test scores are 20 to 34.

(d) Profound Mental Retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(48) "Monitoring" means the periodic review of the implementation of services identified in the annual service plan or annual summary, and the quality of services delivered by other organizations.

(49) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The system is based on a proactive approach that includes methods of effective evasion, deflection and escape from holding.

(50) "Physical intervention" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(51) "Plan of Care" means the written details of the supports, services and resources provided or accessed to address the needs of the individual. The plan of care is to be developed by the support team, using a person-centered approach.

(52) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities that is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other

developmental disabilities in work contributing to a household or community.

(53) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts and to safeguard an individual's person, property and funds as possible.

(54) "Protective services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts and to safeguard an individual's person, property, and funds as soon as possible.

(55) "Psychotropic medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes but is not limited to, anti-psychotic, antidepressant, anxiolytic, and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(56) "Regional Crisis/Diversion Program" means the regional coordination of the management of crisis/diversion services for a group of designated counties.

(57) "Respite care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(58) "Restraint" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.

(59) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. For purposes of this rule the term case manager is synonymous with Services Coordinator.

(60) "Service provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider" or "program" is synonymous with "service provider."

(61) "Short Term Crisis Services" means service(s) to address a crisis, provided for up to 90 days, or on a one-time basis, to or on behalf of, an individual eligible to receive crisis services.

(62) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(63) "Support Specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of resources for individuals with developmental disabilities served by a Support Services Brokerage. The term Title XIX specialist may be synonymous with Support Specialist.

(64) "Support Team" means a group composed of members as determined by an individual receiving services or the individual's legal guardian, to participate in the development of the individual's plan of care.

(65) "Transfer" means movement of an individual from a service site to another within a county, administered by the same service provider and that has not been addressed within the ISP.

(66) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(67) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(68) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the CDDP.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

ADMINISTRATIVE RULES

411-320-0030

Organization and Program Management

(1) Organization and internal management. Each provider of community developmental disability services funded by the Department must have written standards governing the operation and management of the program. Such standards must be up to date, available upon request and include:

(a) Organization chart. An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and for the components and staff within the agency;

(b) Position descriptions. Position descriptions for all staff providing community developmental disability services;

(c) Personnel requirements. Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions and merit pay;

(D) Staff development and training;

(E) Employee conduct (including the requirement that abuse of an individual by an employee, staff or volunteer of the CDDP is prohibited and is not condoned or tolerated);

(F) Reporting of abuse, (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by the Department.

(2) Management plan. The CDDP must maintain a current plan assigning responsibility for the developmental disabilities program management functions and duties described in this rule. The plan must assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that these functions will be implemented.

(3) Qualified staff. Qualified staff must provide developmental disability services. These staff must maintain and enhance their knowledge and skills, through participation in education and training programs. Staff delivering these services must be organized under the leadership of a designated Developmental Disability Program Manager and receive clerical support services sufficient to perform their required duties. Staff must have an approved Criminal History Record Check in accordance with ORS 181.536 through 181.537.

(a) Program management for developmental disability services.

(A) Program Manager. The local mental health authority (LMHA) or the public or private corporation operating the community developmental disability services program must designate a full-time employee who will, on at least a part-time basis, be responsible for management of developmental disability services.

(B) Program Manager Qualifications. The program manager for developmental disability services must meet the following qualifications for employment:

(i) Hold at least a bachelor's degree in a behavioral, social, health science, special education, public administration, or human service administration; and have a minimum of four years' experience, with at least two of those in developmental disability services that provided recent experience in program management, fiscal management and staff supervision.

(ii) On an exceptional basis, the CDDP may hire an individual who does not meet these program manager qualifications if the county and the Department have mutually agreed on a training and technical assistance plan that assures that the individual will quickly acquire all needed skills and experience.

(iii) When the position of program manager for developmental disability services becomes vacant, an interim program manager must be appointed to serve until a permanent program manager is appointed. The community mental health and developmental disability services program must request a variance, as provided in these rules, if the individual(s) appointed as interim program manager do not meet the qualifications and the term of the appointment(s) total more than 180 days.

(C) Management functions. In addition to other duties as may be assigned in the area of developmental disability service, the Community Developmental Disability Program (CDDP) must, at a minimum, assure the following duties are performed:

(i) Develop and assure implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve people with developmental disabilities;

(ii) Develop and assure maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, the Department and other state and local agencies with an interest in developmental disability services;

(iii) Develop and assure implementation of programs funded by the Department to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state and federal requirements;

(iv) Assure collection and timely reporting of information as may be needed to conduct business with the Department, including but not limited to, information needed to license foster homes, to collect federal funds supporting services and to investigate complaints related to services or suspected client abuse; and

(v) Develop and assure use of procedures that attempt to resolve complaints and grievances involving individuals or organizations that are associated with developmental disability services.

(b) Staff. Each CDDP must provide a qualified Services Coordinator or Support Specialist as required by this rule. These roles may be fulfilled by the same person.

(A) Qualifications. A person employed as a Services Coordinator or as a Support Specialist must have at least:

(i) A bachelor's degree and two years' work experience in human services; or

(ii) Five years of equivalent training and work experience; and

(iii) Knowledge of the public service system for developmental disability services in Oregon.

(B) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in 411-320-0030(3)(b)(A) may perform those functions only with prior approval of a variance by the Department. Prior to employment of an individual not meeting minimum qualifications a Services Coordinator or a Support Specialist the CDDP must submit a written variance request to the Department. The request will include:

(i) An acceptable rationale for the need to employ an individual who does not meet the qualifications; and

(ii) A proposed alternative plan for education and training to correct the deficiencies.

(iii) The proposal must specify activities, timelines and responsibility for costs incurred in completing the plan.

(iv) A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(C) Services Coordinator responsibilities. The duties specified in the employee's job description must, at a minimum, include the following:

(i) Deliver case management services as listed in OAR 411-320-0090(4)(a)-(u) to individuals with developmental disabilities;

(ii) Assist the program manager in monitoring the quality of services delivered within the county; and

(iii) Assist the program manager in the identification of existing and insufficient service delivery resources or options.

(D) Support Specialist responsibilities. The duties specified in the employer's job description will at a minimum, include the following:

(i) Authorizing individual support plans of individuals enrolled in Support Services Brokerages for adults with developmental disabilities;

(ii) Ensuring that requirements of for Support Services in the Title XIX Waiver are met, including providing notice of hearing rights and completing an annual waiver review;

(iii) Determining eligibility for and providing assistance in accessing crisis/diversion services;

(iv) Receiving and investigating complaints of abuse or neglect, as well as ensuring the provision of protective services; and

(v) Facilitating transfers to another county or into comprehensive services.

(4) Staff training. Services Coordinators and support service specialists must participate in a basic training sequence. The Department provides training materials, and the provision of training may be conducted by the Department or CDDP staff, depending on available resources. This training is not a substitute for the normal procedural orientation that would occur for a new Services Coordinator or Support Specialist that must be provided by the CDDP.

(a) Orientation. New Services Coordinator or support service specialist orientation provided by the CDDP must include:

(A) An overview of DD services and related human services within the county;

(B) An overview of the Department rule(s) governing the CDDP;

(C) An overview of the Department's licensing and certification rules for service providers;

(D) An overview of the Client Process Monitoring System (CPMS) or any subsequent replacement system;

(E) A review and orientation to Medicaid, Supplemental Security Income (SSI), Social Security Administration (SS), Home and Community Based Waiver Services, the Oregon Health Plan; and

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(F) A review, (prior to having contact with service recipients), of the Services Coordinator's or Support Specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors and children.

(b) Minimum annual training. Each Services Coordinator must be required to participate in a minimum of 20 hours per year of additional Department sponsored or other training in the area of developmental disabilities.

(c) Mandated training. The DD Program Manager will assure the attendance of the Services Coordinators, Support Specialists or quality assurance staff at Department mandated training.

(d) Training documentation. The CDDP must keep documentation of required training in the personnel files of the Services Coordinator, the Support Specialist and in the general files of the CDDP.

(5) Advisory committee. Each CDDP must have an advisory committee.

(a) The committee must meet at least quarterly.

(b) The membership of the committee will be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional and consumer interests represented. Membership must include advocates for individuals with mental retardation or other developmental disabilities as well as individuals with disabilities and their families.

(c) The Advisory Committee will advise the LMHA, the community mental health and developmental disability program director and the developmental disability program manager on community needs and priorities for services and will assist in planning and in review and evaluation of services.

(d) The Advisory Committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the local mental health authority.

(6) Needs assessment, planning & coordination. Upon request of the Department, the CDDP must assess local needs for services to individuals with mental retardation or other developmental disabilities and must submit planning and assessment information to the Department.

(7) Contracts.

(a) Contract required. If the CDDP, (or any of its component service element, as described in the Department contract with the LMHA), is not operated by the LMHA there must be a contract between the LMHA and the organization operating the CDDP or the component service elements. The contract must specify the authorities and responsibilities of each party and conform to the requirements of Department rule(s) pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) Provider selection. The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the individual's family or the individual's guardian or legal representative.

(A) The service provider selected must also meet Department certification or licensing requirements to provide the type of service to be contracted. This is in keeping with the principles of family support expressed in ORS 417.342 and notwithstanding 430.670(2) or 291.047(3).

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of Department rule(s) pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) Model contract. When a CDDP contracts with a public agency or private corporation for delivery of developmental disability service element, the CDDP will include in the contract only terms that are substantially similar to model contract terms established by the Department. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the service element(s) being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to procedures contained in OAR 411-320-0170(2)(a)(A)-(B) and (b)(A)-(D). For purposes of this section i.e., 411-320-0030(7)(a)-(f) (8), the following definitions apply:

(A) "Model contract terms established by the Department" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by the Department as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the service element(s) being provided" means requirements that are not substantially similar to model contract terms developed by the Department.

(d) Local option. The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option as it would appear in the contract. It must include the date upon which the local option would become effective and a complete written description of how the local option would improve client independence, productivity, or integration; or how it would improve the protection of client health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option will impact client services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

(D) The CDDP has sent a written request for approval of the proposed local option to the Administrator for SPD or his/her designee that includes:

(i) A copy of the information provided to the affected contractors;

(ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and

(iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.

(E) The Department has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) Exception to limit on contract requirements for facilities. The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which client care is provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) Contract dispute resolution. The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by the Department and contracted through the CDDP. Procedures implementing this policy must be included in the contract with any such service provider.

(8) Financial Management.

(a) Financial records. There must be up-to-date accounting records for each developmental disability service element accurately reflecting all revenue by source, all expenses by object of expense and all assets, liabilities and equities, consistent with generally accepted accounting principles and conforming to the requirements of OAR 309-013-0120 through 0220 (Audit Guidelines).

(b) Fraud & embezzlement. There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX. Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service charged by the service element.

(9) Policies and Procedures. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with the Department, OAR 411-320-0010 through 0200 and other applicable standards and rules.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0040

Community Developmental Disability Program Responsibilities

The CDDP must ensure the provision of the following services and system supports.

(1) Access to services:

(a) Nondiscrimination. In accordance with the Civil Rights Act of 1964, (codified as 42 USC 2000d et seq.), community mental health and developmental disability services must not be denied any person on the basis of race, color, creed, sex, national origin or duration of residence. Community developmental disability contractors must comply with Section 504 of the Rehabilitation Act of 1973, (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4), that states in part, "No qualified

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person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.”

(b) Acceptance of eligibility. Any individual determined eligible for developmental disability services by a CDDP must also be eligible for other community developmental disability services provided unless admission to the service is subject to diagnostic or disability category or age restrictions based on predetermined criteria or contract limitations.

(2) Coordination of community services. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the community mental health and developmental disability program, other local and state human service agencies and any other service providers as appropriate for the needs of the individual.

(3) Case management services. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CMHDDP and a provider of case management services.

(c) If an individual is receiving services in more than one county, the county of residence must be responsible for case management services unless otherwise negotiated.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring monitoring as well as investigating. Except as allowed under subsection 411-320-0040(3)(e), the case management program will be provided under an organizational structure that separates case management from other direct services for individuals with developmental disabilities. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services, or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) A CDDP or other organization that provides case management services may also provide other direct services under the following circumstances:

(A) When the CDDP coordinates the delivery of Child and Family Support Services for children under 18 years old, living at home with their family or Comprehensive In-Home Supports for adults.

(B) When the CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able and no other organization is able or willing to continue operations on 30 days notice.

(C) In order to develop new or expanded direct services for geographic areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) Exception. If a CDDP intends to perform a direct service, a variance must be prior authorized by the Department.

(A) It is assumed that the CDDP will provide Child and Family Support Services or Comprehensive In-Home Supports described in OAR 411-320-0040(3)(e)(A) above. If the CDDP does not provide one or both of these services they must propose a variance to the Department for approval describing how those services will be provided.

(B) If the circumstance described in OAR 411-320-0040(3)(e)(B) above exist, the CDDP must propose a plan to the Department for review including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If a CDDP providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e)(C) above exists, the organization must propose a variance to the Department for prior approval including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If an organization providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e), it must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in OAR 411-320-0040(3)(g), the CDDP must submit a written variance for prior

approval by the Department that describes how conflict of roles will be managed within the CDDP.

(4) Family support. The CDDP must ensure the availability of a program for Child and Family Support Services in accordance with OAR 411-340-0010 through 0180.

(5) Title XIX administration. The CDDP must ensure the availability of staff to provide the required administrative review of program services funded by the Medicaid waiver(s). This must include the availability of Support Specialists as described in OAR 411-320-0030(3)(b)(A)–(B)&(D).

(a) If an individual is receiving services in more than one county, the county of residence must provide the services of a Support Specialist unless otherwise negotiated.

(b) If a CDDP also operates a Support Services Brokerage the CDDP must submit a variance in writing for prior approval to the Department including the mechanism for addressing potential conflicts of interest.

(6) Abuse and protective services. The CDDP must assure that abuse investigations for adults are appropriately reported and conducted according to statute and administrative rules by trained staff. When there is reason to believe a crime has been committed there must be a report to law enforcement. Any suspected or observed abuse of children should be reported directly to the Child Welfare child protective services unit or local law enforcement, when appropriate.

(7) Foster homes. The CDDP will recruit foster home applicants and maintain forms and procedures necessary to license or certify homes. This will include copies of the following records:

(a) Initial and renewal applications to be a foster home;

(b) All inspection reports completed by the CDDP (including required annual renewal inspection and any other inspections);

(c) General facility information;

(d) Documentation of references, classification information, credit check, if necessary, criminal history clearance and training for provider and substitute caregivers.

(e) Documentation of foster care exams for adult foster home caregivers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denial or revocation (if any); and

(k) Copies of the annual license or certificate.

(8) Contract monitoring. The CDDP will monitor all community developmental disability subcontractors to assure that:

(a) Service element services are provided as specified in the contract with the Department; and

(b) Service elements are in compliance with these rules and other applicable Department administrative rules.

(9) Local quality assurance program. Each CDDP must implement and maintain a local quality assurance system in accordance with these rules.

(a) QA system purpose and scope. The local quality assurance system will:

(A) Ensure the development and implementation of a quality assurance system by:

(i) Providing direct support to DHS in implementation of its quality assurance (QA) plan; and

(ii) Generally improving the quality of services by evaluating service delivery and outcomes and adjusting local planning and performance where needed.

(B) Include all Department funded developmental disability services provided within the county, including services that are operated or subcontracted by the CDDP, state operated community programs for developmental disabilities; and those developmental disability services operating under a direct contract with the Department; and

(C) Include, at a minimum, the quality indicators and all activities that are to be carried out at the local level according to the most recent edition of the Department’s Quality Assurance Plan for Developmental Disability Services (Department’s QA Plan).

(b) Quality assurance activities. The CDDP will perform quality assurance activities that include, but are not limited to, the following:

(A) Develop and maintain a local QA plan that describes the major activities to be performed by the CDDP, including the timelines for each of those activities.

(i) These activities must include all activities that are to be carried out at the local level according to the most current edition of the Department’s QA plan.

(ii) The local QA plan must be updated whenever changes are made, but at least annually.

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(B) Develop CDDP policies and procedures needed to implement the local QA plan.

(C) Implement the activities defined in the local QA plan, including the timely delivery of data and information to the Department as required in the Department's QA plan.

(D) Maintain data and information that has been gathered through implementation of the local QA plan.

(E) Maintain a record of conclusions and recommendations that have been drawn from analysis of the information gathered.

(F) Take management actions as needed to improve service quality or to correct deficiencies; and

(G) Maintain records that document:

(i) The CDDP's performance of the activities described in the local QA plan;

(ii) The CDDP's performance measured against statewide performance requirements as specified in the Department's QA Plan;

(iii) The CDDP's findings, corrective actions and the impact of its corrective actions that have been reviewed at a policy level within the CDDP's department structure within the County; and

(iv) The timely submission of information to the Department, as required in the Department's QA Plan.

(c) Performance requirements. The CDDP will meet or exceed the minimum performance requirements established for all CDDP's in the Department's QA Plan.

(A) The CDDP will collect and analyze information concerning performance of the activities represented in OAR 411-320-0040(9)(a)(A), in the manner specified in the Department's QA Plan.

(B) Data concerning the CDDP's performance will be sent to the Department in the format and within the timelines established by the Department.

(C) The CDDP must cooperate in all reviews, by the Department or its designee, of CDDP performance in accordance with these rules.

(D) Records that document the CDDP's performance will be maintained and be made available to the Department or its designee, for audit purposes, upon request.

(d) Corrective actions. The CDDP will act to correct deficiencies and poor performance through management actions.

(A) Deficiencies and substandard performance found in services that are operated or subcontracted by the county will be resolved through direct action by the CDDP.

(B) Deficiencies and substandard performance found in services that are operated by the state or through direct state contracts will be resolved through collaboration with the Department.

(C) Deficiencies and substandard performance found in services provided through a Region will be resolved through collaboration between the regional management entity and the affected CDDPs.

(e) Local quality assurance committee. The CDDP will utilize a committee of stakeholders to assist in the development and review of local quality assurance plans and activities.

(A) Committee membership will include persons representing self-advocates, service providers, advocates, family members of individuals with developmental disabilities and Services Coordinators.

(B) Activities of the committee will include:

(i) Providing review and comment on CDDP plans for local QA plan activities;

(ii) Providing review and comment on data gathering instruments and methods; and

(iii) Providing review and comment on the results of information gathered by the CDDP and the effectiveness of corrective actions.

(f) Quality assurance resources. The CDDP must allocate resources to implement the local QA plan.

(A) Individuals employed to carry out implementation activities will have the training and education, as well as the rank or classification within the organization that is appropriate for the tasks assigned.

(B) One position within the CDDP will be designated as the QA Coordinator. The minimum requirements must include:

(i) The QA Coordinator must be a full time CDDP employee, unless prior approval of an alternative plan has been obtained from the Department;

(ii) At a minimum the position must meet the qualifications for a Services Coordinator for individual with developmental disabilities as described in OAR 411-320-0030(3)(b)(A)(i)-(iii); and

(iii) The purpose of the QA Coordinator is to facilitate the CDDP's quality assurance process through activities such as the following:

(I) Participate in Department sponsored activities such as planning and training that are intended to assist in development and implementation of Department's QA plan requirements, compliance monitoring procedures, corrective action plans and other similar activities.

(II) Draft local quality assurance plans and procedures that both meet QA requirements established by the Department and consider the unique organizational structure, policies and procedures of the CDDP.

(III) Keep CDDP administrative staff informed concerning new or changing requirements being considered by the Department.

(IV) Coordinate activities within the CDDP such as preparation of materials and training of county staff as needed to implement the local QA plan.

(V) Monitor the implementation of the local QA plan to determine the level of county compliance with Department requirements. Keep CDDP administrative staff informed about compliance issues and need for corrective actions.

(VI) Coordinate delivery of information requested by the Department, such as the Serious Event Review Team (SERT).

(VII) Assure record systems to store information and document activities are established and maintained.

(VIII) Perform abuse investigations, if approved by the Department as part of the CDDP's QA plan.

(10) Information and referral. The CDDP must provide information and referral services to individuals, their families and interested others.

(11) Agency coordination. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(12) Maintenance of centralized waiting list. The CDDP must maintain a current unduplicated central waiting list of eligible individuals appropriate for admission to Comprehensive Services for adults living within the geographical area of the CDDP. Individuals will be placed on a waiting list after written determination of their specific service and support needs, and such information must be provided to the Department upon request. The CDDP must assure that individuals are admitted to programs from the waiting list consistent with Department policies using a fair and equitable process that considers the individual's preferences, circumstances and needs.

(13) Service delivery grievances. The CDDP must implement procedures to address individual or family grievances regarding service delivery that have not been resolved using the CDDP subcontractor's grievance procedures, (informal or formal). Such procedures must be consistent with requirements outlined in OAR 411-320-0170.

(14) Comprehensive in-home supports. The CDDP must ensure the availability of Comprehensive In-Home Supports for those individuals with developmental disabilities for whom the Department has funded such services. These services must be in compliance with OAR 411-330-0010 through 0170.

(15) Emergency planning. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The plan must be immediately available to the program manager and employees. The plan must:

(a) Be integrated with the County emergency preparedness plan where appropriate.

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any DHS agencies, as appropriate.

(c) Include provisions for identifying individuals most vulnerable and any plans for health and safety checks; and emergency assistance;

(d) Other plans that are specific to the type of emergency.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0050

Management of Regional Services

(1) Intergovernmental agreement. A CDDP that acts as the management entity for a group of counties to deliver long-term crisis/diversion, community training, quality assurance activities, or other services must have an intergovernmental agreement with each affiliated local mental health authority.

(2) Regional plan. The CDDP, acting as the management entity for the region, must prepare in conjunction with affiliated CDDP's, a plan detailing the services that will be administered regionally. The plan must be updated when needed and submitted to the Department for approval and must include:

(a) A description of how services will be administered;

(b) An organizational chart and staffing plan; and

(c) A detailed budget, on forms provided by the Department.

(3) Implement plan. The CDDP, acting as the management entity for the region, must work in conjunction with its affiliated CDDP's to

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implement the Regional plan as approved by the Department, within available resources.

(4) Management standards. The region, through the CDDP management entity and its CDDP partners, must maintain compliance with management standards outlined in OAR 411-320-0030 and 0050.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0070

Records of Service

(1) Confidentiality of individual service records. Records of services to individuals with developmental disabilities must be kept confidential in accordance with ORS 179.505, 192.515–517, 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Part 2 HIPAA and any Department administrative rules or policies pertaining to individual service records.

(2) Information sharing. Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the agency must be available to other community mental health and developmental disability service agencies responsible for the individual's services, consistent with state statutes and federal laws and regulations concerning confidentiality and privacy.

(3) Record requirement. In order to meet Department and federal record documentation requirements, the CDDP through its employees must maintain a record for each individual who receives services from the CDDP.

(a) Information contained in the record for all individuals receiving services from a Services Coordinator or a Support Specialist must include:

(A) Documentation of any initial referral to the CDDP for services;

(B) An application for developmental disability services must be completed prior to an eligibility determination;

(C) The application will be on the form required by the Department or it may be transferred onto CDDP letterhead;

(D) Sufficient documentation to conform to Department eligibility requirements including letter(s) of determination;

(E) Documentation of an initial intake interview or home assessment, as well as any subsequent social service summaries;

(F) Referral information or documentation of referral materials sent to a developmental disability service provider or another CDDP;

(G) Case notes written by a Services Coordinator or a Support Specialist;

(H) Medical information, as appropriate;

(I) Admission and exit meeting documentation into any comprehensive service including any transition plans, crisis/diversion or other plans developed as a result of the meeting;

(J) Individual service plans, (ISP), or child and family support plans, (CFSP), documenting that the plan is authorized by a Services Coordinator or a Support Specialist;

(K) Copies of any incident reports initiated by a CDDP representative for any incident that occurred at the CDDP or in the presence of the CDDP representative;

(L) Documentation of a review of unusual incidents received from service providers either in case notes or by electronically entering review of the information into the SERT system and referencing in case notes or placing a copy in the file;

(M) Initial and annual review of Title XIX waiver forms;

(N) Documentation of Medicaid eligibility, if applicable; and

(O) Legal records, such as guardianship papers, civil commitment records, court orders, probation and parole information as is appropriate to the individual in question.

(b) An information sheet or reasonable alternative must be kept current and reviewed at least annually, for each individual enrolled in comprehensive services, child and family support services, or living with family or independently and not enrolled in a support services brokerage and receiving case management services from the program. Information will include:

(A) The individual's name, current address, date of entry into the program, date of birth, sex, marital status, (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number where applicable, guardianship status; and

(B) The names, addresses and telephone numbers of:

(i) The individual's guardian or other legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, education surrogate, if applicable;

(ii) The individual's physician and clinic;

(iii) The individual's dentist;

(iv) The individual's school, day program, or employer, if applicable;

(v) Other agency representatives providing services to the individual;

(vi) Any court ordered or guardian authorized contacts or limitations from contact for anyone living in a foster home, supported living program, or 24-hour residential program.

(c) A current information sheet or reasonable alternative must be maintained for each individual enrolled in a support services brokerage and assigned to a Support Specialist from the program. The current information will include information listed in OAR 411-320-0070(3)(b)(A) and (B)(i) of this rule.

(4) Case notes. Documentation of the delivery of service by a Services Coordinator or Support Specialist through case notes sufficient to support each case service provided. Case notes must be recorded chronologically and documented consistent with CDDP policies and procedures. All late entries must be appropriately documented. This documentation, at a minimum, must consist of material in individual files that includes:

(a) The month, day and year the services were rendered and the month, day and year the entry was made if different from the date service was rendered;

(b) The name of the person receiving service;

(c) The name of the CDDP, the person providing the service, (i.e., the Services Coordinator's or Support Specialist's signature and title), and the date the entry was recorded and signed;

(d) The specific services provided and actions taken or planned, if any;

(e) Place of service. This means the county where the CDDP or agency providing case management services is located, including the address. This may be a standard heading on each page of the progress notes; and

(f) The names of other participants, including titles and agency representation, if any, in notes pertaining to meetings with or discussions about the service recipient.

(5) Retention of records. The CDDP must have a record retention plan for all records relating to the CDDP's provision of and contracts for services that is consistent with this rule and OAR 166-150-0055. This plan must be made available upon request of the public or the Department.

(a) Financial records, supporting documents, statistical records, must be retained for a minimum of three years after the close of the contract period, or until the conclusion of the financial settlement process with the Department, whichever is longer.

(b) Individual service records will be kept for 7 years after date of death, if known. If case is closed, inactive, or death date is unknown, 70 years. Copies of annual ISPs must be kept for 10 years.

(6) Transfer of records. In the event an individual moves from one county to another county in Oregon, the complete case record as described in OAR 411-320-0070(3) must be transferred to the receiving CDDP. The sending CDDP will ensure that the original records required by this rule will be maintained in permanent record transferred to the CDDP having jurisdiction for services. The sending CDDP will retain copies of information necessary to document that services were provided to the individual while enrolled in CDDP services. This includes:

(a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP including Waiver eligibility;

(b) Service enrollment and termination forms;

(c) CDDP case notes;

(d) Documentation of services provided to the individual by the CDDP; and

(e) Any required documentation necessary to complete the financial settlement with the state.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0080

Diagnosis and Eligibility Determination

(1) Qualified professional diagnosis. Diagnosis and evaluation information must be completed by professionals qualified to make a diagnosis of developmental disabilities in accordance with OAR 309-042-0050.

(2) Eligibility for Mental Retardation. A history demonstrating mental retardation must be in place by the 18th birth date. Diagnosing mental retardation is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by qualified professionals per OAR 309-042-0050.

(a) Mental retardation is defined as IQ's under 70 with significant impairments in adaptive behavior directly related to the issues of mental retardation. Individuals with an IQ pattern of 70 to 75 with significant impairments to adaptive behavior directly related to the issues of mental retardation can be considered as having mental retardation.

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(b) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive assessment may be needed.

(c) IQ patterns of 66–75 require an adaptive assessment indicating significant impairments in adaptive behavior to verify mental retardation.

(3) Eligibility for Other Developmental Disabilities. A developmental disability other than mental retardation must be in place prior to the 22nd birth date. Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairments in adaptive behavior related to the diagnosis as described in 411-320-0020(5).

(a) The disability must have originated in the brain;

(b) The support needs of individuals must be similar to that required by individuals with mental retardation; and

(c) IQ scores are not used in verifying the presence of a non-mental retardation developmental disability.

(4) Eligibility for developmental disabilities, including mental retardation, also requires documentation of:

(a) Significant impairments in adaptive behavior (two standard deviations below the norm in two or more of the following areas of functioning, including but not limited to: communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency); and

(b) The adaptive impairments must be directly related to the developmental disability and cannot be primarily attributed to: mental/emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability or Attention Deficit Hyperactivity Disorder; and

(c) The disability has continued, or can be expected to continue, indefinitely.

(5) Eligibility for children 5 years of age or younger is *always* provisional. This means eligibility could change in the future if new information is obtained. Eligibility documentation for children 5 years old or younger must include:

(a) Standardized testing that demonstrates significant impairments in adaptive behavior (at least two standard deviations below the norm in two or more of the following areas, including but not limited to: self-care, receptive and expressive language, learning, mobility and self-direction); or

(b) A medical statement by a licensed medical practitioner of a neurological condition or syndrome (that originates in the brain) that causes or is likely to cause significant impairments in adaptive skills or behavior.

(c) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder, or sensory impairment; and

(d) Can be expected to continue indefinitely.

(6) Eligibility for children 6 years of age and older is always provisional. This means eligibility could change in the future if new information is obtained. Eligibility documentation for children 6 years old and older must meet requirements as described in 411-320-0080(2)(3):

(a) A diagnosis of mental retardation; or

(b) A diagnosis of a developmental disability; and

(c) Documentation of significant impairments in adaptive behavior (at least two standard deviations below the norm in two or more of the following areas, including but not limited to: self-care, receptive and expressive language, learning, mobility, self-direction; and

(d) The condition or impairment must not be primarily related to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder (ADHD), a learning disability, personality disorder, or sensory impairment; and

(e) The condition or impairment must be expected to last indefinitely.

(7) Current evaluation. Evaluation information used in determining eligibility for individuals under age 21 must be no more than three years old. An eligibility determination for an individual age 21 or older must be based on the information obtained after the individual's 17th birthday. At or after age 18, adult evaluation instruments must be used.

(8) Absence of data in developmental years. In the absence of sufficient data during the developmental years, current data may be used if there is no evidence of head trauma, mental or emotional disorder or substance abuse after the developmental years to contribute to the assessment results. In the event head trauma, mental or emotional disorder or substance abuse is a factor for denying eligibility, a clinical impression should be obtained to determine if the assessment results are related to the developmental disability.

(9) Review of eligibility. Eligibility for children under 18 years of age is always provisional. Eligibility for young children should be reviewed at least at ages 6 or no later than age 7 and between age 16 and 18 for mental retardation and by age 22 for developmental disabilities other than mental retardation.

(a) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive assessment may be needed. However, there may be

a need for an adaptive assessment to verify mental retardation. For example, if there is an inconsistent IQ pattern or mental/emotional issues, sensory impairments or substance abuse that may have an effect on cognitive functioning.

(b) IQ patterns of 66–75 require an adaptive assessment indicating significant impairments in adaptive behavior to verify mental retardation.

(c) An informal adaptive assessment can be completed for individuals who have been diagnosed with a developmental disability, who are obviously adaptively impaired and who require an adaptive assessment to re-determine eligibility. A services coordinator with at least two years experience working with people with developmental disabilities can record their observations of the adaptive impairments in client progress notes.

(d) A Vineland Adaptive Behavior Scale or other acceptable measurement of adaptive behavior may be administered and scored by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration and test interpretation of adaptive behavior scales for persons with developmental disabilities.

(10) Securing evaluations. In the event that the Services Coordinator has exhausted all local resources to secure the necessary evaluations for eligibility determination, the Department's Diagnosis and Evaluation Coordinator will assist in determining if evaluations are necessary.

(11) Notice. Individuals and their legal representative, family members, or advocates must receive an eligibility statement and written notice, on forms prescribed by the Department, of the eligibility determination or redetermination. Such notice must include:

(a) The rationale for the decision, including what reports, documents or other information that were relied upon in making the eligibility determination;

(b) Notice that the documents relied upon may be reviewed by the individual or his or her legal representative or advocate; and

(c) Notice of the right to file a grievance to appeal a denial of eligibility, including the timeline for filing a grievance, where to file a grievance and that assistance is available in filing grievances.

(12) Processing eligibility determination. The CDDP of residency of an adult applying for services must process the application and make the determination of eligibility for developmental disability services. In the case of an application for services for a child, the CDDP where the parent(s) resides or alternately the county court having jurisdiction for the child, must be responsible for making the eligibility determination. The CDDP must process the application for developmental disability services in a timely manner.

(a) Within ten working days after receiving an application for services from an individual, his or her guardian or legal representative, the CDDP will begin the process to determine eligibility.

(b) A determination of eligibility must be made within 15 working days of receipt of information from which eligibility can be established.

(c) Grievances of a denial of eligibility must be conducted in accordance with OAR 411-320-0170(2)(c)(B).

(13) Financial status. The Services Coordinator must verify the financial status of individuals during the eligibility or intake process. All sources of income are to be identified. Adults with no unearned income benefits must be referred to Social Security for a determination of financial eligibility. Children or their custodial parent or legal guardian, (if not a State agency), should be referred to the appropriate resources if it appears that they or their parent may be eligible for financial assistance.

(14) Transfer between CDDP's. The eligibility determination by a CDDP must be accepted by other CDDP's when an individual moves from one county to another. If the receiving county has reason to question the determination and cannot resolve it between the two CDDPs, the receiving CDDP will promptly refer the matter for a review and further determination by the Department's Diagnosis and Evaluation Coordinator. The receiving county will continue services for the individual while the review is occurring. If an adult transfers to another CDDP and is subsequently found to be not eligible the CDDP responsible for making the determination may be responsible for the services authorized on the basis of that determination.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0090 Developmental Disabilities Case Management Program Responsibilities

(1) Availability of Services Coordinator(s). The CDDP must assure the availability of either a Services Coordinator and or Support Specialist as required by these rules to meet the service need(s) of the individual and any emergencies or crisis. This assignment must be appropriately docu-

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mented in individual service records and accurately report enrollment in CPMS.

(2) Policies and procedures. The CDDP must adopt written procedures to assure that the delivery services meets the standards set forth in 411-320-0090(4)(a) through (u) of this rule.

(a) Involvement in planning and review of services. The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP;

(b) Available for review. Copies of the procedures for planning and review of case management services, consumer satisfaction and grievances, must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department;

(3) Notice of Services. Individuals, family member(s), legal representatives and advocates must be informed of minimum case management services that are set out in 411-320-0090(4)(b) through (u) of this rule.

(4) Minimum standards for case management services. The following are the minimum standards for case management services for individuals with developmental disabilities:

(a) Eligibility. The CDDP must ensure that eligibility for services is determined in accordance with OAR 411-320-0080 by a qualified Services Coordinator;

(b) Plans and annual summaries. An annual plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1);

(A) The Services Coordinator must assure that there is an annual plan. He or she must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehensive services. The Services Coordinator is responsible for the development of the plan for children receiving family support services in coordination with the child and the family.

(B) An annual summary must be completed for each individual that is not enrolled in any Department funded service other than case management.

(C) Support Specialists will review ISP's of individuals enrolled in Support Service Brokerages as part of service authorization in OAR 411-320-0120(3).

(c) Service authorization. Program services must be authorized in accordance with OAR 411-320-0120(3);

(d) Monitoring. Services Coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130. Support Specialists may participate in monitoring a brokerage service to an individual as part of the CDDP quality assurance plan as approved by the Department;

(e) Entry, exit, or transfer. Entry, exit and transfers from comprehensive program services must be in accordance with OAR 411-320-0110;

(f) Crisis services. Crisis services must be assessed, identified, planned, monitored and evaluated by the Services Coordinator in accordance with OAR 411-320-0160;

(g) Investigations and protective services. Abuse investigations and provision of protective services for adults must be provided as described in OAR 410-009-0050 through 0160, (Abuse Reporting and Protective Services in Community Programs and Community Facilities). This includes investigation of complaints of abuse, writing investigation reports and monitoring for implementation of report recommendations;

(h) Civil commitment. Civil commitment services must be provided in accordance with ORS 427.215 through 427.306 and 427.205(4);

(i) Information and referral. The Services Coordinator must provide information and timely referral for individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county;

(j) Access. The Services Coordinator must assist individuals and their families in accessing services and resources;

(k) Child welfare cases. Services Coordinators must coordinate services with the Child Welfare, (CW), caseworker assigned to a child to ensure the provision of required supports from the CDDP, the Department and CW, according to guidelines published by the Department;

(l) Services Coordinator role for children in school. Services Coordinators may attend IEP planning meetings for children when the Services Coordinator is invited by the family or guardian to participate;

(A) The Services Coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.

(B) Upon request and to the extent possible the Services Coordinator may act as a proponent for the child or family at IEP meetings.

(C) The Services Coordinator will participate in transition planning by attending Individualized Education Program, (IEP), meetings of students 16 years of age or older to discuss the individual's transition to adult living and work situations unless such attendance is refused by the parent or legal guardian.

(m) Enrollment on CPMS. The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in CPMS. The county of residence must enroll the individual on CPMS for all developmental disability service providers except in the following circumstances:

(A) The Department's children's residential Services Coordinator will complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with the state; or

(B) Department Services Coordinators must complete the CPMS enrollment, termination, and billing forms for children entering or leaving the Children's In-home Intensive Services Program (CIIS); or as part of an interagency agreement for purposes of billing for crisis/diversion services by a region.

(n) Nursing home services. Services Coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043;

(o) Specialized services. The Services Coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150;

(p) Adult case management only. If an adult is not enrolled in services other than case management and requires more than occasional services, or requires services that are available through a support services brokerage, the individual must be referred to a brokerage, unless the individual refuses. Referrals to the support services brokerage must be in accordance with the most current published guidelines for access to brokerage services;

(q) Serious events. The Services Coordinator or Support Specialist must ensure that all serious events related to an individual are reported to the Department using the Department's Serious Event Review Team (SERT) system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends;

(r) Medicaid waiver(s). Except for children being served by CIIS or in a Department direct contracted 24-hour residential home, the Services Coordinator or Support Specialist will ensure that Medicaid eligible individuals are offered the choice of home and community based waiver services, provided a notice of fair hearing rights and have a completed Title XIX Waiver form that is reviewed annually or at anytime there is a significant change;

(s) Health care representative. Participate in the appointment of a Health Care Representative per OAR 309-041-1500 through 309-041-1610;

(t) Interagency coordination. Coordinate with other state, public and private agencies regarding services to individuals with developmental disabilities;

(u) In-home services. The CDDP must ensure that a Services Coordinator is available to provide or arrange for Comprehensive In-Home Supports for Adults or Child and Family Supports, as required, to meet the support needs of eligible individuals. This includes:

(A) Assistance in determining needs and plan supports;

(B) Assistance in finding and arranging resources and supports;

(C) Education and TA to make informed decisions about support need and direct support providers;

(D) Arranging fiscal intermediary services;

(E) Employer-related supports; and

(F) Assistance with monitoring and improving the quality of supports.

(5) Service priorities. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval for a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request. The variance request must document the reason the service prioritization is necessary (including any alternatives considered) detail the specific service priorities being proposed and provide assurances that the basic health and safety of individuals will continue to be addressed and monitored.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0100

Assignment of Services Coordinator or a Support Specialist

(1) Initial designation of Services Coordinator or Support Specialist. For individuals determined eligible for developmental disability services, a

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Services Coordinator must be designated within ten working days after eligibility determination. In the instance of an adult moving into the county with an existing eligibility determination, a Services Coordinator should be assigned within ten (10) days of application or, if already enrolled in a support services brokerage, a Support Specialist must be assigned. A written notice that includes the name, telephone number and location of the Services Coordinator or Support Specialist must be sent to the individual requesting services and the individual's legal representative. Notice will be sent to the family or advocate if the adult does not object.

(2) Change of Services Coordinator. The CDDP should keep changes of Services Coordinator(s) to a minimum.

(a) Changes in assignment. If the CDDP changes Services Coordinator assignments or transfers the individual to a Support Specialist there should be timely notification, (within 10 working days of the designation), to the individual, the individual's legal representative and all current service providers. This notification must be in writing and include of the name, telephone number and address of the new Services Coordinator.

(b) Requests for a change. The individual receiving services or the individual's legal guardian may request a new Services Coordinator or Support Specialist within the same county. The CDDP must develop standards and procedures for evaluating and acting upon requests for change of Services Coordinator or Support Specialist. If another Services Coordinator or Support Specialist is assigned by the CDDP, (as the result of a request by the individual or his or her legal representative), the individual, the individual's legal representative and all current service providers must be notified within 10 working days of the change. This notification must be in writing and include the name, telephone number and address of the new Services Coordinator or Support Specialist.

(3) Termination of case management services. A Services Coordinator or Support Specialist retains responsibility for providing case management services to the individual until the responsibility is terminated in accordance with OAR 411-320-0100(3)(a) through (e) of this rule, or until another Services Coordinator is designated. The CDDP must terminate case management or Support Specialist services when:

(a) The individual or the individual's legal representative delivers a signed written request that case management or Support Specialist services be terminated or such a request by telephone is documented in the individual's file. An adult, his or her legal guardian, the parent or legal guardian of a child in Department-funded services can refuse contact by a Services Coordinator or a Support Specialist, as well as the involvement of a services at the ISP meeting.

(b) The individual dies; or

(c) The individual is determined to be ineligible for services based on an assessment by a licensed psychologist, certified educational psychologist or psychiatrist in accordance with OAR 411-320-0080; or

(d) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management or Support Specialist services are to be referred and transferred to the new county. Except in the case of a child moving into a foster home or 24-hour residential home wherein the county of parental residency or court jurisdiction must retain case management responsibility; or

(e) An individual cannot be located after repeated attempts by letter and telephone.

(4) Mandatory services necessary. An individual in Department-funded services must accept the following case management services: protective service investigations, Services Coordinator presence at Department-funded program entry, exit, or transfer meetings, monitoring of provider program(s) and Services Coordinator or Support Specialist access to individual files.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0110

Entry and Exit Requirements

(1) Admission to Department funded developmental disability program.

(a) Department staff must authorize entry into children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs and state training centers. The Services Coordinator will make referrals for admission and participate in all entry meetings for these programs.

(b) The Services Coordinator must ensure that individuals are appropriately referred to a support services brokerage and must participate in the entry of individuals to a support service brokerage according to guidelines established by the Department.

(c) Admissions to all other Department funded programs for persons with developmental disabilities must be coordinated and authorized by the CDDP Services Coordinator in accordance with these rules.

(2) Written information required. The Services Coordinator or his or her designee must provide written information to providers of comprehensive services prior to admission.

(a) If the person is being admitted from his or her family home and entry information is not available (due to a crisis) the Services Coordinator will ensure that the provider assesses the individual upon entry for issues of immediate health or safety and the Services Coordinator will document a plan to secure the information listed in OAR 411-320-0110(2)(b)(A)-(J), no later than thirty (30) days after admission. This will include a written documentation as to why the information is not available. A copy of the information and plan will be given to the provider at the time of entry.

(b) If the person is being admitted from comprehensive service the information must be made available prior to the admission. This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination document;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and the ability to adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam, if any, made within 90 days prior to the entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(F) Copies of protocols, the Risk Tracking Record, and any support documentation;

(G) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(H) Written documentation why preferences or choices of the person cannot be honored at that time;

(I) Written documentation that the individual is participating in out-of-residence activities including school enrollment for individuals under the age of 21; and

(J) A copy of the most recent functional assessment, behavior support plan, individual support plan, and individual educational plan, if applicable.

(3) Entry meeting. Prior to an individual's date of entry into a Department funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The team participants will be determined according to OAR 411-320-0120(1)(b). The findings of the meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the meeting must include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-entry information required by OAR 411-320-0110(2)(b);

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons;

(f) If the decision was made to enter the individual a written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days after admission; and

(g) Record the signatures of all participants.

(4) Crisis services. For a period not to exceed 30 days, OAR 411-320-0110(3)(d) of this rule does not apply if an individual is temporarily admitted to a program for crisis services.

(5) Exit from Department funded programs. All exits from Department funded developmental disability services must be authorized by the CDDP. All exits from Department direct-contracted service for children's 24-hour residential and from state-operated community programs, must be authorized by Department staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The team participants must be determined according to OAR 411-320-0120(1)(b).

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(6) Exit staffing. The exit plan must be distributed to all ISP team members. The exit plan must include:

- (a) The name of the individual considered for exit;
- (b) The date of the meeting;
- (c) Documentation of the participants included in the meeting;
- (d) Documentation of the circumstances leading to the proposed exit;
- (e) Documentation of the discussion of the strategies to prevent an exit from service (unless the individual, his or her legal guardian or, for a child, the parent or guardian, is requesting the exit);
- (f) Documentation of the decision regarding exit including verification of majority agreement of the meeting participants regarding the decision; and
- (g) The written plan for services to the individual after exit.

(7) Transfer meeting. All transfers within a county between service site by a comprehensive service provider agency must be authorized by the CDDP, except as follows: All transfers between Department direct contracted services for children in a 24-hour residential programs and in state operated community programs must be coordinated by Department staff. A meeting of the ISP team must precede any decision to transfer an individual. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

- (a) The name of the individual considered for transfer;
- (b) The date of the meeting;
- (c) Documentation of the participants included in the meeting;
- (d) Documentation of the circumstances leading to the proposed transfer;
- (e) Documentation of the alternatives considered instead of transfer;
- (f) Documentation of the reason(s) any preferences of the individual, the individual's legal representative or family members cannot be honored;
- (g) Documentation of majority agreement of the participants with the decision; and
- (h) The written plan for services to the individual after transfer.

(8) Entry to Support Services.

(a) Referral. Referrals of eligible individuals to a Support Services Brokerage should be made in accordance with OAR 411-340-0110(2)(a)-(b). Referrals must be made using the Department mandated application and referral form in accordance with current Department guidelines.

(b) Eligibility. The CDDP of an individual's county of residence must find the individual eligible for services from a support services brokerage when:

- (A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;
- (B) The individual is an adult living in his or her own home or family home and not receiving other Department-paid in-home or community living support other than State Medicaid Plan services;
- (C) The individual is not enrolled in Comprehensive Services;
- (D) At the time of initial proposed enrollment in the Brokerage, the individual is not receiving short-term services from the Department because she or he is eligible for, and at imminent risk of, civil commitment under ORS Chapter 427; and
- (E) The individual or the individual's legal representative has chosen to use a Support Service Brokerage for assistance with design and management of personal supports.

(c) Required information. The Services Coordinator will communicate with the support services brokerage staff and provide all relevant information upon request. At a minimum this must include:

- (A) A current application or referral on the Department mandated application or referral form;
- (B) A completed Title XIX Waiver form;
- (C) A copy of the eligibility statement for developmental disability services;
- (D) Copies of financial eligibility information;
- (E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;
- (F) Copies of relevant case notes; and
- (G) A copy of any current plan(s).

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0120

Service Planning

(1) Principles for planning. These rules prescribe standards for the development and implementation of plans for individuals with developmental disabilities. As such, plans for individuals must be developed in a manner that address issues of independence, integration and productivity,

enhance the quality of life of the person with developmental disabilities and are consistent with the following principles:

(a) Personal control and family participation. While the service system reflects the value of family member(s) participation in the planning process, adults have the right to make informed choices about the level of participation by family members. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(b) Choice and preferences. The process is critical in determining the individual's and the family's preferences for services and supports. The preferences of the individual and family must serve to guide the team. The individual's active participation and input must be facilitated throughout the planning process.

(c) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve the individual's and family's preferences, identify the barriers to providing those preferred services and develop strategies for reducing the barriers.

(d) Health and Safety. The process should also identify strategies to assist the individual in the exercise of his or her rights. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the individual's exercise of rights while being equally sensitive to protecting the individual's health and safety.

(e) Children in alternate living situations. When planning for children in 24-hour residential or foster care services, maintaining family connections is an important consideration. The following should apply:

(A) Unless contraindicated there should be a goal for family reunification;

(B) The number of moves or transfers should be kept to a minimum; and

(C) If the placement is distant from the family the Services Coordinator should continue to seek a placement that would bring the child closer to the family.

(2) Responsibility for annual ISP, CFSP or annual summary. Individuals enrolled in Department funded services must have an annual ISP or CFSP. Plans will be developed, implemented and authorized as follows:

(a) Persons in foster care, 24-hour residential services and related employment or alternatives to employment services. A Services Coordinator or his or her qualified designee must attend and assure that an annual ISP meeting is held. The Services Coordinator or his or her qualified designee must participate in the development of the ISP for individuals enrolled in comprehensive services. ISP's for children in Department direct contracted children's 24 hour residential must be coordinated by Department staff.

(A) The Services Coordinator must ensure that the plan for persons in foster care or 24-hour residential services is developed and updated in accordance with current published state guidelines, tracks the plan timelines and coordinates the resolution of grievances and conflicts arising from ISP discussions.

(B) ISP Team. At a minimum the ISP team for an individual in services described in OAR 411-320-0120(2)(a)(A) above includes, the individual, the individual's guardian, representatives from the residential program, a representative from the employment or alternatives to employment program, if any, the Services Coordinator, any person requested by the individual and any treatment professional requested by the person or the team on behalf of the person.

(b) Supported living services. The Services Coordinator for an adult in supported living services and any associated employment or alternative to employment program must ensure the development of an annual individual support plan. The Services Coordinator must attend such ISP meetings and participate in the development of an ISP in conformance with the ISP content described in OAR 411-320-0120(3).

(c) Family support. The Services Coordinator will coordinate with the family or the legal guardian the development of the annual child and family service plan. (CFSP), for a child receiving child and family support services. The CFSP must be in accordance with OAR 411-305-0010 through 0180, (Child and Family Support Rule).

(d) Comprehensive in-home supports. The Services Coordinator must coordinate with the individual, his or her family or legal guardian, the development of the annual In-Home Support Plan for the individual enrolled in Comprehensive In-Home Supports in accordance with OAR 411-330-0050(3).

(e) Support services for adults. The Support Specialist must review and authorize the ISP developed by the individual, his or her legal guardian and the personal agent, in accordance with OAR 411-340-0010 through 0180.

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(f) Annual summary. For individuals not enrolled in any other Department funded developmental disability service the Services Coordinator must ensure the completion of an annual summary. The annual summary must be completed within 60 days of intake and annually thereafter. The written summary must be documented in the individual's record as a CDDP plan or as a comprehensive case note and consist of:

- (A) A review of the individual's current living situation;
- (B) A review of any personal health, safety or behavioral concerns;
- (C) A summary of support needs of the individual; and
- (D) Actions to be taken by the Services Coordinator and others.

(3) Plan content. The Services Coordinator or Support Specialist, (as is appropriate), will ensure that individual plans or the annual summary conforms to the requirements of this rule.

(a) The Services Coordinator must ensure that a plan for an individual in Department funded comprehensive services is developed and documents a person centered process that identifies what is important to and for an individual, and also identifies the supports necessary to address issues of health, behavior, safety and financial supports. There must be documentation of an action plan or discussion record resulting from the team's discussion addressing issues of conflict between personal preferences and issues of health and safety.

(b) The Services Coordinator must ensure that a plan developed for a child in Department funded child and family support services conforms to requirements of OAR 411-305-0010 through 0180 rules for Child and Family Support Services.

(c) The Services Coordinator must ensure that an In-Home Support Plan conforms to the requirements describes in OAR 411-330-0050(3).

(d) The Support Specialist must receive a copy of the ISP developed for an individual enrolled in support services for adults that conforms to OAR 411-340-0120 rules for support services for adults.

(4) Plan authorization. The Services Coordinator or the Support Specialist must review and authorize plans for the expenditure of Department funds. The plan must be signed within 5 working days by the Services Coordinator or the support services specialist and be authorized using the following standards:

(a) The plan addresses the needs of the individual as defined in OAR 411-320-0120(3);

(b) The plan identifies type, amount, frequency, duration and provider of services;

(c) The plan is signed by the individual and his or her guardian, (if any), and other team members where applicable;

(d) Plans for individuals residing in foster care or residential care licensed by other licensing authorities may be authorized without using the state-mandated formats described in OAR 411-320-0120(5).

(5) Plan formats. The ISP, CFSP, or In-Home Support Plan developed at the annual or update meeting must be conducted in a manner specified by and on forms required by the Department. In the absence of a Department mandated form, the CDDP with the affected service providers may develop an ISP format that conforms to the licensing or certification service provider rule and provides for an integrated plan across the funded developmental disability service settings.

(6) Plan updates. Plans for individuals must be kept current.

(a) Services Coordinator responsibility. The Services Coordinator or the Department Residential Services Coordinator for Children in Department directed contracted 24-hr residential services must ensure that a current plan for individuals enrolled in comprehensive services, self-directed supports or in family support services for children is authorized in accordance with OAR 411-320-0120(4) and maintained.

(A) The plan must be kept in the individual's record.

(B) Plan updates must occur as required by this rule and any rules governing the operation of the service element.

(C) When there is a significant change the plan must be updated.

(b) Support Specialist responsibility. Anytime there is a significant change in the individual or his or her circumstances the plan must be updated by the personal agent. An updated plan must be submitted to the Support Specialist at the CDDP for authorization in conformance with OAR 411-320-0120(4). The Support Specialist must maintain a copy of the current ISP for individuals enrolled in support services for adults.

(7) Team process in comprehensive services. Except in Comprehensive In-Home Supports or Child and Family Supports the following applies to ISPs developed for persons in comprehensive services:

(a) ISPs must be developed by an ISP Team. The ISP team assigns responsibility for obtaining or providing services to meet the identified needs.

(A) Membership on ISP teams must, at a minimum, conform to this rule and any relevant service provider rules.

(B) Unless refused by the adult, family participation should be encouraged.

(C) The individual may also suggest additional participants, friends or significant others.

(D) The individual may raise an objection to a particular person. When an individual raises objections to a person the team must attempt to accommodate the objection while allowing participation by agency representatives.

(b) Plans developed by an ISP Team must utilize a team approach and work toward consensus for a meaningful plan for the individual.

(A) No one member of the team has the authority to make decisions for the team except as agreed to on the ISP.

(B) When consensus cannot be achieved, majority agreement will prevail. For purposes of the team process and for the reaching majority agreement, representatives from each service provider agency, the family, the CDDP or advocacy agencies will be considered as one member.

(C) The individual or the individual's legal representative retains the right to consent to treatment and training or to note any specific areas of the plan that they object to and wish to file a grievance.

(D) The ISP Team members must keep the team informed whenever there are significant needs or changes, or there is a crisis or potential for a crisis. The Services Coordinator must be notified in all such instances.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0130

Monitoring of Services

(1) Visits to residential provider sites. The CDDP will ensure that regular visits responding to Department questions are conducted at each child or adult foster home and each 24-hour residential program site licensed or certified by the Department to serve individuals with developmental disabilities. Visits will review areas of service and support to individuals with specific focus on areas addressing health, safety, behavior support or financial services to individuals.

(a) In January of each year the CDDP will establish a review schedule based on the number of individuals served in each home. Visits will be scheduled to occur as follows:

(A) Homes or sites licensed or certified for one or two individuals will be visited at least quarterly.

(B) Homes or sites licensed or certified for three or more individuals will be visited at least ten months each year.

(i) The CDDP will develop a procedure for the conduct of the visits to these homes; and

(ii) There should never be two consecutive months when a residential site is not visited.

(iii) In the months the home is not visited, the CDDP may conduct a visit to an employment site or attend a school IEP meeting as a substitute for an employment visit for children who are still in school.

(iv) If there are no Department funded individuals with developmental disabilities residing in the home, a visit by the CDDP is not required.

(b) When the service provider is a Department contracted and licensed 24 hour residential program for children or is child foster proctor agency and a Department children's residential Services Coordinator is assigned to monitor services the Department's residential Services Coordinator and CDDP staff shall coordinate who will visit the home. If the visit is made by Department staff, the staff will provide the results of the monitoring to the local Services Coordinator.

(c) The CDDP will document visits to the residential service and provide information concerning such visits to the Department upon request.

(2) Service delivery. The Services Coordinator must monitor the delivery of services individuals enrolled in case management services at least annually.

(a) Case Management Only. Every individual enrolled in case management services and not enrolled in any other funded developmental disability service must have at least an annual contact with a Services Coordinator. Whenever possible this contact will be made in person. If contact is not made in person the case note must document how contact was achieved. The Services Coordinator must document this contact in an annual summary in accordance with OAR 411-320-0120(1)(f). If the individual has any identified high-risk medical issue, including but not limited to, risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the Services Coordinator will maintain contact in accordance with planned actions described in the annual summary. Any follow-up must be documented in case notes. The Services Coordinator may, to the extent resources are available, monitor the annual summary of other individuals.

(b) Service monitoring. The Services Coordinator will monitor services for individuals enrolled in Department-funded comprehensive services or for children enrolled in Child and Family Support Services. For persons

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residing in 24-hour residential programs or foster care, this monitoring maybe combined with the monthly visits as described in 411-320-0120(1) above. The Services Coordinator will determine if services are in accordance with the ISP or CFSP and take appropriate actions to ensure services.

(A) Content of a review. The review of plans for individuals must include the following:

(i) Consideration of any serious events and unusual incident reports and the results of any monthly monitoring visits conducted in residential programs;

(ii) A semi-annual review of the process by which an individual accesses and utilizes funds according to standards specified in OAR 411-325-0380, 24-hour residential services or OAR 411-320-0170(2), adult foster care. The Services Coordinator must report any misuse of funds to the CDDP and the Department. The Department will determine whether a referral to the Medicaid Fraud Control Unit is warranted;

(iii) Review of the ISP document to determine if the goals and objectives or actions to be taken by the provider, the Services Coordinator or others are implemented. This should include a discussion of the following:

(I) Are services being provided as described in the plan document; and do they result in the achievement of the identified action plans;

(II) Are the personal, civil, and legal rights of the individual protected in accordance with this rule;

(III) Are the personal desires of the individual; the individual's legal representative or family addressed;

(IV) Do the services provided for in the plan continue to meet what is important to and for the individual.

(B) Frequency of ISP reviews. The frequency of the monitoring will be determined by the needs of the individual. At a minimum the results of the ISP for individuals enrolled in comprehensive services must be reviewed at least once within the first 6 months of the plan year and again in preparation for the annual ISP process. The frequency with which individuals presenting with serious health, safety or behavioral risks are monitored should be based on ISP team decisions and CDDP policy.

(C) In monitoring the plan, the Services Coordinator will document his or her findings and any resulting actions in the individual's CDDP record.

(3) Monitoring follow-up. The Services Coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in a Department direct contract 24-hour residential service when a Department staff may conduct the follow-up.

(a) If the Services Coordinator determines that comprehensive services are not being delivered as agreed in the plan, or that an individual's service needs have changed since the last review, the Services Coordinator should initiate action to update the plan.

(b) If there are concerns regarding the service provider ability to provide services, the CDDP, in consultation with the Services Coordinator, will determine the need for technical assistance or other follow-up activities. This may include coordination or provision of technical assistance, referral to the DD program manager for consultation or corrective action, requesting assistance from the Department for licensing unit or other administrative support, or meetings with the provider executive director or board of directors. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when:

(A) A service provider demonstrates substantial failure to comply with any applicable licensing or certification rules for Department-funded programs;

(B) The CDDP finds a serious and current threat endangering to the health, safety or welfare of individuals in a program for which an immediate action by the Department is required; or

(C) Any individual receiving Department funded developmental disability services dies. Notification must be made to the Department's Medical Director or his or her designee within one working day of the death.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0140

Abuse Investigations and Protective Services

(1) General duties of the CDDP. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of the Department. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs. If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow

the CDDP to investigate the alleged abuse. Under such circumstances, the CDDP must receive authorization from the Department before conducting a separate investigation.

(2) Eligibility for protective services. Unless otherwise directed by the Department, the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are:

(a) Eighteen years of age or older; and

(b) Receiving case management services; or

(c) Receiving any Department funded services for individuals with developmental disabilities.

(3) Abuse investigations. The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions and the report writing process. Investigations must be conducted in accordance with OAR 410-009-0050 through 0160.

(4) Coordination with other agencies. The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.

(5) Initial complaints. Initial complaints must immediately be submitted electronically, using the Department's system for reporting serious events.

(6) Conflict of interest. The CDDP must develop and implement procedures to ensure a thorough and unbiased investigation that is timely and avoids actual or potential conflicts of interest where a Services Coordinator or CDDP employee may fall within the scope of the investigation or the perception of bias on the part of the investigator or CDDP.

(7) Notification. Upon the initiation of an investigation of an alleged abuse, the CDDP must assure the immediate notification of the individual and the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the investigation or protective services, unless specifically prohibited by rule or statute.

(8) Reports. The Department or its designee must complete an abuse investigation and protective service report according to OAR 410-009-0120(1). Abuse investigations and protective service reports must be maintained by the CDDP. The sections of a report that are not exempt from disclosure under the public record's law or subject to confidentiality laws will be provided to any service provider organization involved in the allegation. The CDDP must ensure that any actions to prevent further abuse listed in the report are implemented within the deadlines listed.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0160

Crisis/Diversion Services

(1) Crisis/Diversion services. The CDDP will, in conjunction with its regional partners, provide crisis/diversion services for adults who are at imminent risk for civil commitment to Department of Human Services, (DHS), under ORS 427, and for children with developmental disabilities who are at imminent risk of out-of-home placement.

(2) Crisis risk factors. An individual is in crisis when one or more of the following risk factors are present:

(a) An individual eligible for crisis services is not receiving necessary supports to address life-threatening safety skill deficits; or

(b) An individual eligible for crisis services is experiencing life-threatening health and safety issues resulting from complex behavioral or medical conditions; or

(c) An individual eligible for crisis services undergoes loss of caregiver due to caregiver illness or disability, or a protective service action that results in loss of home; or

(d) An individual eligible for crisis services presents the following significant safety risks to others in the home:

(A) Physical aggression toward vulnerable people; or

(B) Fire-setting behaviors; or

(C) Sexually aggressive behaviors; or

(D) An individual eligible for crisis services currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention.

(3) Eligibility for crisis/diversion services. The CDDP must ensure the determination of the eligibility of individuals to receive crisis services, and must ensure eligibility information is made available to support team members upon request, and to regional crisis programs upon each referral. An individual is eligible for crisis/diversion services when:

(a) An individual is court committed to the Department under ORS 427, or an adult with a Full Scale Intelligence Quotient (FSIQ) pattern of 75 or less with significant deficits in adaptive functioning due to mental

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retardation and is at imminent risk of civil court commitment to the Department under ORS 427; and

- (b) With no alternative resources available; and
 - (c) For whom a crisis exists as defined in (2)(a)–(d) above; or
 - (d) A child with developmental disabilities who is at imminent risk of out of home placement; and
 - (e) With no alternative resources available; and
 - (f) For whom a crisis exists as defined in (2)(a)–(d) above.
- (4) Funds for crisis services.
- (a) Must not supplant existing funding.

(b) Purchased goods or services must only be those necessary to divert an adult from civil court commitment under ORS 427, or a child from out-of-home placement.

(c) Crisis services must only be used when no appropriate alternative resources are available to resolve the crisis situation. Funded residential program vacancies represent existing available and alternative resources.

(5) Allowable expenditures. Allowable short term Crisis Services include, but are not limited to:

- (a) Professional consultation, assessment, or evaluation;
- (b) Adaptive equipment;
- (c) Respite care;
- (d) Adaptations to the eligible individual's residence to increase accessibility or security;
- (e) Short-term residential or vocational services;
- (f) Added staff supervision; or
- (g) Wages for direct care staff, respite providers and professional consultants must be paid within the current wage and rate guidelines published by the Department.

(6) Service limitations. The following must not be purchased with crisis services funds:

- (a) Household appliances;
- (b) Services covered under existing provider contracts with the CDDP or Department;
- (c) Health care services covered by Medicaid, Medicare, or private medical insurance; and
- (d) Services provided by the parent of a child, or the spouse of an adult.

(7) Service authorization. The CDDP or Regional Crisis Program must authorize the utilization of crisis services.

(a) To assure that Crisis services are utilized only when no appropriate alternative resources are available, the CDDP or the Regional Crisis Program must document the individual's eligibility for crisis services, the alternative resources considered, and why those resources were not appropriate or available, prior to initiating any crisis services.

(b) For services that exceed \$3,000 per individual case, or 90 days duration, authorization must be made by the CDDP or the Regional Crisis Program, and must be documented, in writing, within the individual's case file; or

(c) For services that exceed \$5,000 for adaptation or alteration of fixed property, authorization must be made by the Department based upon the recommendation of the CDDP or the Regional Crisis Program.

(d) The Department may, at its discretion, exercise authority under ORS 427.300 to direct any court-committed mentally retarded person to the facility best able to treat and train the person. The Department must consult with any CDDP, the Regional Crisis Program or service provider affected by this decision, prior to placement of the individual or child.

(8) Administration of short term crisis services. The CDDP and the Regional Crisis Program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:

- (a) Identification of persons or positions within the organization authorized to approve expenditures;
 - (b) Description of limits on those authorities and procedures for management reviews; and
 - (c) Description of procedures to disburse and account for funds.
- (d) The CDDP or the Regional Crisis/Diversion Program must have the capacity to make service payments within 48 hours.

(9) Monitoring of short-term crisis services.

(a) The CDDP must monitor the delivery of crisis services as specified in the crisis plan and the individual's plan of care. This should be done through contact with the individual, any service providers and the family. This must be documented in the individual's case file.

(b) The CDDP must coordinate with service providers or other support team members to evaluate the impact of crisis services upon the individual, and will ensure needed changes are recommended to the individual's support team.

(c) The Department may monitor crisis services through reports received pursuant to OAR 411-320-0160(10) and (11), Record Keeping and Reporting Procedures and OAR 411-320-0180, On-site Inspections.

(10) Record keeping and reporting procedures.

(a) The CDDP or the Regional Crisis Program must ensure the crisis plan is developed in partnership with the individual's support team, and the following written information is maintained within the crisis plan:

(A) Identifying information about the individual including name, address, age, and name of parent or guardian;

(B) Description of the circumstances for which crisis services were requested, to clearly specify how the individual is eligible to receive crisis services;

(C) Description of resources used or alternatives considered prior to the request for crisis funds, and why the resources or alternatives were not appropriate or were not available in meeting the individual's needs in addressing the crisis;

(D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, to include:

(i) The frequency of the provision or purchase of goods or services; and

(ii) The duration of the provision or purchase of goods or services; and

(iii) The costs of the goods or services to be provided or purchased.

(E) Description of the outcome to be achieved to resolve the crisis through the provision or purchase of the goods and services; and

(b) The CDDP must ensure the documentation of the support team approved modifications to the individual's plan of care, that outline how the crisis is to be addressed through the use of crisis services.

(c) The CDDP must maintain a current copy of the Title XIX waiver form, when the individual eligible for crisis services is receiving a Home and Community Based Waiver Services, or as otherwise instructed by the Department.

(11) Reporting requirements. The CDDP or Region must report, using the accepted Department reporting systems, the following information to the Department by the tenth working day the month following each month in which crisis services were provided:

(a) Individuals for whom crisis services were provided; and

(b) Individual services provided; and

(c) Total cost by type of service.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

411-320-0170

Complaints and Grievance

(1) Complaint and grievance log. The CDDP will maintain a log of all complaints and grievances received regarding the CDDP or any subcontract agency providing services to individuals.

(a) The log must, at a minimum, include the following: the date the complaint or grievance was received, the person taking the complaint, the nature of the complaint or grievance, the name of the person making the complaint or grievance, if known; and the disposition of the complaint.

(b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint and grievance log.

(2) Grievances. The CDDP must address all grievances by individuals or subcontractors in accordance with CDDP policies, procedures and these rules. Copies of the procedures for resolving grievances must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department.

(a) Subcontractor grievances. When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of an administrative rule of the Department relating to developmental disability services, and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.

(A) Procedure. The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(i) Request. The party requesting mediation must send a written request to the Administrator or designee, the CDDP program director, and the provider agency director, unless other persons are named as official contact persons in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

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(ii) Arrangements. Department staff must arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting should include:

(I) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement should be made on arrangements for obtaining these services;

(II) Development of rules and procedures that will be followed by all parties during the mediation; and

(III) Agreement on a date by which mediation will be completed, unless extended by mutual agreement.

(iii) Cost. Unless otherwise agreed to by all parties:

(I) Each party will be responsible for the compensation and expenses of their own employees and representatives; and

(II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. will be shared equally by all parties.

(B) Final report. A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Department will prepare the final report. A final report on each mediation must be retained on file at the Department.

(b) Contract not substantially similar. A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by the Department in its model contract. The service provider's appeal of the imposition of the disputed terms or conditions must be in writing and sent to the Administrator or designee within 30 calendar days after the effective date of the contract requirement.

(A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:

(i) A copy of the contract and any pertinent contract amendments;

(ii) Identification of the specific term(s) that are in dispute; and

(iii) A complete written explanation of the dissimilarity between terms.

(B) Upon receipt of this notice, the CDDP will suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.

(C) Process. The Administrator or designee, must offer to mediate a solution in accordance with the procedure outlined in OAR 411-320-0170(2)(a)(A) and (B).

(i) If a solution cannot be mediated, the Administrator or designee will declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:

(I) A representative from the Department;

(II) A representative from another CDDP; and

(III) A representative from another service provider organization.

(ii) The panel must meet with the parties, consider their respective arguments and send written recommendations to the Administrator within 45 business days after an impasse is declared, unless the Administrator grants an extension.

(iii) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(iv) The Administrator or designee must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(v) Notwithstanding OAR 411-320-0170(2)(b)(C)(i)-(iv) listed above, the Administrator has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Administrator or his or her designee finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Department.

(D) Expedited appeal process. The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(i) The request must be made in writing to the Administrator or designee. It must describe the potential harm and level of risk that will be incurred by following the appeal process.

(ii) SPD must notify all parties of its decision to approve an expedited appeal process within two business days.

(iii) If an expedited process is approved, the Department's designee must notify all parties of his or her decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process will be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

(c) Grievances by or on behalf of individuals. An Individual, his or her guardian or other legal representative, a family member, or advocate may file a grievance with the CDDP under the following conditions:

(A) Informal procedures. Grievances submitted to the CDDP may be resolved at any time through the use of informal procedures such as meetings or mediation. However, the person submitting the grievance may elect not to use informal procedures. Any agreement to resolve the grievance must be reduced to writing and must be specifically approved by the grievant. The grievant must be provided with a copy of such agreement.

(B) Eligibility grievance. A grievance of a denial of an initial determination of eligibility for developmental disability services or an eligibility redetermination must be submitted to the CDDP, in writing, within 30 days of receipt of notice of the eligibility determination required in OAR 411-320-0080. The CDDP, upon request, must assist individuals requiring assistance in preparing a written grievance.

(i) CDDP review of grievance. When a grievance includes new information relative to making an eligibility determination, the CDDP has up to 30 days from the date received to review their original decision of denial, consider the new eligibility documentation, respond to the grievant in writing with a decision and if necessary to forward it for an administrative review. If there is no new information submitted with the grievance the CDDP must refer the grievance to the Diagnosis and Evaluation Coordinator within 5 working days from the receipt of the grievance.

(ii) Extension of process. The process described in OAR 411-320-0170 (2)(c)(B)(i) can be extended by mutual agreement between the parties. A written confirmation of the agreement to extend the time for resolution shall be sent to the grievant.

(iii) Administrative review. Within 30 days of receipt of the grievance, the Diagnosis and Evaluation Coordinator must, based upon a review of the documentation used to deny eligibility and any new information submitted by the grievant, inform the grievant and the CDDP in writing of his or her decision regarding eligibility. The notice must state the reasons for the decision.

(iv) Decision by the D&E Coordinator. The decision by the Diagnosis and Evaluation Coordinator may be grieved by the individual, the guardian, a family member, or his or her legal representative. The grievance must be submitted within 15 days of receipt of the notice from the D&E Coordinator. It should be submitted to the Department's Eligibility Grievance Review Committee.

(v) Department eligibility grievance review committee. The Administrator or designee will appoint a grievance review committee to review all grievances of eligibility determinations that fail to be resolved at the local level or by the D & E Coordinator.

(I) The committee must be composed of at least a Department representative, a local service provider program representative and a county case management representative. The Administrator shall appoint the Committee and name the Chairperson.

(II) In case of a conflict of interest the Administrator will temporarily appoint an alternative representative to the committee.

(vi) Upon receipt of the request for formal review the Department must:

(I) Schedule a grievance committee review meeting within 30 days of receipt of the written request for a formal review of the decision;

(II) Notify in writing, each party involved in the disagreement of the date, time and location of the committee review meeting, allowing at least 15 days from the meeting notification to the scheduled meeting time; and

(III) Record the review committee meeting.

(vii) Individual rights. The Grievance Review Committee must afford individuals the following rights:

(I) The opportunity to review documents and other evidence relied upon in reaching the decision being grieved;

(II) The opportunity to be heard in person and to be represented; and

(III) The opportunity to present witnesses or documents to support their position and to question witnesses presented by other parties.

(viii) Within 15 days after the conclusion of the meeting, the grievance review committee must provide written recommendations to the Administrator.

(ix) The Administrator must make a decision and send written notification of the recommendations and implementation process to all grievance

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review meeting participants within 15 days of receipt of the recommendations.

(x) The decision of the Administrator is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.

(C) Dispute with service provider or CDDP services. A grievance may be filed regarding an inability to resolve a dispute concerning the appropriateness of services described in the service plan provided by a CDDP subcontractor or regarding dissatisfaction with services provided by the CDDP.

(i) The CDDP must follow its policies and procedures regarding receipt and resolution of a grievance.

(ii) The CMHDDP Director or his or her designee must provide to the grievant a written decision regarding the grievance within 30 days of receipt of the grievance.

(I) The written decision regarding the grievance must contain the rationale for the decision, and must list the reports, documents, or other information relied upon in making the decision.

(II) Along with the written decision, the grievant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the grievance; and

(III) Be provided a notice that the grievant has the right to request a review of the decision by the Department. Such notice, must be written in clear, simple language and at a minimum explain how and when to request such a review and when a final decision must be rendered by the Administrator.

(iii) Department review. Following a decision by the CMHDDP Director or his or her designee regarding a grievance, the grievant may request a review by the Administrator.

(I) The grievant must submit to the Department a request for review within 15 days from the date of the decision by the CMHDDP Director or his or her designee.

(II) Upon receipt of a request for a review, the Administrator will appoint a Grievance Review Committee and name the Chairperson. Such a committee will be comprised of a representative of the Department, a CDDP representative and a service provider who provides a similar service as the service being grieved, i.e., residential, employment, foster care, etc. Committee representatives must not have any direct involvement in the provision of services to the individual or have a conflict of interest in the specific case being grieved.

(III) The Committee will review the grievance and the decision by the CMHDDP Director and make a recommendation to the Administrator within 45 days of receipt of the grievance unless the grievant and the Committee mutually agree to an extension.

(IV) The Administrator or his or her designee will consider the report and recommendations of the Grievance Committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the Committee. The written decision must contain the rationale for the decision.

(V) The decision of the Administrator or his or her designee is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.

(3) Specific Grievances. Individuals, their guardian, or legal representative may request a review of specific decisions by the CDDP, a service provider or a state training center as follows:

(a) Residential. Grievances of entry, exit or transfer decisions within residential services may only be initiated according to the "24-Hour Residential Services" (OAR 411-325-0010 to 0480) and the "Supported Living (OAR 309-041-0550) rules;

(b) Employment. Grievances of entry, exit or transfer decisions within employment services or community inclusion services may only be initiated according to the "Employment and Alternatives to Employment Services" (OAR 411-345-0150) rule;

(c) Medicaid. Appeals of Medicaid eligibility decisions may only be initiated according to the "Client Appeals" (OAR 410-120-1860); and

(d) Eastern Oregon Training Center. Disagreements with State Training Center decisions for admission and discharge may only be initiated according to OAR 309-118-0000, Grievance Procedure for Use in State Institutions.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670 & 427.005 - 427.007

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06

Adm. Order No.: SPD 17-2005

Filed with Sec. of State: 12-12-2005

Certified to be Effective: 12-12-05

Notice Publication Date: 11-1-05

Rules Amended: 411-018-0000, 411-018-0010, 411-018-0020

Subject: Lowers the Medicaid residency rate for nursing facilities, assisted living facilities and residential care facilities from 70% to 50%.

Provides for general housekeeping.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-018-0000

Purpose and Definitions

Purpose: These rules establish standards and procedures for a long-term care facility that will be certified by the Department as an essential community provider long-term care facility.

(1) "Adult Foster Home" defined in ORS 443.705 means any family home or facility in which residential care is provided in a home like environment for five or fewer adults who are not related to the provider by blood or marriage.

(2) "Certification" means a written statement by the Department that the facility is an essential community provider long-term care facility.

(3) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(4) "Disqualification" means a written statement by the Department that informs the facility of the reasons for disqualification.

(5) "Essential community provider long-term care facility" means a long-term care facility in which the average residency rate is 50% or more eligible for Medicaid during the calendar year immediately preceding the calendar year in which the Department is making certification; except that in adult foster homes the average residency rate will be 60%.

(6) "Long term care facility" means a nursing facility, assisted living facility, residential care facility or an adult foster home that is licensed by the Department.

(7) "Medicaid" means Title XIX of the Social Security Act.

(8) "Medicaid eligible residency rate" means the days of facility occupancy in the calendar year for which Medicaid is responsible for payment either paid or accrued (or would have been paid by or accrued to Medicaid except that another payment source was available and used) divided by all days of facility occupancy in the calendar year for which payment has been made or a liability for payment accrued.

(9) "Medicare" means Title XVIII of the Social Security Act.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 307.808 - 307.815, 443.888 & 410.070

Hist.: SDSL 11-1999, f. 12-30-99 cert. ef. 1-1-00; SDSL 7-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 17-2005, f. & cert. ef. 12-12-05

411-018-0010

Certification Process

(1) A long-term care facility seeking certification as an essential community provider long-term care facility must make written application to the Department. The application must include:

(a) The name under which the facility is licensed;

(b) The facility's Medicaid provider number, if the facility has a Medicaid contract;

(c) The mailing address of the facility;

(d) The county in which the facility is located;

(e) The name and address of a contact person at the facility;

(f) Information about facility residency during the previous calendar year to include:

(A) A monthly count of resident days paid for or accrued by Medicaid;

(B) A monthly count of resident days paid for or accrued by Medicare;

(C) A monthly count of resident days that would have been paid by Medicaid except for the availability of Medicare payment;

(D) A monthly count of resident days paid privately by facility residents or their families; and

(E) A monthly count of resident days paid through any other payment source; and

(g) A statement of the average calendar year Medicaid eligible residency rate. The average Medicaid eligible residency rate is the sum of all monthly days paid by or accrued to Medicaid plus all monthly days that would have been paid by Medicaid except for the availability and use of another source of payment divided by the total of all monthly days paid through or accrued to all payment sources including Medicaid. The percent calculated will be rounded up by the third decimal place.

(2) The Department will make a suggested application form available to facilities upon request. Facilities are not required to use the suggested application form to apply for certification; however, no application for certification may be considered complete until all information listed in section (1) of this rule is received.

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(3) Applications must be delivered to Seniors and People with Disabilities, Research, Planning and Rate Setting, 500 Summer Street NE-E18, Salem, OR 97301-1074.

(4) The earliest date on which the Department will accept an application for certification is January 2 of the calendar year following the year for which the Certification is sought.

(5) Application will be considered complete on the date received by the Department if all required information is included.

(6) The Department must audit and review applications submitted by facilities to ensure accuracy of the information provided and will issue Certification if the average Medicaid eligible residency rate during the preceding calendar year is:

(a) 50 percent or more in a nursing facility, assisted living facility or residential care facility; or

(b) 60 percent or more in an adult foster home.

(7) The Department must issue a notice of Certification within 15 business days following receipt of the completed application if it is determined the facility meets the required Medicaid eligible residency rate in section (6)(a) or (6)(b) of this rule.

(8) The Certification issued by the Department will include information required by the local taxing districts for submitting Certifications.

(9) The Certification must be mailed to the mailing address supplied by the facility.

(10) The Certification issued by the Department only applies to the single licensed facility for which Certification is requested.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 307.808 - 307.815, 443.888 & 410.070

Hist.: SDDS 11-1999, f. 12-30-99 cert. ef. 1-1-00; SDDS 7-2000, f. 12-29-00 cert. ef. 1-1-01; SPD 17-2005, f. & cert. ef. 12-12-05

411-018-0020

Appeal Process

(1) The Department will issue a notice of Disqualification to a facility when it has been determined the facility does not qualify for Certification.

(2) The notice of Disqualification must be issued within 15 business days following receipt of the completed application and informs the facility of the reasons for disqualification. A facility is entitled to an informal conference or a contested case hearing pursuant to ORS 183.413-183.470, as described in sections (3) or (4) of this rule, to protest the disqualification.

(3) Informal Conference.

(a) The facility may request an informal conference by notifying the Department in writing within 30 days of receipt of the notice of Disqualification.

(b) The request for an informal conference must be postmarked within the 30-day limit and must state specifically the reasons for requesting the conference.

(c) The facility may submit documentation and explain the basis for the protest at the informal conference.

(d) Following the informal conference, the Department will notify the facility of its decision by mail within 15 business days.

(e) No judicial review is available following a decision from an informal conference. If the facility is not satisfied with the decision, the facility may request a contested case hearing pursuant to ORS 183.413-183.470 by notifying the Department in writing of the request for the hearing within 10 business days of the date of the decision notice from the informal conference.

(f) If a facility is not satisfied with the results from the contested case hearing, the facility may petition for judicial review pursuant to ORS 183.480-183.497.

(4) Contested Case Hearing.

(a) As an alternative to section (3) of this rule, the facility may request a contested case hearing pursuant to ORS 183.413-183.470 by notifying the Department in writing that a contested case hearing is requested, within 30 days of receipt of the notice of disqualification from the Department.

(b) The request for the contested case hearing must be postmarked within the 30-day limit and must state, specifically, the reason(s) for requesting the hearing.

(c) If a facility is not satisfied with the results from the contested case hearing, the facility may petition for judicial review pursuant to ORS 183.480-183.497.

(5) If no request for an informal conference or contested case hearing is made within the specified time period, the most recent decision from the Department automatically becomes the final order.

(6) A facility may request documentation supporting the disqualification from the Department; however, a request for documentation does not extend the time period within which an informal conference or contested case must be requested. The Department will produce these work papers within 30 days of receipt of a written request.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 307.808 - 307.815, 443.888 & 410.070

Hist.: SDDS 11-1999, f. 12-30-99 cert. ef. 1-1-00; SPD 17-2005, f. & cert. ef. 12-12-05

Department of Justice Chapter 137

Adm. Order No.: DOJ 16-2005

Filed with Sec. of State: 11-23-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Adopted: 137-087-0000, 137-087-0005, 137-087-0010, 137-087-0015, 137-087-0020, 137-087-0025, 137-087-0030, 137-087-0035, 137-087-0040, 137-087-0045, 137-087-0050, 137-087-0055, 137-087-0060, 137-087-0065, 137-087-0070, 137-087-0075, 137-087-0080, 137-087-0085, 137-087-0090, 137-087-0095, 137-087-0100

Subject: The Batterer Intervention Program Rules establish statewide standards for the batterer intervention programs for services provided to batterers as defined in the rules. These rules create a new Division (087) within the Department of Justice Chapter 137.

Rules Coordinator: Carol Riches—(503) 378-6313

137-087-0000

Purpose and Implementation

(1) ORS 180.700 gives the Attorney General authority, in consultation with an advisory committee, to adopt rules that establish standards for batterers' intervention programs (BIP). OAR 137-087-0000 through 137-087-0100 establish those BIP standards (standards) for intervention services provided to male batterers who engage in battering against women. Additional rules shall be developed later to address standards for intervention services for women batterers and battering in same sex relationships. Nothing in these rules should be construed to prevent a BIP from providing appropriate batterer intervention services to batterers who are not within the scope of these rules at this time.

(2) The purposes of the standards are:

(a) To help ensure the safety of women, their children and other victims of battering;

(b) To help ensure that BIPs use appropriate intervention strategies to foster a batterer's stopping his violence, accepting personal accountability for battering and personal responsibility for the decision to stop, or not to stop, battering; and to promote changes in the batterer's existing attitudes and beliefs that support the batterer's coercive behavior;

(c) To help ensure that BIPs address all forms of battering;

(d) To help ensure that BIPs are culturally informed and provide culturally appropriate services to all participants;

(e) To help ensure egalitarian and respectful behavior by BIP staff toward women and men of all races and cultures;

(f) To help ensure that BIPs provide services that are affordable and accessible for participants, including participants with disabilities;

(g) To provide a uniform standard for evaluating a BIP's performance;

(h) To foster local and statewide communication and interaction between BIPs and victim advocacy programs, and among BIPs; and

(i) To help ensure that BIPs operate as an integrated part of the wider community response to battering.

(3) Implementation and transition provisions.

(a) A BIP may only apply these standards to BIP applicants who request or are referred for admission to the BIP after the effective date of these rules.

(b) BIPs in operation on the effective date of these rules shall make reasonable efforts to conform their policies and practices with these standards as soon as practicable but no later than six months after the effective date of these rules.

(c) BIPs commencing operations after the effective date of these rules shall comply with these standards as soon as practicable but no later than six months after commencing operations.

Stat. Auth.: ORS 180.070 - 180.710

Stats. Implemented: ORS 180.070 - 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06.

137-087-0005

Definitions

For purposes of OAR 137-087-0000 through 137-087-0100, the following terms have the meanings set forth below.

(1) "Batterer" means:

(a) An adult male 18 years of age or older who engages in "battering" against women; or

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(b) A male minor criminally convicted as an adult of conduct against women that constitutes “battering” in whole or in part.

(2) “Battering” includes but is not limited to physical violence, sexual violence, threats, isolation, emotional and psychological intimidation, verbal abuse, stalking, economic abuse, or other controlling behaviors against women in, but not limited to, the following relationships:

- (a) A current or former spouse of the batterer;
- (b) An unmarried parent of a child fathered by the batterer;
- (c) A woman who is cohabiting with or has cohabited with the batterer;

(d) A woman who has been involved in a sexually intimate relationship with the batterer within the past two years;

- (e) A woman who has a dating relationship with the batterer;
- (f) An adult woman related by blood, marriage or adoption to the batterer; or

(g) A woman who relies on the batterer for ongoing personal care assistance. “Battering” may or may not violate criminal law and in most instances is patterned behavior.

(3) “Batterer intervention program” (BIP) means a program, whether public or private, profit or non-profit, that is conducted to provide intervention and education services to batterers related to ending their battering.

(4) “Facilitator” means anyone who provides BIP intervention services, whether in a group or class setting, or individually.

(5) “Local Domestic Violence Coordinating Council” (Council) means a council set up by local entities that works to intervene with or prevent domestic violence, and to foster a coordinated community response to reduce domestic violence. A Council shall include representatives of the criminal justice system (such as law enforcement, prosecution, and judiciary) and victims’ advocacy programs. A Council may also include medical professionals, mental health professionals, health agencies, substance abuse programs, culturally specific providers, child protective services, child support enforcement, school personnel, senior services, disability services, self-sufficiency services (public assistance) and other applicable programs of the Oregon Department of Human Services (DHS), representatives from faith communities, other community groups, and BIPs.

(6) “Local Supervisory Authority” (LSA) means the local corrections agencies or officials designated in each county by that county’s board of county commissioners or county court to operate corrections supervision services, or custodial facilities, or both.

(7) “Mandating Authority” (MA) means the court, district attorney, or corrections system authority that has ordered or required the batterer to participate in a BIP.

(8) “Participant” means a batterer who participates in a BIP.

(9) “Partner” means a female in a past or present intimate relationship with a batterer, including persons described in subsection (2) of this section. A partner may be under the age of 18 and may or may not be an identified victim of the participant’s battering.

(10) “Victim” means a female, including a past or present partner, subjected to battering. A victim may be under the age of 18. In no event shall the batterer be considered a victim for purposes of these rules.

(11) “Victim advocacy program” (VP) means a nonprofit organization, agency or program that assists domestic violence or sexual assault victims. VPs include, but are not limited to, battered women’s shelters, rape crisis centers, and other sexual assault and domestic violence programs assisting victims of battering.

Stat. Auth.: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0010

Integration With Total Community Response to Domestic Violence

(1) BIP in Wider Community Response. A BIP shall be part of a wider community response to battering and not a “stand alone” form of response. A BIP shall interface with VPs, the Council, the criminal justice system including the LSA, other BIPs, members of the Council, and entities recommended to be part of the Council in OAR 137-087-0005(5), to achieve the following objectives:

(a) Increase victim safety and batterer accountability and responsibility;

(b) Increase BIP coordination and communication with the criminal justice system, VPs, other BIPs, and all other entities involved in the total community response to domestic violence;

(c) Decrease the likelihood that a lack of communication between BIPs and other representatives in the community response to domestic violence will jeopardize victim safety or be used by the batterer to manipulate the response system;

(d) Increase the likelihood that BIPs are not working at cross-purposes with other agencies serving domestic violence and sexual assault victims and offenders;

(e) Increase the likelihood that BIPs are providing services representing best practices;

(f) Promote community beliefs and attitudes that discourage battering; and

(g) Support other programs that work to reduce or prevent battering.

(2) BIP and Council. A BIP shall participate in and seek to join the Council if a Council exists in the BIP’s service area.

Stat. Auth.: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0015

Interface Standards — Victims and Current Partners

(1) Victim/Current Partner Notification Policies:

(a) A BIP shall have written policies and procedures that govern BIP contact with identified victims and current partners, and that adequately address the safety of victims, including present and past partners. BIP policies relating to victim or partner contacts shall include a policy as to how to document victim or partner contact information that is consistent with OAR 137-087-0060(4)(b), and shall require the segregation and protection of victim or partner contact records. A BIP shall provide a VP with the opportunity to review and comment on the BIP’s proposed victim or partner contact policies and procedures, and any amendments to those policies and procedures, before a BIP adopts them.

(b) In all BIP contacts with victims or partners, the primary goal is the safety of the victim or partner. Any BIP victim or partner contact procedure shall consider victim or partner safety, including the risk of identifying victim location, and the risk of any other unauthorized BIP disclosure of information from the victim or partner.

(c) A BIP shall not pressure, coerce or require victims or partners to disclose any information, have any future contact with the BIP or participant, or attend any BIP or other program sessions, meetings or education groups as a condition of the participant’s involvement with the BIP.

(d) Victim or partner contact initiated by a BIP normally shall be limited to the following circumstances:

(A) Notifying the victim or partner that the participant has been accepted or denied admission to the BIP;

(B) Notifying the victim or partner of any conditions imposed on the participant’s admission to the BIP;

(C) Notifying the victim or partner of the participant’s attendance record;

(D) Notifying the victim or partner that the participant has been suspended, discharged or terminated from the BIP; and

(E) Giving the victim or partner general information about the BIP and community resources, consistent with section (2) of this rule.

(e) A BIP may adopt a victim or partner contact policy that provides for victim or partner contact using a VP in any of the circumstances described in section (1)(d) of this rule, or other contacts requested by the BIP. This policy may be established by a formal interagency agreement with the VP.

(2) Informational Materials:

(a) A BIP shall prepare for distribution to victims and partners informational materials written in plain language, tailored to the community and responsive to relevant cultural components. The information shall be made available by the BIP upon request to any victim or partner, provided to the VP and LSA, and made available in a form that may be distributed through community resources.

(b) The materials shall include information about the following:

(A) A brief description of the BIP, including program expectations, content and philosophy;

(B) A clear statement that the victim or partner is not expected in any way to help the participant complete any BIP requirements, and that the participant’s eligibility for the BIP’s services is not contingent in any way on victim or partner participation or on other victim or partner contact with the BIP;

(C) The limitations of BIPs, including a statement that the batterer’s participation in a BIP does not ensure the participant will stop any or all battering behaviors;

(D) The high likelihood of participants misusing information they hear in their BIP groups or classes against the victim or partner;

(E) The risk of participants re-offending, or changing their control tactics, or both, while in the BIP or after completion of BIP requirements;

(F) The victim’s or partner’s right, at her discretion, to contact the BIP, or the facilitators of the group or class the participant is attending, signed up for, or sanctioned into, with any questions or concerns, and the right to have communications kept confidential unless confidentiality is waived by the victim or partner, or unless release of victim information is required by federal or state law or regulation or court order;

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(G) A statement that the victim or partner may complain to the BIP, LSA, a VP, or the Council if she has a concern about how the BIP is contacting her;

(H) Contact information related to victim services, such as services offered by VPs in the victim's community, the statewide automated victim notification system (VINE), Oregon crime victims' compensation program, and constitutional and statutory victims' rights;

(I) Encouragement for victims to make safety plans to protect themselves and their children, including community resources to contact if they believe they are at risk; and

(J) Notification that a VP may be available as a means by which the information set forth in section (1)(d) of this rule may be communicated, thereby allowing the victim to choose to avoid direct contact with the BIP.

(c) Upon request, a BIP shall make a reasonable effort to provide its informational materials in a form suitable for victims or partners with vision impairments or with limited English proficiency.

(3) Imminent Threat to Health or Safety. The BIP shall disclose participant information when, and to the extent, the BIP in good faith believes such disclosure is necessary to prevent or lessen an imminent threat to the health or safety of a person or the public. No authorization to release information is required in such circumstances. The BIP may provide information to a person or persons reasonably able to prevent or lessen the risk of harm, including but not limited to the victim and past or present partners.

(4) Victim-Initiated or Partner-Initiated Contacts. If a victim or partner contacts the BIP, the BIP may provide information and referral as allowed by state and federal confidentiality laws. The BIP shall not inform the batterer about the victim or partner contact. In response to victim-initiated or partner-initiated contacts, any information the BIP wants to request from the victim or partner (e.g., level of concern for her own safety, recent behaviors of her partner) shall only be sought after she has given full consent. The BIP shall make clear that the victim or partner is under no obligation to provide any information, that refusal to do so shall not affect the status of the participant, and that information shared with the BIP may be subject to release if required by federal or state law or regulation or court order. Any information provided to the BIP shall be kept completely confidential unless the victim or partner expressly authorizes its disclosure, or unless release of information is required by federal or state law or regulation or court order. In considering whether to request such information from the victim or partner, the BIP shall prioritize victim or partner safety over any other concerns.

Stat. Auth: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0020

Confidentiality of Victim and Partner Information

(1) Confidentiality. All information about or from a victim or partner shall be confidential.

(2) Treatment of Information. Any information the BIP receives about or from a victim or partner is not a part of the participant's record and shall be kept in a secure location separate from information about any participant.

(3) Restriction of Access to Information. A BIP shall restrict access to and use of victim or partner information to only BIP staff who have a specific need to know the information and who are accountable for their access to and use of that information.

(4) Disclosure of Information. Any disclosure of information about the victim or partner shall be made only with the victim's or partner's authorization, or as otherwise required by federal or state law or regulation, or court order.

(5) Notification of Possible Disclosure of Information. If a BIP is put on notice that federal or state law or regulation or court order may require the disclosure of information provided by a victim or partner, the BIP shall immediately notify the victim or partner or the appropriate VP unless such notification would endanger the safety of the victim or partner.

Stat. Auth: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0025

Interface Standards – Victim Advocacy Programs

(1) Liaison. A BIP shall designate a program staff member to serve as a liaison to at least one VP and to the Council in the BIP's service area. Through the liaison, the BIP shall:

(a) Work collaboratively with VPs to help ensure that victims are provided informational materials about, or are referred to, a VP or other advocacy, safety planning, or assistance agencies;

(b) Provide BIP policies, procedures and informational materials, and any amendment to such policies, procedures and informational materials, to

the VPs and Council for review and comment as to whether the policies, procedures and materials help ensure the safety of victims and follow best practices related to victim notification;

(c) Work cooperatively with VPs to post, in appropriate locations, information about how victims can contact the BIP, LSA or MA for more information about the BIP;

(d) Work cooperatively with VPs to address VP concerns or problems related to BIP interventions with batterers, or the BIP's relationship with the LSA or MA, or both; and

(e) Develop a procedure to notify VPs when the BIP believes in good faith that such notification is necessary to prevent or lessen an imminent threat to the health or safety of the victim or the public.

(2) Imminent Threat to Health or Safety. A BIP shall disclose participant information to a VP when, and to the extent, the BIP in good faith believes such disclosure is necessary to prevent or lessen an imminent threat to the health or safety of a person or the public. No authorization to release information is required in such circumstances.

Stat. Auth: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0030

Interface Standards – Criminal Justice System

(1) Participation in Judicial or Corrections Response. A BIP's intervention services may be part of a judicial or corrections response to battering, either as a condition of probation or post-prison supervision, through a domestic violence deferred sentencing agreement, or as otherwise authorized by law. A BIP is encouraged to use the power of the criminal justice system to hold batterers accountable for their battering.

(2) Liaison. A BIP shall designate a program staff person to serve as a liaison to the LSA and the MA. The liaison shall:

(a) Request information such as court orders, protective orders, no-contact orders, and police reports;

(b) Work collaboratively with the LSA and MA to facilitate coordination of BIP services with supervision requirements so the BIP is not working at cross-purposes with criminal justice system requirements applicable to the batterer;

(c) Report to the appropriate LSA or MA, or both, any known violations of the requirements of a court order, any criminal assaults, or threats of harm to the victim, unless doing so would jeopardize the safety of the victim;

(d) If violations of BIP program requirements create a significant risk of termination from the BIP, report such violations and risk of termination to the appropriate LSA or MA, or both;

(e) Upon request of the LSA or MA, or both, submit periodic status reports about participant attendance, recommendations for further intervention, and program exit summary; and

(f) Report any other information requested by the LSA or MA to the extent permitted by federal or state law, required by court order, or authorized by the participant.

(3) Communications about Participant Release. In communications about participant release for completion of BIP intervention services, a BIP shall note that such release shall not be interpreted as evidence that the participant is presently non-abusive, as descriptive of his present behavior outside the group, or as predictive of his future behavior.

(4) Consistency with Court Orders. A BIP shall ensure BIP actions are consistent with all court orders, including orders affecting batterer contact with the victim(s) or partner(s).

(5) Training. A BIP shall participate in training and cross-training in conjunction with VPs and criminal justice agencies, and shall offer technical assistance to the criminal justice system and VPs relating to batterers and appropriate intervention strategies to eliminate battering of women and abuse of children.

(6) Imminent Threat to Health or Safety. The BIP shall disclose participant information when, and to the extent, the BIP in good faith believes such disclosure is necessary to prevent or lessen an imminent threat to the health or safety of a person or the public. No authorization to release information is required in such circumstances. The BIP may provide information to a person or persons reasonably able to prevent or lessen the risk of harm, including but not limited to the LSA, the MA, and other law enforcement or corrections personnel.

Stat. Auth: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0035

Interface Standards – Other BIPs

(1) Purpose. The purpose of sections (2)–(4) of this rule is to promote accountability and completion of BIP program requirements and to deter

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batterers from changing enrollment from one BIP to another BIP to avoid accountability.

(2) Restrictions on Participant Transfer. A participant may not transfer from one BIP to another BIP without the specific authorization of the LSA or MA, or its agent, with supervisory responsibility for the batterer.

(3) Authorization to Obtain Information. After receiving a referral for a new BIP participant from the LSA or MA, a BIP shall require the participant to authorize any former BIP(s) to send the new BIP information about the participant's attendance, participation and payment record, Accountability Plan, exit summary and transfer plan. The new BIP shall promptly request the authorized information from any former BIP(s).

(4) Credit for Sessions. The new BIP may, but is not required to, extend credit for the number of sessions attended at the former BIP; however, the participant shall be required to complete all of the new BIP's program requirements before program completion.

(5) Participation in BIP Organizations. A BIP shall be active in local and statewide BIP organizations to help:

(a) Provide quality services to enhance the safety of victims;

(b) Participate in peer review that fosters statewide compliance with the standards set out in these rules;

(c) Discourage practices by other BIPs that do not comply with these standards;

(d) Assist in the development of relationships with VPs and others in the coordinated community response to domestic violence;

(e) Share research results and new practices with other BIPs; and

(f) Cooperate, to the extent practicable, in research on domestic violence that is approved by the Council and otherwise consistent with victim or partner safety, and collaborate in the production and dissemination of research findings.

Stat. Auth: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0040

Interface Standards – Social Service Interfaces

BIP Responsibilities. To the extent reasonably practicable, a BIP shall:

(1) Establish a liaison with the DHS office in the BIP's service area(s);

(2) Participate in and seek to join the Council if a Council exists in the BIP's service area(s);

(3) Coordinate with community members to provide community education and public awareness campaigns related to domestic violence;

(4) Assist in training professionals in the community about batterers, services for batterers and accountability for batterers; and

(5) Collaborate with community representatives on issues of public policy related to safety for battered women and children, and intervention with batterers.

Stat. Auth: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0045

Intervention Strategies

(1) Appropriate Intervention Strategies. A BIP's intervention strategies shall include, but are not limited to, the following:

(a) Using a culturally specific curriculum whenever possible;

(b) Increasing the participant's understanding of the causes, types and effects of his battering behavior;

(c) Identifying beliefs that support battering;

(d) Using respectful confrontation that encourages participants to challenge and change their beliefs and behaviors;

(e) Addressing tactics used to justify battering such as denial, victim blaming, and minimizing; increasing participant recognition of the criminal aspect of his thoughts and behavior; and reinforcing participant identification and acceptance of personal responsibility and accountability for such tactics;

(f) Reinforcing appropriate respectful beliefs and behavioral alternatives;

(g) Promoting participant recognition of and accountability for patterns of controlling and abusive behaviors and their impacts, and participant responsibility for becoming non-controlling and non-abusive; and

(h) Ensuring that the impact of battering on victims, partners and children, including their safety and their right to be treated respectfully as individuals, remains in the forefront of intervention work.

(2) Inappropriate Intervention Strategies. The following intervention strategies are inappropriate and inconsistent with these standards because each compromises victim safety:

(a) Blaming the participant's decision to batter on the victim's qualities or behaviors;

(b) Coercing, mandating, requiring or encouraging victim or partner disclosure of information or participation in the intervention with the participant;

(c) Offering, supporting, recommending or using couples, marriage or family counseling or mediation as appropriate intervention for battering;

(d) Identifying any of the following as a primary cause of battering or a basis for batterer intervention: poor impulse control, anger, past experience, unconscious motivations, substance use or abuse, low self-esteem, or mental health problems of either participant or victim;

(e) Using ventilation techniques such as punching pillows or encouraging the expression of rage;

(f) Viewing battering as a bi-directional process with responsibility shared by the victim;

(g) Viewing battering as an addiction and the victim as enabling or co-dependent in the battering; or

(h) Using actions or attitudes of moral superiority, or controlling or abusive behaviors toward participants.

Stat. Auth: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0050

Intervention Curriculum

(1) Basic Intervention Curriculum Requirements. Challenging and confronting participant beliefs and behaviors shall be balanced by creating a safe and respectful environment for change. To accord with these standards, a curriculum for batterers shall include, but is not limited to, the following basic requirements:

(a) Addressing belief systems that legitimize and sustain battering of women and abuse of children;

(b) Informing participants about the types of battering as defined in OAR 137-087-0005(2);

(c) Challenging participants to identify the patterns of their battering behaviors and all tactics used to justify battering such as denial, victim blaming, and minimizing; increasing participant recognition of the criminal aspect of his thoughts and behavior; reinforcing participant identification and acceptance of personal responsibility and accountability for all such tactics; and reinforcing alternatives to non-battering behavior;

(d) Encouraging participants to identify the cultural factors that are used by a batterer to legitimize both individual acts of abuse and control and battering as a whole;

(e) Modeling respectful and egalitarian behaviors and attitudes;

(f) Increasing participants' understanding and acceptance of the adverse legal, interpersonal and social consequences of battering;

(g) Increasing the participants' overall understanding of the effects of battering upon their victims, themselves, and their community, and encouraging participants to go beyond the minimum requirements of the law in providing victims and their children with financial support and restitution for the losses caused by their battering;

(h) Identifying the effects on children of battering directed at their mothers, including but not limited to the incompatibility of the participant's battering with the child's well-being, the damage done to children witnessing battering, and educating participants about the child's need for a close mother-child bond, nurturance, age-appropriate interactions, and safety;

(i) Facilitating participants' examination of values and beliefs that are used to justify and excuse battering;

(j) Requiring participants to speak with respect about their partners and other women, and challenging participants to respect their partner and other women and to recognize their partner and other women as equals who have the right to make their own choices;

(k) Encouraging empathy and awareness of the effect of participants' behavior on others;

(l) Challenging participants to accept personal responsibility and accountability for their actions;

(m) Encouraging participants to challenge and change their own battering beliefs and behaviors; and

(n) Identifying how the participant uses alcohol and other drugs to support battering behaviors.

(2) Accountability Plan. A BIP shall require every participant to develop an Accountability Plan (Plan), and a BIP's curriculum shall provide information that a participant can use to develop his Plan. Accountability planning is an ongoing process intended to increase the batterer's self-awareness, honesty and acceptance of responsibility for battering and its consequences. A participant's Plan shall include specific and concrete steps to be identified and implemented by the participant. A BIP shall always prioritize the safety and best interests of the victim when teaching and reporting on accountability planning. Under no circumstances

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may the terms of a Plan require, or imply authorization of or permission for, conduct that violates the terms of a court order or other legally binding requirements.

(3) Elements of the Plan. The Plan shall include, but need not be limited to, the following elements.

(a) Description of the conduct to stop and to be accountable for, including:

(A) Description of the specific actions that caused harm, including the entire range of attempts used to control and dominate the victim(s) or partner(s), specific actions that led to the participant being in the BIP, and the participant's intentions or purposes in choosing those actions.

(B) Identification of the beliefs, values, and thinking patterns the participant used:

(i) To prepare himself and plan to batter;

(ii) To justify his battering to himself and to others;

(iii) To blame other persons and circumstances outside his control for his battering; and

(iv) To minimize and deny his battering, its harmful effects, and his personal accountability and responsibility for the battering and its effects.

(C) Identification of the full range of effects and consequences of the battering on the victim(s), partner(s), children, the community and the participant.

(b) Participant's plan for choosing to treat his former, current or future partner(s) and children in a continually respectful and egalitarian manner, including:

(A) Description of the excuses and underlying beliefs used to justify his battering;

(B) Description of the participant's plan for intervening in his battering to prevent himself from continuing his pattern of battering;

(C) Description of battering the participant is currently addressing and how he is utilizing his Plan;

(D) Description of how the participant is intervening in his battering including the excuses, beliefs and behaviors he is addressing;

(E) Description of how the participant shall choose to act in ways that no longer cause harm to the victim(s), partner(s), children and the community;

(F) Description of how the participant shall take responsibility for choosing to act in ways that no longer cause harm to the victim(s), partner(s), children and the community;

(G) Description of the thoughts, beliefs and actions the participant shall need to change to become non-abusive and non-controlling, and a description of alternative thoughts, beliefs and actions he can use to make non-abusive and non-controlling choices; and

(H) Description of the thoughts, beliefs and actions that the participant uses in other areas of his life that demonstrate that he is already aware and capable of making responsible non-abusive and non-controlling choices.

(c) Acceptance of full responsibility for the participant's choices and their consequences, including:

(A) Acknowledgement that the participant's actions causing harm to the victim(s), partner(s), children and the community were his choice, that he had other options, and that he is fully accountable for his choices and the consequences of those choices for himself and others;

(B) Acceptance of full responsibility for having brought the criminal justice system into his life, and for other consequences of his behaviors; and

(C) Participant's plan for beginning and continuing to make reparation and restitution for the harms caused, either directly to the victim(s) if appropriate, approved by the victim(s), and not manipulative, or indirectly by anonymous donation or community service when the victim wants no contact with the participant.

Stat. Auth.: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0055

Culturally Informed Interventions

(1) Familiarity with Cultural Demographics. A BIP shall maintain familiarity with the cultural demographics of its service area(s) to help the BIP:

(a) Anticipate the various cultural backgrounds that may be represented by participants; and

(b) Identify factors within a particular cultural background that influence battering, or that can be used by the participant to excuse the battering or by the BIP to assist the participant in ending battering without using such factors as excuses for battering.

(2) Scope. For purposes of these rules, cultural groups shall be construed broadly to include race, religion, and national origin, as well as economic and social groups that are identifiable within the BIP's service area(s).

(3) Basic Service Requirement. Culturally-specific services shall be offered to the extent practicable; however, if culturally-specific services are not available, BIPs shall offer culturally informed services.

(4) Culturally Informed Curriculum. A BIP's curriculum shall address, in a culturally informed way, the factors within the particular cultural background of a participant that influence battering. The curriculum shall avoid cultural stereotyping. Facilitators shall show videos and provide information from a variety of cultural perspectives to staff and participants.

(5) Personnel Policies and Procedures. A BIP's personnel policies and procedures shall require training and other activities that:

(a) Promote recognition and understanding of the factors within a particular cultural background that support battering and hinder batterers from stopping violence. Such training shall promote the recognition and avoidance of cultural stereotype views and beliefs by BIP staff. The BIP shall provide staff with the tools to understand their own biases and preconceptions about people from specific cultures, and how to avoid such biases or preconceptions in the provision of BIP services and activities;

(b) Inform staff about the negative effects of all forms of oppression and about how individuals within each specific cultural background in the BIP's service area(s) may experience oppression within their own culture or within the dominant community;

(c) Inform staff about how the cultural backgrounds of the populations in the BIP's service area(s) view gender roles and family structure, and how those cultures typically respond to domestic violence, sexual assault, and conflict;

(d) Inform staff about specific strengths of the cultural backgrounds in the BIP's service area(s), e.g., strong kinship ties and work ethic, adaptability of family roles, and egalitarianism, high achievement goals, and strong religious orientation; and

(e) Inform staff about specific traditions within the particular cultural backgrounds in the BIP's service area(s) that support battering and hinder batterers from stopping their battering.

(6) Library of Information and Resources. A BIP shall develop and maintain a library of information and resources about specific cultural backgrounds and culturally sensitive modes of intervention.

(7) Diverse Staff and Environment. To the extent possible, a BIP shall provide a staff and environment that reflect the diversity of cultural backgrounds in the BIP's service area(s).

(8) Relationship with Other Programs. BIPs shall develop relationships with appropriate culturally-specific programs to obtain information or training about the culture, and to refer participants for non-BIP culturally-specific services as needed. BIPs shall cooperate with other BIPs in developing culturally specific programs that comply with these standards.

Stat. Auth.: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0060

Admission Policies and Procedures

(1) Admission Criteria. A BIP shall have written criteria for accepting or refusing admission requests or referrals. An applicant or referral shall be referred to as a potential participant until the BIP admits the person to the BIP program. The admission criteria shall be available to potential participants, staff, victims, partners and the community, and shall include the following provisions:

(a) A BIP may reject any potential participant the BIP deems to be inappropriate. Inappropriate potential participants may include but are not limited to:

(A) Persons whose conduct causing the referral or application is not battering as defined in OAR 137-087-0005(2); and

(B) Persons whose behavior would be disruptive to meaningful participation in the BIP.

(b) Except for reasons identified in section (1)(a) of this rule, a BIP may not reject a potential participant referred for anger management that is intended to address battering.

(c) After admitting a participant, a BIP may terminate participation on the ground the admission was inappropriate based on the criteria in section (1)(a) of this rule.

(d) If a BIP rejects a referral as inappropriate, or terminates participation of a referral because admission was inappropriate, the BIP shall notify the referral source of the reason for rejection or termination of participation and, when appropriate, may make recommendations for other intervention, treatment services or criminal justice action. The BIP shall notify the referral source within seven working days of the rejection or termination of participation.

(e) A BIP's admission criteria and practices shall not discriminate against any potential participant based on national origin, race, culture, age, disability, religion, educational attainment or sexual orientation. Where there is a substantial barrier to a potential participant's participation in a

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BIP because of cultural background, language, literacy level, or disability, a BIP shall make reasonable modifications in policies, practices, and procedures to provide BIP services within available resources and in consultation with the referring LSA or MA.

(2) Intake procedures:

(a) A BIP shall use an intake procedure that includes an interview with the potential participant and written documentation of the information collected.

(b) The BIP shall request information from the potential participant and other relevant sources that the BIP shall use initially to determine whether the potential participant is appropriate and otherwise meets the BIP's admission criteria. That information includes, but is not limited to, the history of battering or violent criminal conduct; history of BIP participation; existence of restraining, protection or no-contact orders; police reports; court orders; involvement with DHS child welfare services; and terms and conditions of probation.

(c) In addition to the information requested under subsection (b) of this rule, a BIP may request additional information from the potential participant and other relevant sources. Any BIP contact to obtain information from a victim or partner shall comply with the victim and partner interface standards in these rules, OAR 137-087-0015. Additional information may be requested by a BIP related to the following:

(A) Factors that may indicate a risk of future violence against the victim or other intimate partner, including but not limited to: safety concerns expressed by the victim; prior assaults against intimate partner(s), children and pets; criminal history; prior violation of conditional release or restraining order(s) or other court orders; history of stalking; extreme isolation or dependence on the victim or partner; attitudes that condone or support domestic violence; history of weapon possession or use; access to firearms; credible threats of injury, death or suicide; lack of personal accountability; minimization or denial of domestic violence history; and association with peers who condone domestic violence.

(B) Factors that may make participation in the BIP difficult or impossible, including but not limited to: lifestyle instability (e.g., unemployment or lack of housing); substance use, abuse or addiction; information about any mental health diagnosis that would affect ability to appropriately participate in the program; negative response to prior services (dropping out, lack of motivation and resistance to change); and persistent disruptive behavior.

(C) Factors that may indicate risk of future violence toward the BIP provider or other participants, including but not limited to a history of weapon use and violent criminal behavior.

(D) Demographic factors that may be used for statistical reasons or programmatic planning, including but not limited to age at time of offense and length of relationship with current or former victim(s).

(3) Participant Orientation to the BIP:

(a) A BIP shall use an orientation procedure to inform the participant about BIP requirements and expectations. A BIP may combine orientation with intake.

(b) The orientation shall provide the participant with the following BIP materials verbally and in writing:

(A) Statement of the BIP's philosophy consistent with these standards;

(B) Length of program, program attendance policies, and consequences of failure to comply with attendance policies;

(C) Specified fees, methods of payment, and consequences of failure to comply with payment agreements;

(D) Statement of active participation requirement, including personal disclosure and completion of group or class activities and assignments;

(E) Rules for group or class participation and statement of requirement to cooperate with those rules;

(F) Statement of requirement to develop and present an Accountability Plan;

(G) Statement of the BIP's drug and alcohol policy, including but not limited to a prohibition against attending any sessions while under the influence of drugs or alcohol;

(H) Statement of procedure for asserting grievances with the BIP;

(I) Prohibition of weapons possession while on BIP premises or when participating in a BIP function;

(J) Statement of any other BIP rules and conditions for participation in the BIP;

(K) Statement of the BIP's obligation to follow all federal or state laws and regulations, including these standards, relating to required disclosures in the case of: imminent danger to self, victim, current partner or others; or child abuse, elder abuse, abuse of vulnerable adults, or any other circumstances requiring reporting;

(L) Statement of the BIP's confidentiality policy as to participant records, identity of other BIP participants, and information disclosed by other participants in the BIP groups or classes;

(M) Notification that the BIP shall not provide the participant with any information about the victim or partner, either directly or in any judicial or administrative proceeding;

(N) Statement of a requirement that the participant execute all necessary documents to obtain information from, or release of information to, law enforcement, the courts, prior intervention or treatment services, social services, victim(s), partner(s), and others as appropriate; and

(O) Statement of criteria for program completion or release.

(4) Participant Record:

(a) A BIP shall keep the following information in each participant's record:

(A) Participant's name, address and phone number;

(B) Name and telephone number of contact in case of emergency;

(C) Fee agreement;

(D) Intake information obtained under section (2) of this rule, name of staff member completing intake, and participant's signed acknowledgment of receiving orientation materials;

(E) Copy of any signed releases of information;

(F) Records of participant's attendance and other participation;

(G) Information received by the BIP after intake, including court orders, police reports, and restraining orders; and information as to any violations, offenses, new arrests or criminal charges during participation;

(H) Except for victim or partner contact information addressed in subsection (b) of this section, documentation of BIP disclosures, including name(s) of person(s) notified due to imminent danger or mandatory reporting consistent with these rules;

(I) Documentation of the participant's status as to completion of the requirements of the program, and any current obstacles to completion;

(J) Exit summary pursuant to OAR 137-087-0070; and

(K) Documentation of any refusal to provide requested information or to sign authorization forms.

(b) The following information is not a participant record and shall not be documented:

(A) Contact or other information about the whereabouts of a victim or partner, other information about a victim or partner not provided by the participant, and any information received by the BIP from a victim or partner;

(B) Any disclosures to a victim or partner, including any indication that the victim or partner was contacted by the BIP.

(c) Any record of information described in section (4)(b) of this rule shall comply with OAR 137-087-0015.

(5) Participant Access to Records. Subject to denial of access pursuant to subsection (a) of this section, a BIP shall provide the participant an opportunity to review information in the BIP's participant record under section 4(a) of this rule within a reasonable time of receiving a review request, and shall provide a copy of the records upon payment of the cost of duplication.

(a) A BIP may deny or limit a participant's access to the BIP's participant record:

(A) When the BIP determines that disclosure of the records is reasonably likely to endanger the life or safety of the participant or another person;

(B) When the BIP determines that the information was provided to the BIP on the condition that the information not be re-disclosed; or

(C) When the BIP determines that the information was compiled by the BIP in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding involving the BIP.

(b) If a document in the BIP's records contains any information, obtained from a source other than the participant, about a person other than the participant, the BIP shall redact that information.

(c) Except as expressly provided in these rules, nothing in these rules is intended to create any expectation or right of privacy or confidentiality for any records, files or communications relating to potential participants or participants in BIP services. The BIP may use and disclose information unless and to the extent prohibited or restricted by federal or state law or regulation, including these rules. Use or disclosure of otherwise confidential medical, mental health and treatment records shall comply with applicable federal and state law and regulations.

(d) The BIP shall adopt policies that provide for the confidentiality of a participant record, to the greatest extent practicable consistent with these rules, of a participant who is a defendant participating in a domestic violence deferred sentencing agreement.

Stat. Auth.: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

ADMINISTRATIVE RULES

137-087-0065

BIP Program Format

(1) Use of Group or Class Format. A BIP shall ordinarily provide intervention in a group or class format. Exceptions to the group or class format shall be rare and the reasons clearly documented and provided to the Council.

(2) Gender-specific. BIP groups or classes shall be gender-specific.

(3) Group or Class Size. To maximize the impact of the program curriculum, groups or classes shall ideally be composed of 7-12 participants, but shall have no more than 15 participants in addition to the co-facilitators unless approved by the Council and the LSA or MA. Group or class sizes of more than 12 shall be reported to the Council for review and comment.

(4) Co-facilitation. Whenever possible, BIP groups or classes shall be conducted by at least one male and one female to establish an egalitarian model of intervention, increase accountability, and to model healthy egalitarian relationships. The BIP shall notify the Council and LSA when co-facilitation is not occurring, stating the reasons and justifications. At least one of the co-facilitators shall have already met all training requirements as specified in these rules.

(5) Number and Length. After intake, participants shall be involved in the program for at least 48 weekly sessions. Each group or class shall last one and one-half to two hours. There shall be a three month transition period immediately after such completion, with at least one group session each month. A BIP may extend the period of required participation for an individual pursuant to attendance policies and program completion requirements in sections (6) and (7) of this rule.

(6) Written Attendance and Tardiness Policies. A BIP shall adopt written group or class attendance and tardiness policies. At a minimum, such policies shall address punctuality of attendance, criteria for excused and unexcused absences, criteria for a maximum number of absences allowed, and criteria for obtaining exceptions to the attendance policies.

(7) Written Completion Requirements. A BIP shall adopt written program completion requirements, including consequences for excessive absences and other non-compliance, and provide a copy of the completion requirements to the LSA and Council.

Stat. Auth.: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0070

Policies and Procedures as to Termination or Release

(1) Policies and Procedures. A BIP may release a participant based upon program compliance, or terminate participation based on program non-compliance or for other reasons, as provided in sections (3)–(6) of this rule.

(2) Program Exit Summary. No later than 30 days after the last service contact, a BIP shall prepare for the participant's record an exit summary describing the reason for release or termination and the participant's status. A BIP shall provide a copy of the exit summary to the LSA or MA, or both, or their designees within seven business days after its preparation. In communications about release based on program compliance, a BIP shall note that release is not evidence that the participant is presently non-abusive or non-violent, does not describe current behavior outside the BIP, and does not predict future behavior.

(3) Release for Program Compliance. A BIP may release a participant based on program compliance only if a participant has achieved:

(a) Compliance with the BIP's attendance policy for the entire time period established in accordance with the BIP's rules;

(b) Compliance with group or class rules throughout intervention services;

(c) Completion of the Accountability Plan; and

(d) Compliance with other BIP rules and conditions for participation in the BIP.

(4) Terminating Participation for Program Non-Compliance. A BIP may terminate participation based on program non-compliance for any of the following reasons:

(a) Failing to maintain regular attendance, consistent with OAR 137-087-065(5) and (6);

(b) Failing to participate during BIP services, or failing to complete assignments, as required by BIP policies provided during orientation pursuant to OAR 137-087-0060(3)(b)(D);

(c) Creating an unsafe environment or exhibiting disruptive behavior that undermines the achievement of group or class objectives;

(d) Threatening the safety of the facilitator, staff, or other BIP participants;

(e) Failing to comply with other requirements of a BIP, including violation of the group or class rules or other conditions that are a part of the BIP's participation requirements;

(f) Failing to comply with the BIP payment agreement; or

(g) Ongoing battering behavior.

(5) LSA Request for Re-admission. Unless the participant was terminated based on section (4)(d) or section (6) of this rule, the BIP may re-admit the participant upon request of the LSA with an increased number of sessions necessary to achieve BIP program completion requirements and other conditions appropriate to the basis for termination.

(6) Terminating Participation for Other Reasons. A BIP may terminate participation because the admission was inappropriate based on the criteria in OAR 137-087-0060(1)(a).

(7) Leaves of Absence. A BIP may permit a participant to remain in the BIP while temporarily not attending groups or classes for reasons the BIP determines are justified. Leaves of absence shall be rare and granted only upon proper supporting documentation and when there are no other viable options. The BIP shall immediately inform the LSA or its designee about any leave of absence.

Stat. Auth.: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0075

Post-Release Services

(1) Service Eligibility. A BIP may provide post-release services to a participant only after his release for program compliance.

(2) Cost of Services. Whenever possible, a BIP shall offer post-release services at little or no cost for former participants to encourage long-term and on-going participation in such services.

(3) Elements of Services. Post-release services may include but are not limited to:

(a) Occasional attendance of the group or class the former participant has left;

(b) Periodic individual meetings with BIP staff to assess maintenance and to review the Accountability Plan developed pursuant to OAR 137-087-0050;

(c) Periodic group or class meetings of typical or extended length conducted specifically for post-release men; and

(d) Regularly scheduled group or class meetings on an on-going basis.

(4) Limit on Role of Services. Attendance in a post-release group or class shall not substitute for re-enrolling in a BIP or as the primary intervention when there is a new legal charge, court mandate to complete a BIP, or when the participant or partner reports physical violence.

Stat. Auth.: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0080

Personnel Standards

(1) Personnel Policies. A BIP shall adopt the following written personnel policies and procedures applicable to program facilitators, managers or supervisors, administrative staff, volunteers and interns, board members and owners (collectively referred to as "staff" for purposes of this rule except as otherwise specifically identified):

(a) Rules of conduct and standards for ethical practices of staff involved in BIP services with participants or contact with victims or partners;

(b) Standards for use and abuse of alcohol and other drugs, and procedures for managing incidents of use and abuse that, at a minimum, would be sufficient to comply with Drug Free Workplace Standards, 41 U.S.C. § 701 et seq. as described in 45 CFR Part 76 Appendix C;

(c) Compliance with laws relating to domestic violence, sexual assault, stalking and these rules, and applicable federal and state personnel regulations including the Civil Rights Act of 1964 as amended, Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title 1 of the Americans With Disabilities Act, and Oregon civil rights laws related to employment practices;

(d) Policies and procedures relating to the commission of domestic violence, sexual assault, stalking or abuse by any staff, and providing that the BIP shall terminate employment or volunteer service for such conduct unless the BIP documents reasons for not doing so in the personnel file; and

(e) Policies and procedures relating to discipline of staff for misuse or unauthorized disclosure of information obtained from or about participants, partners or victims.

(2) Background Checks for Facilitators. A BIP shall use an appropriate method to obtain and review a fingerprint-based state and federal criminal record check for facilitators.

(a) A BIP may ask an applicant, as a condition of employment or volunteer service, to certify whether he or she is, or has been, a respondent in any civil enforcement proceeding, including but not limited to a Family Abuse Prevention Act (FAPA) proceeding involving a restraining or no-contact order, protection order, stalking order, or delinquent child support

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order. Failure to disclose the existence of a FAPA or no-contact order, protection order, stalking order, or delinquent child support order shall constitute grounds for dismissal or grounds not to rehire.

(b) An applicant shall be disqualified if the individual has ever been convicted of any crime or has been subjected to a FAPA restraining or no-contact order, protection order, or stalking order. The BIP may make an exception to this disqualification if the BIP can document reasons for hiring or retaining the individual consistent with factors in section (5)(d) of this rule. If the facts underlying the conviction were related to domestic violence, the applicant must have completed a BIP with standards similar to these rules, including at least 48 weeks of group classes and implementation of an Accountability Plan, and the applicant must have maintained child support and alimony payments, if any. In addition, a period of more than five years shall have passed since the conviction of the crime or expiration of a court order (e.g., restraining order, no-contact order, protection order, or stalking order), the individual shall have complied with all the terms of his or her sentence or court order, and the individual shall be in compliance with all other qualifications as a facilitator. The BIP shall provide this documentation to the Council for review and comment before hire or continuation of employment, document the response of the Council, and place documentation of the reasons for hiring or retention, and of the Council's response, in the applicant's or employee's personnel file for permanent retention.

(c) A facilitator has an ongoing responsibility to inform the BIP within three working days of any changes in his or her history, including new arrests, convictions, restraining orders or rehabilitation services.

(3) Qualifications of Facilitators. A BIP shall adopt the following minimum qualification standards for facilitators, and as a condition of employment or volunteer services at a BIP, a facilitator shall provide the BIP documentation of compliance with the BIP standards.

(a) Facilitator Experience. A facilitator shall document completion of a minimum of 200 hours of face-to-face contact co-facilitating BIP groups or classes with a facilitator who has met all the facilitator qualification requirements in these rules using a model consistent with these rules. A facilitator shall document that this experience was obtained over a period of at least one year. A maximum total amount of 100 hours of this requirement can also be satisfied in one or more of the following ways:

(A) By up to 50 hours of supervised face-to-face contact facilitating victim or survivor support or education classes, or up to 50 hours of working with a caseload primarily of domestic violence offenders on probation or parole;

(B) By up to 50 hours of facilitating offender-related non-domestic violence groups or classes;

(C) By earning a bachelor's degree (50 hours credit for required experience) or master's degree (100 hours credit for required experience) in women's studies, social work, criminal justice, psychology, sociology or other related field from an accredited institution of higher education. The facilitator shall document receipt of the required degree.

(b) Facilitator Training. A facilitator shall document completion of 40 hours of training provided by a nongovernmental (if available) victim advocacy program approved by the Council, and 40 hours of training on batterer intervention that includes the following topics:

(A) Dynamics of domestic violence, including sexual assault and stalking, and power and control models;

(B) Effects on children of exposure to a battering parent and to battering directed at their mothers, including but not limited to, the incompatibility of the battering with the child's well-being, the damage done to children witnessing battering, the child's need for a close mother-child bond, and how abusers use children to gain and maintain control;

(C) Historical views and social attitudes about male dominance, domestic violence including sexual assault and stalking, and the status of women;

(D) Risk factors for future or additional battering, aggressive or controlling behavior;

(E) Cultural competence as it relates to domestic violence, sexual assault, stalking and abuse;

(F) An overview of current state and federal domestic violence laws, including sexual abuse, sexual assault, stalking, child custody and visitation;

(G) An overview of battering behavior and tactics, including sexual abuse and stalking;

(H) Risk of facilitator and system collusion with the BIP participant;

(I) Appropriate safety guidelines for BIP contact with victims;

(J) An overview of the criminal justice system;

(K) State and local requirements for BIPs, including intervention curriculum requirements in OAR 137-087-0050; and

(L) Importance and elements of a coordinated community response to domestic violence and methods of collaborating with community programs and services.

(c) Culturally Informed Intervention. To satisfy the training requirements in section 3(b)(E) of this rule, a facilitator shall document completion of seven hours of training in oppression theory, cultural factors and anti-racism as it relates to domestic violence.

(d) Interviewing skills requirement. In addition to the experience and training requirements in sections 3(a) and (b) of this rule, a facilitator shall document completion of at least 18 hours of training in basic interviewing and group facilitation skills.

(e) Additional training requirement. In addition to the training requirements in section 3(b) of this rule, a facilitator shall document completion of at least 18 hours of training in substance abuse identification and screening, and at least 12 hours of training in mental health identification and screening.

(f) Documentation requirements. A facilitator shall provide the BIP with documentation of his or her training for each of the topics required by sections 3(b)–(e) of this rule, and shall include the number of hours and dates of training for each specific topic. If the training in any specific topic was received more than five years before the employment application date or the effective date of these rules, whichever is later, the facilitator must also document completion of additional training in the specific topic(s) during the five years prior to the application date or the effective date of the rules, whichever is later, equal to 25 percent of the required hours in that topic.

(4) Continuing Education for Facilitators. After a facilitator has met the basic qualification standards in section (3) of this rule, the facilitator shall document a minimum of 32 hours over a two calendar-year period of continuing education or training in topics related to the training requirements under sections 3(b)–(e) of this rule. Not more than eight hours of in-program training, or eight hours of internet or correspondence training, may be used annually to satisfy this biennial requirement.

(5) Background Checks for Staff other than Facilitators. Before employment or volunteer service, a BIP shall use an appropriate method to obtain and review background information for staff and applicants other than facilitators, as follows:

(a) By having the applicant, as a condition of employment or volunteer service, apply for and receive a criminal history check from a local Oregon State Police office and furnish a copy of it to the BIP; or

(b) By having the applicant, as a condition of employment or volunteer service, sign an authorization for the BIP to contact the local Oregon State Police office for an "Oregon only" criminal history check on the individual.

(c) The BIP may ask the applicant to certify whether he or she is, or has been, a respondent in any civil enforcement proceeding, including but not limited to:

(A) A FAPA proceeding involving a restraining or no-contact order;

(B) A delinquent child support order; and

(C) A protection order or stalking order.

(D) Failure to disclose the existence of a FAPA restraining or no-contact order, protection order, stalking order, or delinquent child support order shall constitute grounds for dismissal or grounds not to hire or to allow volunteer service.

(d) The BIP shall establish policies to evaluate criminal history, if any, in determining whether an applicant shall be hired. The policies shall consider:

(A) The severity and nature of the crime(s);

(B) The number of criminal offenses;

(C) The time elapsed since commission of the crime(s);

(D) The facts of the crime(s);

(E) The applicant's participation in intervention or rehabilitation programs, counseling, therapy, or education evidencing a sustained change in behavior; and

(F) A review of the police or arrest report confirming the applicant's explanation of the crime(s).

(e) If the applicant has been convicted of a crime, the BIP shall determine whether the person poses a risk to the BIP's staff, participants, victims or partners, and whether the criminal history indicates a propensity to collusion with batterers. If the BIP intends to hire the applicant, the BIP shall confirm in writing the reasons for doing so. These reasons shall address the applicant's suitability to work with the BIP's staff or participants or to have contact with victims or partners in a safe and trustworthy manner. The BIP shall place this information in the staff's personnel file for permanent retention.

(f) BIP staff have an ongoing responsibility to inform the BIP within three working days of any changes in their history, including new arrests,

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convictions, restraining orders, no-contact order, protection order, stalking order, or delinquent child support order, or rehabilitation services.

(6) Professional Standards for Staff. A BIP shall include the following professional standards in personnel policies to ensure that staff maintain their professional objectivity and to minimize collusion or any appearance of favoritism or impropriety by the BIP or its staff:

(a) Staff shall not be delinquent in paying any required child support or spousal support;

(b) Staff shall not be involved in any criminal activity;

(c) Staff shall not be under the influence of alcohol or controlled substances while providing BIP services;

(d) Staff shall not use their position to secure special privilege or advantage with participants;

(e) Staff shall not in any way collude with participants. Collusion includes activities such as sympathizing with their complaints against wives; defending their abusive actions for any reason; or laughing at jokes about women, wives, girlfriends or violence. Staff shall not imply that any victim deserves the abuse or show disrespect of any victim.

(f) Staff shall not allow personal interest to impair performance of professional duties;

(g) Staff shall not act as a facilitator for a group or class that includes a family member, personal friend, or past or current business associate of the staff member;

(h) Staff shall not accept any gift or favor from current or former participants, or enter into any business contract or association with participants currently enrolled with the BIP. Cultural or traditional values and customs shall at all times be balanced against this principle;

(i) Staff shall report any potential conflict of interest to BIP supervisors; and

(j) Staff shall immediately report to an appropriate licensing authority, or to the MA or LSA, any unethical or illegal behavior by other staff. A BIP shall not take retaliatory action against a staff person making such report.

(7) Prohibition of Sexual Harassment or Sexual Exploitation. A BIP shall adopt a written policy prohibiting sexual harassment and sexual exploitation, and shall document in each staff member's file that he or she has reviewed the policy and agreed to comply with it. The policy shall include disciplinary steps available to the BIP if a staff person violates the policy.

(8) Maintenance of Qualification Records. A BIP shall maintain a record documenting each staff member's compliance with applicable qualification standards. The BIP shall maintain the record for three years after the departure of a staff member.

(9) Mentoring and Internships. A BIP is encouraged to provide mentoring or internship opportunities between its staff and staff of other BIPs or VPs to promote professionalism, to provide experienced role models for less experienced staff, interns or volunteers, and to provide cross-training for the BIP's staff. Interns or those being mentored shall be required to comply with all of the supervising BIP's policies and procedures and instruction of the supervising BIP staff.

(10) Facilitators in Training. Individuals in training who have not met all the training and experience requirements applicable to facilitators under these rules may co-facilitate under the active supervision of a facilitator who meets these standards. Facilitator-trainees can co-facilitate under this status for up to two years from the start of the co-facilitating. The facilitator-trainee is immediately responsible for compliance with all other requirements of these rules applicable to a facilitator.

[Publications: Publications referenced are available from the agency.]

Stat. Auth: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0085

Research Programs

(1) Research. A BIP may use and disclose participant information for research purposes consistent with this rule. Nothing in this section applies to a BIP's disclosure of its own aggregate data or the conduct of its own quality assurance activities. Before making use or disclosure of participant information for research purposes, a BIP shall obtain the following in writing from an independent researcher:

(a) Description of specific actions the researcher shall take to ensure the safety, confidentiality, and autonomy of victims;

(b) An adequate plan to protect participant information from improper use or disclosure;

(c) Description of steps to ensure that any victim or partner participation, or access to information about a victim or partner by the researcher, shall be based solely on the victim's or partner's informed consent obtained in a manner consistent with section (1)(d) of this rule;

(d) Description of steps to ensure that any procedure involving any victim, partner, or family member, and other collateral contacts including but not limited to past or present employers of the research participant, victim or partner, and a request for participation in the research, shall be developed in consultation with a VP to address victim or partner safety;

(e) Description of steps taken to ensure the input and involvement of community-based domestic violence VPs in the design and implementation of the project;

(f) Description of steps to ensure that the research product shall:

(A) Report both positive and negative data and acknowledge alternative hypotheses, modalities and explanations;

(B) Include a statement about the limitations of self-reporting in accurately measuring a participant's progress or behavior when the research includes information based on self-reporting by participants, including self-reports of program effectiveness; and

(C) Clarify that release for program compliance does not provide any evidence that the participant is presently non-abusive, describe present behavior outside the BIP, or predict future behavior.

(g) Description of a plan to destroy identifiable information at the earliest opportunity or at the conclusion of the research, and to keep confidential any information about, gathered from, or traceable to the victim or partner;

(h) An agreement by the researcher, and his or her agents, not to use or further disclose the research information other than for purposes directly related to the research, and to use appropriate safeguards to prevent misuse of that information;

(i) An agreement by the researcher, and his or her agents, not to publicly identify the research participant or past or current victims or partners; and

(j) An agreement by the researcher to follow federal guidelines relating to Human Subject Research, 45 CFR Part 46, if applicable.

(2) Complaints about Research Conduct. The BIP or other researcher shall make available a person independent of the BIP or other researcher with whom ethical complaints about the conduct of the research can be filed, and establish a procedure for such filing. The BIP or other researcher shall inform both the participant and the victim or partner, and any other person or entity upon request, about the complaint procedure.

(3) Reporting Research. The BIP shall require a researcher conducting research on a BIP or BIPs to advise the LSA and the Council about the nature, scope and intent of the research.

Stat. Auth: ORS 180.070 – 180.710

Stats. Implemented: ORS 180.070 – 180.710

Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0090

Demonstration Projects

(1) Demonstration Projects. BIPs shall continue to evolve and change as best practices are developed. These standards are not intended to discourage innovative demonstration projects as long as victim safety and participant accountability are maintained. A BIP may propose to operate a demonstration project by a written request for project approval by the Attorney General's BIP Advisory Committee (Advisory Committee), established under OAR 137-087-0100, that addresses the following:

(a) Identification of the sections and subsections in these rules that project approval would waive;

(b) Relevant research, professional experience, or other credible data showing that the batterer intervention method proposed for the project is an effective and appropriate means of intervention, and that under no circumstances shall the project require actions that shall jeopardize the safety of women, children or the community, collude with the participant, or require victim participation;

(c) Expertise of the BIP to conduct the proposed project and the BIP's ability to maintain such expertise for the project's duration;

(d) A means, independent of the BIP, for evaluating the effectiveness of the project;

(e) The BIP's record, if any, of conducting and completing other programs or projects for private or public entities, including the BIP's record of cooperation in resolving problems identified by such entities;

(f) The geographic location to be served, the participating persons, agencies and organizations, and their respective roles in the project; the length of time for the proposed project, subject to section (3) of this rule; and expected outcomes;

(g) The involvement, if any, of community-based VPs in the design and implementation of the project;

(h) Position of the LSA, MA and Council in the area to be included in the project as to approval of the project; and

(i) Any additional information the BIP believes is relevant to deciding whether the proposal shall be approved.

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(2) Informing Community Partners of the Demonstration Project. After approval of the project by the Advisory Committee and before implementing the project, the BIP shall inform community partners (VPs, LSA, courts, Council, community justice, district attorney's office, alcohol and drug treatment providers and other agencies that come in contact with batterers or with victims or partners) of the demonstration project and changes in the BIP's program design. BIP informational materials shall be revised to state clearly the project's changes so as to avoid any misleading or inaccurate information about the BIP. On a quarterly basis, the BIP shall report to the community partners on the progress of the demonstration project, including concerns about its efficacy. A copy of each report shall also be mailed to the Advisory Committee.

(3) Demonstration Project Time Period. In general, a proposal for a demonstration project shall not exceed an 18 month period. While a demonstration project is being conducted, a BIP may petition to extend the demonstration project. The petition shall provide updated information on all the criteria identified in section (1) of this rule.

(4) Discontinuation of Demonstration Project. After a proposed project is approved, evidence of an increase in batterer abuse, or a decrease in batterer accountability, shall lead to immediate discontinuation of the project. The BIP shall immediately inform the community partners specified in section (2) of this rule, and the Advisory Committee, of the discontinuation of the demonstration project.

Stat. Auth.: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0095 Program Review

(1) Review of BIP Performance. An LSA, in consultation with the Council, shall periodically review the performance of BIPs located within the jurisdiction of the LSA for compliance with these rules.

(2) Availability of Records. Except for victim or partner records a BIP shall not disclose, a BIP shall make records available for, and require its staff to cooperate with, program review described in section (1) of this rule.

(3) Distribution of Review. If a review is completed under section (1) of this rule, a copy of the review shall be provided to the BIP executive director, board of directors and owners, and sent by the LSA to the presiding judge and the district attorney for the county in which the LSA operates.

(4) Action on Recommendations. Within 90 days after receipt of the written copy of the review by the BIP, the BIP shall take any corrective actions recommended by the review or advise the LSA in writing why the BIP does not intend to take a particular corrective action. The BIP shall provide a copy of its written response to the Council.

(5) Grievance Policies and Procedures. Each BIP shall develop, implement, and fully inform participants of grievance policies and procedures that provide for receipt of written grievances from participants. The BIP shall document the receipt, investigation, and any action taken as to the written grievance.

(6) Complaint Procedure. Any person, other than a participant, with a concern about a BIP's service delivery may file a written complaint with the BIP. The BIP shall respond to the complaint in writing within a reasonable period of time. In its written response, the BIP shall inform the person that if he or she is not satisfied with the BIP's response, the person may direct his or her complaint to the LSA or the Council.

Stat. Auth.: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

137-087-0100 BIP Advisory Committee

The Attorney General shall appoint an Advisory Committee composed of representatives from LSAs, BIPs and VPs, and of other members the Attorney General deems appropriate. At the request of the Attorney General and consistent with ORS 180.700, the advisory committee shall evaluate the operation of these standards and provide the Attorney General with any amendments the committee recommends, and shall evaluate requests for demonstration projects that require a waiver of these BIP rules.

Stat. Auth.: ORS 180.070 – 180.710
Stats. Implemented: ORS 180.070 – 180.710
Hist.: DOJ 16-2005, f. 11-23-05, cert. ef. 1-1-06

Adm. Order No.: DOJ 17-2005
Filed with Sec. of State: 11-30-2005
Certified to be Effective: 1-1-06
Notice Publication Date:
Rules Amended: 137-008-0005

Subject: The rule adopts the most current version of the Attorney General's Model Rules as applicable to the Oregon Department of Justice.

Rules Coordinator: Carol Riches—(503) 378-6313

137-008-0005 Model Rules of Procedure

Pursuant to ORS 183.341, the Attorney General adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective January 1, 2006.

Stat. Auth.: ORS 183.341(2) & 183.341(4)
Stats. Implemented: ORS 183.341(2), 183.341(4) & 183.390
Hist.: 1AG 5-1979, f. & ef. 12-3-79; JD 7-1989, f. 12-21-89, cert. ef. 12-20-89; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 17-2005, f. 11-30-05, cert. ef. 1-1-06

Adm. Order No.: DOJ 18-2005
Filed with Sec. of State: 12-5-2005
Certified to be Effective: 12-31-05
Notice Publication Date: 10-1-05
Rules Amended: 137-010-0030

Subject: The proposed rule change would fully implement ORS 128.670(7) which requires collection of a fee in conjunction with the filing of an annual charitable corporation or trust report. If adopted, this will require the payment of a \$10 fee by organizations filing a form CT-12 only.

Rules Coordinator: Carol Riches—(503) 947-4700

137-010-0030 Payment of Fees

Except as otherwise provided in this rule, each charitable organization filing a report required by this Act shall pay to the Department of Justice, with each such report, a fee as provided in ORS 128.670(7). References to "total amount of its income and receipts" in ORS 128.670(7) shall mean total revenue or income as defined by Internal Revenue Service form 990, 990-EZ, 990-PF or 1041-A, and, if no financial return is filed, shall mean the total amount of revenue the organization received from all sources. References to "fund balance" ORS 128.670(7) shall mean net assets or fund balances as defined by Internal Revenue Service form 990, 1041-A, 990-EZ or 990-PF.

Stat. Auth.: ORS 128.670
Stats. Implemented: ORS 128.670
Hist.: 1AG 5, f. 8-2-72, ef. 8-15-72; 1AG 6, f. 8-2-72, ef. 8-15-72; 1AG 11, f. 3-29-74, ef. 4-25-74; 1AG 1-1979, f. & ef. 2-1-79; 1AG 2-1981, f. & ef. 12-1-81; JD 1-1990, f. & cert. ef. 1-25-90; DOJ 4-1998, f. & cert. ef. 4-2-98; DOJ 18-2005, f. 12-5-05, cert. ef. 12-31-05

Department of Oregon State Police Chapter 257

Adm. Order No.: OSP 5-2005
Filed with Sec. of State: 11-18-2005
Certified to be Effective: 11-18-05
Notice Publication Date: 5-1-05
Rules Adopted: 257-050-0020, 257-050-0125, 257-050-0145, 257-050-0157, 257-050-0170, 257-050-0200
Rules Amended: 257-050-0040, 257-050-0070, 257-050-0090, 257-050-0140, 257-050-0150

Rules Repealed: 257-050-0080, 257-050-0120, 257-050-0160
Subject: ADOPT: OAR 257-050-0020 (1-4) establishing policy & purpose of the Oregon State Police pertaining to towing needs of the Department in regards to the Non-Preference Tow Program.

OAR 257-050-0125 (1-7): reinspections/self certifications
OAR 257-050-0145 (1-4): conduct criminal history checks on tow company employees when listed as tow truck drivers.
OAR 257-050-0157 (1-2): suspension for violation other than chargeable as violation or crime.
OAR 257-050-0170 (1-7): procedure for hearings
OAR 257-050-0200 (1-5): mandatory equipment standards for tow trucks/safety related equipment, replaces 257-050-0160.

ADMINISTRATIVE RULES

AMEND: OAR 257-050-0040 (2): clarifying rules
OAR 257-050-0070 (A)(B)(D): increase in cargo & garagekeepers liability insurance
OAR 257-050-0090: housekeeping
OAR 257-050-0140 (4-A) (4-B) (5): housekeeping
OAR 257-050-0150 (6): housekeeping
REPEAL: OAR 257-050-0080
OAR 257-050-0120
OAR 257-050-0160

Rules Coordinator: Betsy Enos—(503) 378-3725, ext. 4105

257-050-0020

Policy and Purpose

It is the policy and purpose of the Oregon State Police that:

(1) To further the Oregon State Police's interest in the prompt and orderly removal of disabled or abandoned vehicles from the highways of the State of Oregon, and to meet the towing needs of the Department, the Department has established a non-preference tow program as defined in Oregon Administrative Rules (OAR) 257-050-0020 to 257-050-0200. The program, in part, consists of a non-preference tow rotational list comprised of qualified tow businesses. The non-preference tow rotational list is computer generated and does not favor any one tow business. The non-preference tow rotational list is not a guarantee of business to the towing industry by the Department. Tow businesses participating in the non-preference tow rotational list understand that they may be called upon to conduct vehicle tows at the operational need of the Oregon State Police, as may be determined by the requesting State Police Officer or Department member.

(2) Because the non-preference tow rotational list is designed to meet the towing needs of the Department, tow businesses do not need to be on the list to conduct business with the general public in the State of Oregon.

(3) The Oregon State Police do not charge any fees to the owner or driver of a vehicle towed under its non-preference tow program. Therefore, the Department does not require any tow business participating in the non-preference tow rotational list to charge any fees to the owner or driver of a vehicle towed under the Department's non-preference tow program. Accordingly, the Department shall not establish, recommend, or in any way dictate the cost of a non-preference tow conducted by a tow business under the Department's non-preference tow program. It is also the policy of the Department that tow businesses that participate in the Department's non-preference tow rotational program shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(4) Tow businesses called upon by the Oregon State Police to conduct non-preference tows must reflect the highest standards of professionalism. Tow businesses that, through their conduct or actions, abuse the non-preference tow system or the integrity, trust or security of the Oregon State Police shall be removed from the non-preference tow rotational list through the suspension and/or revocation processes.

Stat. Auth.: ORS 181.440
Stats. Implemented: 181.440
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0040

Authority

(1) These Administrative Rules are promulgated pursuant to ORS 181.440, which permits the Superintendent of the Oregon State Police to make rules governing the eligibility of tow businesses to be placed and remain on any list of such businesses used by the Department when it requests towing services on behalf of any person.

(2) All approved tow businesses providing service to the public and the Department through calls received from the Oregon State Police shall conduct their operation in accordance with all applicable federal, state, and local laws, rules, or their equivalent.

(3) In the event the Oregon State Police enters into an agreement with any other state agency, allowing that state agency the use of the non-preference tow rotational list, then these rules shall apply to tow requests made by that state agency.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0070

Application for a Letter of Appointment

Application Requirements:

(1) Application for placement on the non-preference tow rotational list shall be made on the forms furnished by the Department and shall be accompanied by an inspection report. The inspection report shall be fur-

nished by the Department, and shall be completed by the applicant or the applicants authorized agent or representative. The application form shall establish or provide all of the following:

(a) The applicant has an established place of business at the address shown.

(b) The applicant's place of business has an office area that is accessible to the public without entering the storage area and that the storage area complies with these Administrative Rules and all local zoning rules and regulations.

(c) Each tow business is licensed as a separate legal entity with a separate place of business and a separate storage area. Only one tow business may be operated at any one place of business.

(d) The applicant or the applicant's agent has inspected and certifies, under penalty of perjury, suspension, revocation and/or criminal prosecution that all of the information supplied in the application form and inspection form is true and accurate and that the applicant's place of business and all tow truck equipment meet the minimum requirements established by these Administrative Rules.

(e) The applicant has proof of the following current, minimum insurance coverage (Proof of required current insurance coverage shall be submitted with applications and inspection forms.):

(A) \$750,000, or the minimum required by the Federal Motor Carrier Regulations, or the Oregon Department of Transportation (ODOT), which ever is greater when towing under authority of Federal Motor Carrier Regulations or ODOT, for liability, for bodily injury or property damage per occurrence;

(B) Garage keeper's legal liability (for care, custody and control) per occurrence in the amount of:

(i) Class A — \$ 50,000;

(ii) Class B — \$ 150,000;

(iii) Class C — \$ 200,000;

(iv) Class D (Note: Class "D" equipment is not considered to be recovery tow vehicles):

(I) Class D-A or Other Equipment under this classification — \$ 50,000;

(II) Class D-B or Other Equipment under this classification — \$ 75,000;

(III) Class D-C or Other Equipment under this classification — \$ 200,000.

(C) Insurance to protect against vehicle damage including, but not limited to fire and theft, from the time a vehicle comes into custody and control of the tow business and is hooked onto, throughout the recovery, and until that vehicle is reclaimed or sold.

(D) Insurance for cargo transported in the amount of:

(i) Class A — \$50,000;

(ii) Class B — \$ 100,000;

(iii) Class C — \$ 200,000;

(iv) Class D-A — or Other Equipment under this classification — \$50,000;

(v) Class D-B or Other Equipment under this classification — \$100,000;

(vi) Class D-C or Other Equipment under this classification — \$200,000.

(f) Nothing in this section will relieve a person from maintaining insurance in the amounts and providing coverage of the type for motor carriers in ORS Chapter 825 if the amounts exceed, or coverage is different from, that required by this section.

(g) A certificate of insurance from the insurance carrier to the Department that includes the type and amounts of coverage and provides for notification of cancellation of the tow business's insurance is mandatory.

(h) The information for the letter of appointment may be included in the inspection form that is completed by the applicant or the applicants authorized agent or representative.

(i) The applicant business owner has a minimum of three (3) years of documented experience in the towing industry, either as a business owner and/or tow vehicle driver for a tow business.

(j) The applicant has a dedicated recovery vehicle assigned to the tow zone applied for and capable of handling the classifications of tows requested in the application. A tow business may list a class B recovery vehicle to cover both class A and class B tows and a tow business may list a class C recovery vehicle to cover both class B and/or class A tows. If a larger recovery vehicle is listed by a tow business, that vehicle may only be listed for one tow zone for the smaller recovery tow classes it is used for, even if the larger tow vehicle tow zone overlaps with the other tow classification zones. Recovery vehicles may only be listed for one tow zone. All tow vehicles approved must comply with these Administrative Rules for the classification of tow applied for. Only equipment approved through the

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letter of appointment to be used for the non-preference tow program for a specific tow zone can be used in that tow zone.

Note: A written waiver may be granted by the Oregon State Police based on local non-preference towing operational needs.

(k) The names of all business drivers authorized to drive in the tow zone for which the tow business applied, and all business employees who will have contact with the towed/assisted vehicle(s) and/or the driver/owner of the towed/assisted vehicle(s) or other representative(s) of the towed/assisted vehicle(s) owner(s). The use of non-listed and/or unreported drivers shall not be permitted.

(2) Within 30 days of the receipt of a request for an application for a letter of appointment, the Patrol Services Division of the Oregon State Police shall send an application packet, and include a current copy of these Administrative Rules and all forms related to the self certification, inspection and certification of equipment, and other related information required by these Administrative Rules.

(3) The address the applicant lists on its application shall be the place of business where the tow business keeps business records. The application also shall list all locations of secure areas for vehicle storage and redemption. If there is a change in address of the tow business, the applicant immediately will notify the Patrol Services Division, and in no event will notification take longer than ten (10) days.

(4) All tow trucks shall display the tow business's name, city, and telephone number. This information shall be painted or permanently affixed to both sides of the vehicle and the lettering shall be at least 2 inches in height with 1/2 inch stroke and in a color that is in contrast with the tow truck's color.

(5) Any applicant in violation of this Administrative Rule may be denied a letter of appointment and shall be notified of the denial in writing. The Department may also deny a renewal application for any tow business with an existing letter of appointment that is in violation of this Administrative Rule and may have its existing letter of appointment immediately suspended, prior to any hearing and shall be notified of the suspension in writing. A suspension under this rule will be in effect until the violation is corrected and inspected. Other sanctions, up to revocation and/or criminal prosecution, may be applied to an applicant upon finding by the Department that the applicant is in violation of this Administrative Rule.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0090

Inspections

The applicant shall self-certify on its application under penalty of False Swearing related to Regulation of Vehicles related to Businesses (ORS 822.605), penalty of Perjury (ORS 162.065), suspension or revocation from the non-preference tow rotational list that its tow business, employees and vehicles meet the minimum requirements as set forth in these Administrative Rules. This self-certification shall verify that the applicant's request for a letter of appointment complies with all applicable local laws and regulations as prescribed for the geographical area where the tow business will be established. If the local zoning regulations are applicable, the applicant must include with the application a copy of the certification of approval from the local zoning commission to the Patrol Services Division. A zoning certification will become part of the permanent record maintained on each approved tow business by the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0125

Reinspection/Certification

(1) Self Certification/re-inspections will be conducted at least once a year by all tow businesses granted a letter of appointment. Unscheduled inspections of the tow business may be conducted without notice by any Oregon State Police inspector to determine the fitness of tow trucks, facilities, and business records. These inspections shall be done during business hours.

(2)(a) In the event of missing or defective tow truck equipment that is not safety related, but that was required for initial approval, the Oregon State Police shall advise the tow business of the defect. If after 15 days the tow business fails or refuses to repair the defect, the defective truck will be suspended from the non-preference list for the duration of the letter of appointment without renewal, until after the last day of authorization of the letter of appointment and the defect is repaired.

(b) In the event of a violation of these Administrative Rules by a tow business relating to the tow business's facilities, records or other conditions required for initial approval, the Oregon State Police shall advise the tow business of the violation. If after 15 days the tow business fails or refuses to fix the violation, the tow business's letter of appointment will be suspended for its duration without renewal until after the last day of authorization of the letter of appointment and the violation is fixed.

(c) A tow business may avoid suspension under this section by voluntarily removing the involved tow or recovery vehicle from the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon 97310, advising the Oregon State Police of the tow business's voluntary removal of the vehicle from service on non-preference calls for the Oregon State Police. This voluntary removal of defective equipment letter shall be received by the Oregon State Police, Patrol Services Division no later than 15 days after the initial notification of the defect.

(3)(a) In the event of a safety related violation which renders the tow truck a safety hazard upon a public highway, the tow truck shall be immediately suspended. If the defect is corrected and reinspected within 30 days of the immediate suspension, the tow truck shall be reinstated on the tow business's letter of appointment. If the defect is not corrected and reinspected within 30 days, the suspension will continue without reinstatement until after the last day of the authorization of the letter of appointment and the defect is repaired and reinspected.

(b) In the event of a safety related violation which renders a tow business's facilities unsafe, the tow business shall immediately be suspended for the duration of the letter of appointment from the Department's non-preference tow rotational list, without renewal until after the last day of the authorization of the letter of appointment and the defect is repaired. If the defect is corrected and reinspected within 30 days of the immediate suspension, the tow business's letter of appointment shall be reinstated.

(c) A tow business may avoid immediate suspension under this section by voluntarily removing the tow or recovery vehicle from the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon, 97310, advising of the tow business's voluntary removal of the vehicle from service or the business on non-preference calls for the Oregon State Police. This voluntary removal safety hazard letter shall be received by the Oregon State Police, Patrol Services Division no later than 30 days after the initial notification of the defect.

(4) Upon repair or correction of a defect of a voluntarily removed tow truck or a defect related to a tow business, an Oregon State Police inspector, upon written request from the affected tow business, shall reinspect the equipment/facility which was found to be defective or missing. If the defects have been satisfactorily corrected, the inspector shall reinstate the tow truck to the non-preference list and/or shall reinstate a tow business's letter of appointment. In the event an Oregon State Police inspector is not readily available to reinspect, another officer appointed by the inspector's supervisor may reinspect and re-instate the tow truck/tow business. The reinspection shall be completed as soon as possible after a written request from the tow business has been received by the Patrol Services Division, advising that the defect has been repaired. In no event shall a reinspection take longer than ten (10) business days after the written request for inspection has been received by the Patrol Services Division.

(5) Upon revocation, suspension, expiration or voluntary relinquishment of a letter of appointment, a tow business's right to conduct towing services at the request of the Department is terminated, unless the call for service is a preference tow made by the owner and/or driver of a vehicle.

(6) Upon sale or transfer by the tow business of a truck approved for use on the non-preference tow list, the tow business shall advise the department so that the truck may be removed from the non-preference list. This notification must be made immediately and in no event may exceed ten (10) days after the sale or transfer.

(7) Upon the purchase or acquisition of any additional tow truck(s) to be used pursuant to this rule, the tow business shall immediately notify the Department. The tow business shall make a self-certified inspection of the new unit and submit this inspection to the Department, prior to the tow truck being used for non-preference towing.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05

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257-050-0140

Place of Business Requirement and Business Hours

Business hours for the purpose of inspection of business records, place of business, and towing equipment shall be 8AM–5PM, excluding weekends and holidays:

(1) When a tow business is not open and does not have personnel present at the place of business, the tow business shall post a clearly visible telephone number at the place of business for the purpose of public contact for the release of vehicles or personal property.

(2) The tow business shall maintain personnel who can be contacted 24 hours a day to release impounded vehicles within a 30-minute period of time.

(3) The tow business must post and maintain its letter of appointment at its place of business.

(4)(a) Dispatch service. The tow business shall provide dispatch services 24 hours a day, 365 days a year. Each tow vehicle used shall be equipped with a two-way radio (not a citizen's band radio) and/or cellular phone capable of direct communications with the tow business's dispatch service. Equipment provided shall be subject to approval of the Oregon State Police. Equipment shall be maintained in proper working condition at all times.

(b) Failure to respond to a call:

(A) Refusal or failure of the tow business to respond to calls from the Department for towing services may result in the suspension or revocation of the tow business's letter of appointment;

(B) The tow business shall advise the appropriate Oregon State Police Dispatch Center when the tow business is temporarily unavailable to respond to non-preference tow calls. Unavailability may occur due to conditions which include, but are not limited to, a disabled tow truck or a tow truck under repair, or unforeseen driver shortage due to illness or vacation. The tow business shall advise the Oregon State Police Dispatch Center once the business is available to resume its normal operation;

(C) Regardless of the unavailability of any tow business, the non-preference list rotation shall continue as if the business was available.

(5) Service call response time. Response times are mandatory. Class A and D-A tow trucks shall be on the road within fifteen minutes. Class B, C, D-B and D-C tow trucks shall be on the road within thirty minutes. At the time of the dispatch, all classes of tow trucks shall provide an estimated time of arrival at the scene. The station commander may waive this requirement due to inclement weather or unusual circumstances that might exist.

(6) For abandoned vehicles not deemed to be a hazard, tow requests will be made during business hours, defined as 8 A.M. to 5 P.M., seven (7) days a week, including holidays. Requested tow businesses may tow abandoned vehicles at the business's convenience during business hours on the date of the tow request. Once a vehicle is removed from the roadway and in possession of the tow business, the business shall notify the requesting Oregon State Police Office Dispatch Center as soon as possible on the date of the tow request of its possession of the abandoned vehicle. Notification of possession of the abandoned vehicle should be made immediately by the requested tow business. In no case will notification to the Oregon State Police be made more than two hours after the abandoned vehicle comes into the possession of the responding tow business.

(7) At the time a response is requested, the Department will provide the location, make, model, year of car license plate and estimated gross vehicle weight (if necessary) to the tow business. Also, the Department will inform the tow business about any condition or circumstances that may require special handling or assistance. The tow business shall transmit the information to the person driving the tow truck.

(8) Tow business's record requirement: At its place of business of each tow zone, tow businesses shall maintain the following records on each vehicle towed for a period of three years:

- (a) Vehicle description;
- (b) License number;
- (c) Issuing state;
- (d) Make;
- (e) Model;
- (f) Year;
- (g) Vehicle identification number.
- (h) Towing location;
- (i) Location vehicle was towed from;
- (j) Location to where the vehicle was towed.
- (k) Tow Business, Name, Address and Phone Number;
- (l) Name of tow truck driver;
- (m) Reasons for towing and/or service;
- (n) Time and date of service include storage dates as applicable;
- (o) Class of tow truck or truck number.
- (p) OSP Impound Forms;

(q) All invoices for abandoned vehicles towed;

(r) All invoices for all OSP non-preference tows.

(9) All fees for service shall be itemized. A copy of voided invoices shall be filed by invoice number at the place of business and shall be retained in a file for a period of three years.

(10) All vehicles shall be handled and returned in substantially the same condition that they were in before being towed.

(11) All employees who operate tow truck(s) shall have an operator's license with the proper class or type for vehicle combinations. As prescribed by the state issuing the license, Oregon licensees shall comply with all applicable Oregon laws.

(12) Any person who shows proof of ownership or written authorization from the owner of the impounded vehicle may inspect and view the vehicle without charge during normal business hours. This does not apply to a vehicle seized and stored as evidence.

(13) All towing receipts on impounded vehicles, or confiscated vehicles, shall be made available by the tow business to the nearest Department office after the tow has been completed.

(14) The tow business shall notify the Oregon State Police Dispatch Center immediately when any person seeks to redeem any vehicle towed as abandoned or where a police hold has been placed on the vehicle. Release of vehicle under temporary or formal hold shall require written release from the Department. When a person entitled to take possession of the vehicle subject to a hold presents the tow business with an official Oregon State Police release form, the tow business shall release the vehicle to the person named.

(15) When inspection or reinspection of a tow truck is necessary, the area commander shall designate a location and time for the inspection to be conducted. When practical the inspection or reinspection shall be made within ten (10) days following the request by the tow business.

(16) The tow business shall provide either locked outside storage or locked, secure indoor storage, or both, which meets the following requirements:

(a) The tow business's storage facility shall be in conformance with all zoning requirements of all applicable governments. Storage shall be provided, and of sufficient size, for each class of vehicle towed for the Oregon State Police, including semi trucks and motor homes, except as provided in ORS 819.110. Storage shall be located within the contractual geographical service area described as zones. The vehicle storage area may be located up to five (5) miles from the original place of business, provided that both facilities are located within the appointed tow zone. Contact phone numbers and addresses are to be posted at both locations for the place of business and the storage area. When the towed vehicle storage area is not located at the place of business, employees shall be able to respond from one location to the other within 30 minutes or less.

(b) The storage area will be under the exclusive access and control of the individual tow business. The storage area cannot be shared with other businesses, including non-tow businesses not owned by the tow business owner(s).

(17) The tow business shall provide fencing around the outside storage area. The fencing must meet the following requirements:

(a) Fencing must comply with the requirements established in these Administrative Rules and all local zoning rules and regulations.

(b) Fencing shall be either made of a woven wire composition normally referred to as "cyclone fencing — chain link fencing", or made of a solid material, such as wood or concrete block, inclusive of a permanent natural barrier which would prevent access and unauthorized entry to the storage area. Fencing shall be topped by a minimum of three (3) strands of barbwire. Fencing not meeting the requirements of these regulations as determined by the Oregon State Police will not be accepted. Tow businesses that are unable to comply with these fencing requirements due to local zoning requirements will be addressed on a case by case basis by the Department.

(c) Gates and entryways shall be of a solid frame, and the same minimum height as the other fencing material. All gates and entryways shall be designed to afford locking the gate or entryway securely to prevent unauthorized entry.

Note: Tow businesses holding a valid appointment letter for a specific tow zone as of the adoption date of this Administrative Rule, will have one (1) year from their renewal date in the year 2003 to comply with this rule for the tow zone listed in the appointment letter. New tow businesses applying for a letter of appointment for the non-preference tow program shall immediately comply with this Administrative Rule after the adoption date of this rule.

(18) The tow business shall allow the owner of a towed vehicle or anyone authorized in writing by the Oregon State Police, and/or an Oregon State Police Officer or other Department Member, to go to the vehicle and remove items of personal emergency nature, e.g.: eyeglasses, medication, clothing, identification, wallets-purses (and their contents), credit cards,

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check books, any known money-currency, child safety car and booster seats, except as provided in ORS 819.110 and 819.160.

(19) The tow business shall be responsible for the contents, storage and disposal of all personal items, except items taken by authorized personnel in OAR 257-050-0140(18).

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0145

Application by Convicted Felon

The Oregon State Police in the interest of public safety and public alarm, and to avoid placing any tow company owner or employee in a position of being in violation of Oregon Revised Statutes shall deny, suspend and/or revoke the application and/or letter of appointment for the non-preference towing program of any person, business or business employee for any of the following:

(1) Any person, business, or business employee convicted of any felony charge, or any charge in any state, which in Oregon is considered to be a felony, within the last fifteen (15) years from the date the application is received by the Oregon State Police. This subsection is subject to the provisions set forth under ORS 166.270.

(2) Any person, business, or business employee convicted of two felony charges, regardless of when those felonies were committed.

(3) Any person convicted of a felony charge, or any charge from another state which in Oregon is considered to be a felony, where a weapon was used or threatened to be used in the commission of the crime, regardless of the date of the felony charge.

(4) Any person, business or business employee convicted of any of the sex crimes listed in ORS 181.594(2)(a-s) or the equivalent conviction of a sex crime from another jurisdiction regardless of the degree of the charge.

Stat. Auth.: ORS 181.440

Stat. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0150

Towing

(1) The Department shall not establish, recommend or in any way dictate the cost of a non-preference tow by a tow business.

(2) A tow business that conducts a non-preference tow under these administrative rules shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(3) The tow business shall furnish the Patrol Services Division with an itemized list of charges that can be incurred during a non-preference tow including, but not limited to:

- (a) Hookup charge;
- (b) Mileage fee;
- (c) Response fee.

(4) The tow business shall not charge for items not declared on the list relating to the towing of a vehicle. This does not include mechanical work, bodywork or other repair work conducted subsequent to the tow.

(5) Complaints of unfair charges against a tow business shall be referred to the Oregon Attorney General's Office.

(6) Tow businesses shall not transport passengers in any towed and/or carried vehicle(s).

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0157

Suspension for Violation (other than a Law Chargeable as a Violation or Crime)

(1) Suspensions, unless otherwise outlined or defined in these rules, shall fall under one of the following four levels:

(a) Immediate suspension – A suspension that takes place immediately, upon written notice from the Oregon State Police, as evidenced by the date of the postmark, removing a tow vehicle, tow equipment or a tow business from the non-preference rotational tow list.

(b) Level one suspension — any first violation of these Administrative Rules unless otherwise defined in the rule and shall be for a period of not less than sixty (60) days, and not more than one (1) year in length.

(c) Level two suspension — any second violation of these Administrative Rules that is committed within a one (1) year period from the date of any final order and shall be for a period of not less than one (1) year and not more than two (2) years in length.

(d) Level three suspension — any third violation of these Administrative Rules, unless otherwise defined in the rule, that is committed within a three (3) year period of the date of any final order and shall result in a revocation of the letter of appointment.

(2) A suspension shall be in effect until the violation is corrected, or a Hearing Officer orders reinstatement of the tow business.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0170

Hearings

(1) The Oregon Administrative Procedures Act shall govern the conduct of any hearing held pursuant to these regulations. The burden of proof in any hearing before the Hearing Officer shall be on the applicant seeking a letter of appointment, on the tow business that has had its letter of appointment suspended or revoked by the Oregon State Police.

(2) A Hearing Officer duly appointed by the Oregon State Police shall make written findings of the facts based on the evidence and written conclusions of law based on the findings and shall issue a proposed order.

(3) Oral proceedings shall be recorded on tape and such tape shall become part of the hearing record.

(4) A request for an administrative hearing must be in writing and be received by the Hearing Section — Patrol Services Division of the Oregon State Police no later than fifteen (15) days from the notice of denial, suspension and/or revocation as evidenced by the postmark. The Department may also initiate/request an administrative hearing, regarding a denial, suspension and/or revocation of a letter of appointment.

(5) An administrative hearing must be conducted within ninety (90) days, excluding weekends and holidays, from the date the written request is received by the Hearings Section — Patrol Services Division of the Oregon State Police.

(6) Any request by a tow business for a continuance or reset of the hearing after the original scheduled date will result in the temporary suspension and/or extension of any temporary suspension of the tow business's letter of appointment until a ruling is issued from the hearing with no liability to the Department. If the Department requests a continuance or reset of a hearing, the tow business shall be left on the tow rotational list until a ruling is issued from the hearing unless a temporary suspension has been levied against the applicant's tow business.

(7) Exceptions to proposed orders under OAR 257-050-0040 to 257-050-0200 must be submitted in writing within ten (10) days of the date the proposed order is issued, excluding weekends and holidays, to the Director of the Patrol Services Division of the Oregon State Police or his/her designee. The Director or his/her designee shall have the authority to issue a final order. Written argument submitted with the exceptions will be considered; no opportunity for oral argument will be allowed.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05

257-050-0200

Mandatory Equipment Standards for Tow Trucks/Safety Related Requirements

(1) All tow trucks granted a letter of appointment under these rules shall have the following minimum equipment:

(a) Minimum of two (2) lights mounted behind the cab of the tow truck controlled by a dedicated on/off switch. This lighting must be capable of illuminating the area of the tow under darkened, foggy or dangerous conditions;

(b) An FCC licensed two-way radio, in conformance with Part 93 FCC Regulations, or cellular phone (citizen band radios so not meet this requirement);

(c) Cables or wire ropes as called for in each class. Cable/wire rope lengths shall be measured from the point of attachment on each drum. Cables/wire ropes shall meet the following requirements.

(A) Each cable shall be capable of being fully extended from and fully wound onto its drum;

(B) Cables or wire ropes shall be free from the following defects or conditions:

(i) There shall be no more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay;

(ii) There shall be no evidence of any heat damage from any cause;

(iii) There shall be no end attachments that are cracked, deformed, worn or loosened;

(iv) Where a wire rope is attached to a hook with clamps instead of being swaged, a minimum of three clamps shall be used on end attachments. Clamps shall be spaced at least six rope diameters apart and attached

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with the base or saddle of the clamp against the longer or "live" end of the rope. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size

(d) Two revolving or intermittent red or amber lamps with 360 degree visibility. The truck may also be equipped with flashing amber lights, which may be used in conjunction with the red lamp(s). Such lighting will not be used when responding to a call, but only at the scene when necessary to warn approaching traffic of impending danger.

(e) A broom and a shovel. The broom shall be at least twelve inches wide and have a handle at least four feet long. The shovel shall be flat scoop type with a minimum width of seven inches and overall length of a least three feet. Tow truck driver shall clean accident/incident scenes of all vehicle glass and debris required by ORS 822.225.

(f) A tow sling, wheel lift, car carrier or other comparable device made of a material designed to protect vehicles.

(g) Motorcycle Tows — A tow sling, wheel lift, car carrier or other comparable device that has the ability to tow motorcycles.

(h) One fire extinguisher, 25 BC rating or equivalent.

(i) One snatch block, or equivalent block, in good working condition for each working line.

(j) Commercially manufactured dollies on all class A recovery vehicles and class B recovery vehicles up to 26,000 GVW. Commercially manufactured dollies are required for all tow class categories when dollies are used and/or defined for use up to 26,000 GVW.

(k) All class A and B tow vehicles that are inclusive of class DA and DB tow vehicles shall carry at least one pinch bar, or an equivalent device. The bar or equivalent device must be 4 feet in length and 3/4 inch in diameter, and the ends may either be tapered or flattened.

(l) Portable lights for unit being towed including, but not limited to, tail lights, stop lights and directional signals.

Note: Class D tow trucks roll backs are exempt from this section if not towing a second vehicle.

(m) All tow vehicles must have a minimum of two "wreck ahead" signs to be placed by tow truck drivers as required by ORS 822.220. The signs shall confirm to all specifications as set forth in the Oregon Department of Transportation's publication "Traffic Control on State Highways for Short Term Work Zones" (Form 734-2272) and the "Manual Uniform of Traffic Control Devices."

(n) All tow trucks and equipment used to perform services under these rules shall be maintained in good working order. Failure to maintain equipment shall be cause for suspension and removal of the defective equipment from the non-preference list. If equipment does not meet the Department's criteria for non-preference tows under these Administrative Rules, the Department may suspend and remove the equipment from the non-preference list.

(2) Class A Tow Trucks (Small): Tow trucks shall be provided that are capable of towing and recovery operations for passenger cars, pickup trucks, small trailers or equivalent vehicles. All equipment used in conjunction with the tow truck must be compatible with the manufacturer's basic boom rating and must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Ten thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Dual tires on the rear axle or duplex type tires, referred to as super single with a load rating that is comparable to dual tire rating;

(c) Six ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(d) A minimum of one hundred (100) feet of 3/8-inch continuous length cable; and

(e) A wheel lift for this class of tow truck.

(3) Class B Tow Trucks (Medium): Class B tow trucks shall be capable of towing and recovery operations for medium size trucks, trailers, motor homes or equivalent vehicles. In addition to standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Ten ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Class B tow trucks in excess of 26,000 pounds GVW will not be required to carry dollies when used for heavy towing;

(d) A wheel lift for this class of tow truck; and

(e) A minimum of 150 feet of seven-sixteenths inch cable.

(4) Class C Tow Trucks (Large): Tow trucks that are capable of towing and recovery operations for large trucks, trailers, motor homes or equivalent

vehicles. In addition to the standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Twenty-five ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Minimum of 150 feet of cable, five-eighths inch diameter;

(d) Air brakes and an air system capable of supplying air to the towed unit;

(e) Portable dollies are not required;

(f) Tandem rear axle truck chassis (three axle truck);

(g) May include an under-lift for this class of tow truck.

(h) Exception to commercially manufactured tow vehicles (for Class C recovery tow trucks/equipment only). Class C Recovery Tow Equipment that has been approved by the Oregon State Police to be used on the Department's non-preference towing list prior to the adoption of these Administrative Rules, but does not meet the criteria outlined under these Administrative Rules, may continue to be used for the Department's non-preference tows if the following conditions are met:

(A) The equipment must first be inspected and approved by the Oregon State Police;

(B) If the tower has the only "Class C" tow truck in a zone, then the tow business must replace the equipment after 5 years from the adoption date of these rules. The Oregon State Police reserve the option to extend the time period for the use of Class C Towing Equipment under this exception based on operational need by the Department; and

(C) If it is determined at any time that the equipment does not meet Oregon State Police criteria for towing under these Administrative Rules, then the Oregon State Police can remove the equipment from the non-preference list.

(5) Class D Tow Trucks (Trucks and equipment in this class are not considered recovery vehicles):

(a) Tow trucks and other vehicles in this class are to be used for towing and/or hauling purposes only. No recovery can be performed by equipment in this class;

(b) Equipment in this class capable of towing/hauling passenger cars, pickup trucks, trailers, trucks or equivalent vehicles, and debris is based on the size and ratings of the Class D tow unit used. All equipment used in conjunction with the tow truck must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(A) Class D-A:

(i) Eleven thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent.

(ii) Dual tires on the rear axle;

(iii) A minimum of fifty feet three-eighths inch continuous length cable;

(iv) May include wheel lift, if chassis GVW is over 14,500 pounds; and

(v) If a Metro unit, dollies and a wheel lift.

(B) Class D-B:

(i) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of 50 feet of three-eighths inch cable;

(iv) May include wheel lift; and

(v) If a Metro unit, dollies and a wheel lift.

(C) Class D-C:

(i) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent.

(ii) Minimum of 50 feet of cable, five-eighths inch diameter.

(iii) Tandem rear axle truck chassis (three axle truck).

(iv) May include wheel lift; and

(v) Air brakes and an air system capable of supplying air to the towed unit.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05

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Department of Public Safety Standards and Training Chapter 259

Adm. Order No.: DPSST 13-2005
Filed with Sec. of State: 12-7-2005
Certified to be Effective: 12-7-05
Notice Publication Date: 9-1-05
Rules Adopted: 259-008-0076

ADMINISTRATIVE RULES

Subject: Establishes minimum eligibility requirements for Police Chief applicants.

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

259-008-0076

Eligibility Requirements for Police Chief

(1) In addition to the minimum standards for employment and training as a law enforcement officer as described in OAR 259-008-0010 and 259-008-0025, a person accepting employment as a Police Chief must:

(a) Be currently certified as a police officer by the Department; or

(b) If the person is not currently certified as a police officer by the Department, the person accepting employment as Police Chief must obtain certification no later than 18 months after accepting such employment.

(2) Any person accepting employment as Police Chief must obtain Management certification by the Department within two (2) years of accepting employment as Police Chief, unless an extension is requested in writing and granted by the Department.

(3) The Department may grant an extension of time to obtain a Management certificate upon presentation of evidence by a law enforcement unit that a Police Chief was unable to obtain the certification within the required time limit due to a leave of absence for illness, injury, military service, special duty assignment, or any other reasonable cause as determined by the Department. No extension will be granted beyond one year.

(4) The employing agency must maintain documentation of a Police Chief's qualifications.

(5) The employing agency must notify the Department within 10 days of the date that a Police Chief is appointed, resigns, retires, terminates employment, is discharged, deceased, takes a leave of absence, or transfers within a law enforcement unit, or private or public safety agency as required by OAR 259-008-0020.

(6) Failure to obtain a Management Certificate as required in section (2) or (3) above, will result in the immediate suspension of the Police Chief's certification.

(a) A Police Chief with a suspended certification is prohibited from working in a certifiable police officer position.

(b) Prior to recertification of a Police Chief's suspended certificate, the employing agency head must submit the following:

(A) A written request for recertification, along with an explanation of the individual's current job duties and why the Department should recertify the individual if they are not currently in a certifiable police officer position; or

(B) Verification that a Management Certificate was obtained, if the individual is requesting reinstatement as a Police Chief.

(c) A Police Chief who fails to recertify within 2 1/2 years is subject to the provisions of OAR 259-008-0025(2).

(d) A Police Chief who fails to recertify within five (5) years is subject to the provisions of OAR 259-008-0025(1)(c).

Stat. Auth.: ORS 181.640, 181.665

Stats. Implemented: ORS 181.640, 181.665

Hist.: DPSST 13-2005, f. & cert. ef. 12-7-05

Department of Transportation Chapter 731

Adm. Order No.: DOT 7-2005(Temp)

Filed with Sec. of State: 11-17-2005

Certified to be Effective: 11-17-05 thru 5-15-06

Notice Publication Date:

Rules Adopted: 731-007-0335

Subject: HB 2077 requires the Department of Transportation to adjust the amount paid to a contractor under the contract if the contractor requests an adjustment and the steel material delivered to the contractor was more than 10 percent above the market price of the steel material on the contractor's original bid quote. This rule establishes the process for making payments to Highway Construction Contractors for the unanticipated escalation in the cost of steel materials. This rule covers: which contracts are eligible, the process for requesting an adjustment, documentation required, the department response to the request, and schedule for payment.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-007-0335

Agency Payment for Steel Escalation

(1) The purpose of this rule is to carry out the provisions of Section 2, Chapter 557, Oregon Laws 2005, as authorized by Section 2, subsection (5).

(2) A Contractor's request for an adjustment of payment under the provisions of this rule must be received by the Department of Transportation (ODOT) prior to January 2, 2010.

(3) This rule applies only to ODOT Public Improvement Contracts executed on or after April 1, 2003 and before October 1, 2005, and that are not eliminated by section (4) of this rule.

(4) This rule does not apply to Public Improvement Contracts that meet all of the following:

(a) The Project is included in the Statewide Transportation Improvement Program;

(b) The Project is partially funded by the Federal Highway Administration; and

(c) The Project is classified as "Local Agency". Such projects are not typically on the State or Federal highway system and all or nearly all matching funds are provided by the Local Agency. The final decision of the applicability of the classification of a project as "Local Agency" will be at the sole discretion of ODOT.

(5) Process:

(a) A Contractor must initiate the request for an adjustment of payment in the format required by ODOT on Form 734-2615. The request must be received by ODOT prior to January 2, 2010.

(b) The Contractor must demonstrate with written contemporaneous documentation that the market price of a steel material charged to the Contractor, on the date the steel material was delivered to the Contractor, was more than 10 percent above the market price of the steel material on the Contractor's original bid quote. The Contractor must demonstrate that the steel material was required either as a contract pay item or as incidental to a contract pay item. The steel material shall have been purchased by and delivered to the Contractor after the original bid quote was made. Materials salvaged by the Contractor would not be eligible for this reimbursement.

(A) The Contractor must itemize and include a total of the amount requested. Example: Invoice Value of Steel — (1.10 X Bid Quote Value of Steel) = Escalation Example: \$125 — (1.10 X \$100) = \$15.

(B) The Contractor must certify under penalty of law for perjury or false swearing that the request is a true statement of the actual costs incurred in the request.

(C) The Contractor must send the request to the ODOT Project Manager.

(D) The Contractor is obligated to respond to a request from ODOT for additional clarification or information. Failure by the Contractor to provide a response in writing within 14 calendar days of receipt of the Project Manager's request is deemed to have waived its right to further review and the request for steel escalation will not be considered preserved.

(e) The Project Manager will, within 45 days of receiving the contractor's request, consider, investigate, and evaluate the Contractor's request and provide a written response to the Contractor. The Project Manager will use the expertise of a statewide central position assigned to review adjustments of payment for steel escalation to provide consistency in ODOT's evaluation and decision on the Contractor's request. The request will be reviewed in its entirety for compliance with Oregon Laws 2005, Ch 557, Section 2 and this rule. During its review, ODOT will verify that the request correlates with an increased cost of steel to ensure the increase is due to an industry wide market price increase of steel and the increase is not unique to this request. The Project Manager's written response to the Contractor's request will either:

(A) Request additional written information or documentation to substantiate the Contractor's request if the Project Manager determines it is needed. The Contractor shall either:

(i) Provide the requested written information to the Project Manager or meet with the Project Manager within 14 calendar days of receiving the request, or as otherwise agreed to by the parties, to present the additional information or documentation, or make other arrangements with the Project Manager to supply that information. Upon receipt of the information, the Project Manager will respond as provided in subsection (c) of this section.

(ii) Provide the Project Manager a written statement that it cannot supply the required information and request the Project Manager issue a decision without the information. Upon receipt of the written statement, the Project Manager will respond as provided in subsection (c) of this section.

(B) Provide the Contractor with the Project Manager's decision. The Project Manager's decision either will agree to the Contractor's request or will deny in full or part the Contractor's request.

(d) The Contractor, within 14 calendar days of receiving the Project Manager's decision, shall do one of the following:

(A) Provide the Project Manager a written acceptance of the decision. See subsection (f) of this section if payment is due.

(B) Provide the Project Manager with a written rejection of the decision. See subsection (e) of this section for resolution process for denials.

ADMINISTRATIVE RULES

(e) Resolution process for Contractor rejection of Project Manager's decision. If the Contractor rejects the Project Manager's decision in section (5)(c)(B) of this rule, the Contractor may request that the Project Manager's decision be escalated to the claim review process established in the Contract with ODOT. The Contractor must notify the ODOT Project Manager within 14 calendar days of issuance of the Project Manager's decision and request the issue be escalated. The Contractor is deemed to have waived its right to further review and the request for steel escalation will not be considered preserved if the Contractor fails to provide the written notice within 14 days of issuance of the Project Managers decision.

(f) Payment. Upon execution of a Change Order ODOT will include such payment on the next scheduled monthly payment for active projects or will issue payment on inactive or closed projects within 30 calendar days. Late payment interest will apply for the number of days above the 45 calendar days allowed in subsection (c) of this section or if ODOT does not make payment within 30 calendar days after the Change Order is executed. The request for adjustment will be considered a claim for payment on the day it is escalated by the Contractor under subsection (e) of this section. Interest, if applicable, will be included in accordance with ORS 279C.

Stat. Auth.: ORS 184.616, 184.619, Sec. 2, Ch. 557, OL 2005
Stat. Implemented: Sec. 2, Ch. 557, OL 2005
Hist.: DOT 7-2005(Temp), f. & cert. ef. 11-17-05 thru 5-15-06

Adm. Order No.: DOT 8-2005(Temp)

Filed with Sec. of State: 11-17-2005

Certified to be Effective: 11-21-05 thru 5-19-06

Notice Publication Date:

Rules Adopted: 731-035-0010, 731-035-0020, 731-035-0030, 731-035-0040, 731-035-0050, 731-035-0060, 731-035-0070, 731-035-0080

Subject: These rules implement Chapter 816, Oregon Laws 2005 (Senate Bill 71/SB 71), which creates the Multimodal Transportation Fund. SB 71 authorizes the State Treasurer to issue lottery backed bonds to finance grants and loans for air, marine, public transit, and rail transportation projects and excludes projects that could be funded with money from the State Highway Fund. SB 71 establishes \$100 million plus bond issuance cost as the maximum limit of bond proceeds and directs that the bond proceeds be deposited in the Multimodal Transportation Fund. SB 71 establishes a review process under which the Oregon Transportation Commission solicits recommendations from the State Aviation Board for aeronautic and airport projects; the Freight Advisory Committee for freight transportation projects; and from public transit and rail advisory committees. SB 71 directs ODOT to adopt rules specifying the process by which a public body or private entity may apply for a loan or grant.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-035-0010

Purpose

Chapter 816, Oregon Laws 2005, created the Multimodal Transportation Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects that involve air, marine, rail or public transit. The purpose of Division 35 rules is to establish the Multimodal Transportation Fund Program.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

731-035-0020

Definitions

For the purposes of Division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Agreement" means a legally binding contract between the Department (or Oregon Department of Aviation) and Recipient that contains the terms and conditions under which the Department is providing funds from the Multimodal Transportation Fund for an Approved Project.

(2) "Applicant" means a Person or Public Body that applies for funds from the Multimodal Transportation Fund.

(3) "Approved Project" means a Project that the Commission has selected to receive funding through either a grant or loan from the Multimodal Transportation Fund.

(4) "Aviation" is defined in ORS 836.005(5).

(5) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the defini-

tion of collateral in ORS 79.0102(1), and with respect to a Public Body, any real or personal property as defined in ORS 288.594.

(6) "Commission" means the Oregon Transportation Commission.

(7) "Department" means the Oregon Department of Transportation.

(8) "Director" means the Director of the Oregon Department of Transportation.

(9) "Freight Advisory Committee" means the committee created in ORS 366.212.

(10) "Person" has the meaning given in ORS 174.100(5), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.

(11) "Program" means the Multimodal Transportation Fund Program established by Division 35 rules to administer the Multimodal Transportation Fund.

(12) "Program Funds" means the money appropriated by the Legislature to the Multimodal Transportation Fund. These funds may be used as either grants or loans to eligible projects.

(13) "Public Body" is defined in ORS 174.109.

(14) "Public Transit Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs related to public transportation in Oregon.

(15) "Rail Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs that affect rail freight and rail passenger facilities and services in Oregon.

(16) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the Multimodal Transportation Fund.

(17) "State Aviation Board" means the board created in ORS 835.102.

(18) "Transportation Project" or "Project" is defined in ORS 367.010(11). A Multimodal Transportation Program Project must involve one of more of the following modes of transportation: air, marine, rail or public transit. The term includes, but is not limited to, a project for capital infrastructure and other projects that facilitate the transportation of materials, animals or people.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

731-035-0030

Application Submission Periods

(1) The Department will announce periods for submitting applications for funding from the Multimodal Transportation Fund.

(2) Project applications will be reviewed for compliance with the requirements in OAR 731-035-0040 and as prescribed in 731-035-0050.

(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

731-035-0040

Application Requirements

Applicants interested in receiving funds from the Multimodal Transportation Fund must submit a written application to the Department. The application must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

731-035-0050

Application Review

(1) The Department will review applications received to determine whether the Applicant and the Project are eligible for Program Funds.

(2) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Public Body or Person within the state of Oregon.

(b) The Applicant, if applicable, is current on all state and local taxes, fees and assessments.

(c) The Applicant has sufficient management and financial capacity to complete the Project including without limitation the ability to contribute 20 percent of the eligible Project cost.

(3) Projects that meet all of the following criteria are eligible:

(a) The project is a Transportation Project.

(b) The Project will assist in developing a multimodal transportation system that supports state and local government efforts to attract new industries to Oregon or that keeps and encourages expansion of existing industries.

ADMINISTRATIVE RULES

(c) The Project may be funded with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon.

(d) The Project will not require or rely upon continuing subsidies from the Department.

(e) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the Highway Trust Fund.

(4) If an Applicant or Project is not eligible for Program Funds, the Department will, within 30 days of receipt of the application:

(a) Specify the additional information the Applicant must provide to establish eligibility, or

(b) Notify the Applicant that the application request is ineligible.

(5) The Department will make all eligible applications available for review, as applicable, to the State Aviation Board, the Freight Advisory Committee, the Public Transit Advisory Committee, the Rail Advisory Committee and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

731-035-0060

Project Selection

(1) The Commission will select Projects to be funded through either a grant or loan with moneys in the Multimodal Transportation Fund.

(2) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission will solicit recommendations from:

(a) The State Aviation Board for Aviation Transportation Projects.

(b) The Freight Advisory Committee for freight Transportation Projects.

(c) The Public Transit Advisory Committee for public transit Transportation Projects.

(d) The Rail Advisory Committee for rail Transportation Projects.

(3) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule.

(4) The Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Multimodal Transportation Fund:

(a) Whether a proposed Project reduces transportation costs for Oregon businesses.

(b) Whether a proposed Project benefits or connects two or more modes of transportation.

(c) Whether a proposed Project is a critical link in a statewide or regional transportation system that will measurably improve utilization and efficiency of the system.

(d) How much of the cost of a proposed Project can be borne by the Applicant for the grant or loan.

(e) Whether a Project creates construction or permanent jobs in the state.

(f) Whether a Project is ready for construction, or if the Project does not involve construction, whether the Project is at a comparable stage.

(g) Whether a Project leverages other investment and public benefits from the state, other government units, or private business.

(h) Whether the Applicant for a grant can meet the requirement to contribute 20 percent of the eligible Project costs.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

731-035-0070

Grant and Loan Awards and Match

(1) At least 15 percent of the total net proceeds of the lottery bonds will be allocated to each of the five regions as specified in Chapter 816, Oregon Laws 2005. The regions consist of the following counties:

(a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties;

(b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties;

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties;

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties; and

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(2) Applicants may use a combination of grant and loan funds to finance a Project.

(3) Grants and loans will be awarded only when there are sufficient funds available in the Multimodal Transportation Fund to cover the costs of the loans and grants.

(a) Grants:

(A) Awards must not exceed 80 percent of the total eligible Project costs.

(B) Applicant matching funds must be provided by the Applicant in the form of cash and cover at least 20 percent of the eligible Project costs.

(b) Loans:

(A) Loans may be for any portion of project costs, up to the full amount of the project.

(B) The Department will not charge fees for processing or administering a loan to a Recipient.

(C) Loans from the funds provided by Chapter 816, Oregon Laws 2005, may be interest free if repaid according to the terms and conditions of the Agreement between the Department and Recipient.

(D) Prior to entering into a loan Agreement, the Department will determine an application meets reasonable underwriting standards of credit-worthiness, including whether:

(i) The Project is feasible and a reasonable risk from practical and economic standpoints.

(ii) The loan has a reasonable prospect of repayment according to its terms.

(iii) The Applicant's fiscal, managerial and operational capacity is adequate to assure the successful completions and operation of the Project.

(iv) The Applicant will provide good and sufficient Collateral to mitigate risk to the Multimodal Transportation Fund.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

731-035-0080

Project Administration

(1) The Department will administer all non-aviation Projects.

(2) The Department and an Applicant of an Approved Project will execute an Agreement prior to the disbursal of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement.

(3) The Agreement will contain provisions and requirements, including but not limited to:

(a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursal of Program Funds.

(b) Only Project costs incurred on or after the effective date of the Agreement are eligible for grant or loan funds.

(c) Disbursal of Program Funds for grants and loans will be paid on a reimbursement basis and will not exceed one disbursal per month.

(d) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(e) Recipients must separately account for all moneys received from the Multimodal Transportation Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(f) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(g) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(h) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued pursuant to the authority of Chapter 816, Oregon Laws 2005.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in Chapter 816, Oregon Laws 2005 and this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project, and those corrective actions are not, or will not be, made within a reasonable time.

ADMINISTRATIVE RULES

(5) The Department may impose one or more of the following sanctions:

- (a) Revoke an existing award.
- (b) Withhold unexpended Program Funds.
- (c) Require return of unexpended Program Funds or repayment of expended Program Funds.
- (d) Bar the Applicant from applying for future assistance.
- (e) Other remedies that may be incorporated into grant and loan Agreements.

(6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.

(7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Applicant or Recipient may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

(8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619, Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06

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**Department of Transportation,
Board of Maritime Pilots
Chapter 856**

Adm. Order No.: BMP 1-2005
Filed with Sec. of State: 11-29-2005
Certified to be Effective: 11-29-05
Notice Publication Date: 11-1-05
Rules Amended: 856-010-0012

Subject: Amends training rules for the Columbia & Willamette River pilotage ground to increase the vessel length restriction on Class C licenses to under 570 feet L.O.A. The previous restriction for piloting vessels less than 550 feet no longer corresponds to the size class of vessels that transit the pilotage ground.

Rules Coordinator: Susan Johnson—(503) 731-4044

**856-010-0012
Degrees of Licenses for the Columbia and Willamette River Pilotage Ground**

(1) Grade "C" License: The initial license issued by the Board to a pilot for the Columbia and Willamette River pilotage ground shall only authorize the pilot to pilot vessels under 570 feet length over-all (L.O.A.).

(2) To obtain a Grade "B" License while holding a Grade "C" License: In order to obtain authority from the Board to pilot vessels between 570 feet L.O.A. and 700 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

- (a) Have a minimum of six months service on the pilotage ground;
- (b) Have made a minimum of 30 transits on the pilotage ground piloting ships of between 300 and 570 feet L.O.A.;

(c) Have made a minimum of 30 transits on the pilotage ground on ships greater than 570 feet L.O.A. under the supervision of a minimum of ten different pilots, with not less than five years experience while holding unlimited state licenses for the pilotage ground. The training course monitor and a minimum of ten different pilots from the Board's licensed training organization holding unlimited or Grade "A" state licenses, must have certified to the Board that, in their opinion, the applicant has sufficient local knowledge and shiphandling skills to pilot vessels between 570 feet L.O.A. and 700 feet L.O.A. on the pilotage ground;

(d) The requirements specified in subsections (b) and (c) of this section must have been met during the six months preceding application for authority to pilot vessels between 570 feet L.O.A. and 700 feet L.O.A.; and

(e) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are less than 700 feet L.O.A., except that the applicant shall not pilot tankers, or vessels with a draft of 38 feet or deeper, on the pilotage ground.

(3) To obtain a Grade "A" License while holding a Grade "B" License: In order to obtain authority from the Board to pilot vessels between 700 feet L.O.A. and 800 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

- (a) Have a minimum of six months service on the pilotage ground;

(b) Have made a minimum of 30 transits on the pilotage ground piloting ships of between 300 and 700 feet L.O.A. as a state-licensed pilot;

(c) Have made a minimum of 15 transits on the pilotage ground on ships greater than 700 feet L.O.A. while under the supervision of at least ten different pilots holding unlimited state licenses for the pilotage ground. The training course monitor and a minimum of ten pilots from the board's licensed training organization who supervised the applicant's training transits must have certified to the board that, in their opinion, the applicant has sufficient local knowledge and shiphandling skills to pilot vessels between 700 feet L.O.A. and 800 feet L.O.A. on the pilotage ground;

(d) The requirements specified in subsections (b) and (c) of this section must have been met during the six months preceding application for authority to pilot vessels between 700 feet L.O.A. and 800 feet L.O.A.; and

(e) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are less than 800 feet L.O.A. on the pilotage ground, except that the applicant shall not pilot tankers, or vessels with a draft of 38 feet or deeper.

(4) To obtain an Unlimited License while holding a Grade "A" License: In order to obtain authority from the Board to pilot vessels on the Columbia and Willamette River pilotage ground without any limitation on the length and draft of the vessels, including tankers and vessels with a draft of 38 feet or deeper, an applicant must meet the following requirements:

(a) Have a minimum of six months service on the pilotage ground;

(b) Have made a minimum of 30 transits on the pilotage ground on ships of between 300 and 800 feet L.O.A. These transits must be made during the six months preceding application for an unlimited license;

(c) Have made a minimum of ten transits on the pilotage ground on ships greater than 800 feet L.O.A. while under the supervision of ten different pilots holding unlimited state licenses for the pilotage ground, and the pilots who supervised these transits, shall have not less than five years experience as unlimited state licensed pilots. The training course monitor and a minimum of ten pilots from the board's licensed training organization who supervised the applicant's training transits must certify to the board that, in their opinion, the applicant has sufficient local knowledge and shiphandling skills to pilot vessels greater than 800 feet L.O.A. on the pilotage ground. The transits on ships greater than 800 feet L.O.A. must be made while the applicant is a state-licensed pilot for the pilotage ground;

(d) Have made a minimum of 12 transits on the pilotage ground on tankers (including at least nine transits on loaded tankers) while holding a Grade "B" License or a Grade "A" License and while under the supervision of at least six different state-licensed pilots who have held an unlimited state license on the pilotage ground for a minimum of five years;

(e) The training course monitor and a minimum of six pilots from the board's licensed training organization who supervised the applicant's training transits on tankers, shall certify to the Board that, in their opinion, the applicant has sufficient local knowledge and shiphandling skills to pilot tankers on the pilotage ground and understands the risks and hazards peculiar to piloting tankers on the pilotage ground;

(f) Have made a minimum of twelve transits on the pilotage ground on ships with draft greater than 38 feet while holding a Grade "B" License or a Grade "A" License and while under the supervision of at least six different state-licensed pilots who have held an unlimited state license on the pilotage ground for a minimum of five years. The training course monitor and a minimum of six pilots from the board's licensed training organization who supervised these transits must have certified to the Board that, in their opinion, the applicant has sufficient local knowledge and shiphandling skills to pilot vessels of draft greater than 38 feet;

(g) When the foregoing requirements are met, the Board shall issue an unlimited license to the applicant authorizing the applicant to pilot vessels of any length and draft, including tankers, on the pilotage ground.

(5) Each grade of license will be valid for one year. No license except an unlimited license may be renewed.

Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.315
Hist.: MP 2-1985, f. & cf. 6-7-85; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2005, f. & cert. ef. 11-29-05

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

Adm. Order No.: DMV 23-2005
Filed with Sec. of State: 11-18-2005
Certified to be Effective: 11-18-05
Notice Publication Date: 10-1-05
Rules Amended: 735-062-0030, 735-062-0105, 735-062-0110, 735-062-0115, 735-062-0120, 735-062-0135, 735-070-0010

ADMINISTRATIVE RULES

Rules Repealed: 735-062-0030(T), 735-062-0105(T), 735-062-0110(T), 735-062-0115(T), 735-062-0120(T), 735-062-0135(T), 735-070-0010(T)

Subject: Section 1, Chapter 59, Oregon Laws 2005 (HB 2106) amends ORS 807.160 to require the department to establish by administrative rule the reasons for issuing a replacement driver license, driver permit or identification card. DMV is amending OAR 735-062-0110 to set forth the reasons a replacement driver license, driver permit or identification card may be issued by DMV. Section 4 of HB 2106 amends ORS 807.390 to authorize waiver of a fee for replacement of a driver permit under the circumstances described. DMV is also amending OAR 735-062-0105, which describes fee waiver requirements, to implement these statutory amendments.

OAR 735-062-0030, 735-062-0105, 735-062-0115, 735-062-0120, 735-062-0135 and 735-070-0010 are amended to remove references to "duplicate." The term is deleted by amended ORS 807.160, and, therefore, is no longer relevant to these rules.

Because the legislative change went into effect May 18, 2005, DMV filed temporary amendments to these rules in June of 2005. These permanent rules replace the temporary rules.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0030

Proof of Residence Address

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) requires all applicants for an original driver permit, driver license, or identification card to present to DMV at least one document showing the applicant's name and current residence address. Current residence address is the address where the applicant actually lives, and DMV will include this address on the permit, license, or identification card. Acceptable documents include any of the items listed in section (3) of this rule.

(2) DMV requires all applicants who apply for a renewal or replacement driver permit, driver license, or identification card at a DMV field office to present to DMV at least one document showing the applicant's current residence address if the applicant is changing his or her address. Acceptable documents include any of the items listed in section (3) of this rule.

(3) Proof of residence address includes any of the following documents that show the applicant's current residence address:

(a) Any one of the proofs of identity listed in OAR 735-062-0020(10) or (11).

(b) Mortgage documents.

(c) A statement from the parent, step-parent, or guardian of an applicant attesting to the applicant's residence address. The parent, step-parent or guardian must reside at the same address as the applicant and sign a statement attesting to the applicant's residence address. In addition, the parent, step-parent, or guardian must present one acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.

(d) A statement of the applicant's spouse. The spouse must reside at the same residence as applicant and sign a statement attesting to the applicant's residence address. In addition, the spouse must present one other acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.

(e) Rental or lease agreement signed by the landlord and applicant and dated within one year of the application for the license, permit or identification card.

(f) Utility hook-up order.

(g) Payment booklet.

(h) Mail that is dated within 60 days of the application for the license, permit or identification card. DMV will accept mail from the following sources:

(A) Credit card companies;

(B) U.S. Treasury;

(C) Social Security Administration;

(D) State or Federal Revenue Department;

(E) Government agencies;

(F) Utility companies;

(G) Financial institutions;

(H) Insurance companies; and

(I) Originators of out-of-state clearance letter.

(i) Oregon vehicle title or registration documents.

(j) Oregon voter registration card.

(k) Selective Service card.

(l) Medical or health card.

(m) Educational institution transcript forms for the current school year.

(n) An unexpired professional license issued by an agency in the United States.

(4) If the applicant does not have a residence address, DMV may accept a descriptive address with a mailing address. DMV may require the applicant to provide proof that no residence address has been assigned to the property. Such proof may include, but is not limited to, a statement from the U.S. Postal Service or from the Assessor's office in the county in which the property is located.

(5) An applicant who is homeless may use a descriptive address of the location where he/she actually resides, e.g., "under the west end of Burnside Bridge." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

(6) An applicant who travels continuously may use a descriptive address of "continuous traveler." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050, 807.150 & 807.400

Stats. Implemented: ORS 807.110, 807.160 & 807.400

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0017; DMV 2-1995, f. & cert. ef. 2-10-95; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 8-2005, f. & cert. ef. 2-16-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05

735-062-0105

Waiver of Replacement License or Driver Permit Fee

For purposes of convenience, DMV will issue a replacement license or driver permit and waive the replacement fee if, after filing a change of address form, a customer does not receive the address change sticker and comes in person to a DMV field office.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.390

Stats. Implemented: ORS 807.160 & 807.390

Hist.: DMV 21-2001, f. & cert. ef. 10-18-01; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05

735-062-0110

Replacement Driver Permits, Driver Licenses, and Identification Cards

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a replacement driver permit, driver license or identification card for one of the reasons listed in section (2) of this rule if a person meets the requirements set forth in ORS 807.160 and the person is eligible for the driver license, driver permit or identification card.

(2) DMV may issue a replacement driver license, driver permit or identification card when a person:

(a) Furnishes proof satisfactory to the department of the loss, destruction or mutilation of the person's driver license, driver permit or identification card.

(b) Changes residence address from the address noted on the person's driver license, driver permit or identification card.

(c) Is an officer or eligible employee who has requested, in accordance with ORS 802.250, that department records show the address of the person's employer.

(d) Changes names from the name noted on the person's driver license, driver permit or identification card.

(e) Is applying for or is required to add or remove a restriction on the person's driver license or driver permit.

(f) Is applying for or is required to add or remove an endorsement other than a motorcycle or farm endorsement on the person's driver license or driver permit.

(g) Furnishes proof satisfactory to the department or the department determines that the department made an error when issuing the person's driver license, driver permit or identification card.

(h) Surrenders the person's driver license that was issued without a photograph under OAR 735-062-0120 and requests a driver license with a photograph.

(i) Surrenders a driver license, driver permit or identification card to the department following a suspension and the person becomes eligible for driving privileges or an identification card.

(j) Has a driver license, driver permit or identification card that was confiscated by a police officer, a court or other agency and the person is eligible for a driver license, driver permit or an identification card.

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(k) Requests to change any physical description, notation, photograph or signature on the driver license, driver permit, or identification card or to add or delete an anatomical donor designation.

(l) Surrendered an Oregon driver license or driver permit to the driver licensing agency of another state or jurisdiction and the person again becomes domiciled in or a resident of Oregon, as long as the person remains eligible for driving privileges and the driver license or permit has not been expired for longer than one year. This subsection does not apply if the person is requesting a commercial driver license.

(m) Has a reason satisfactory to DMV to be issued a driver license, driver permit or identification card with a different distinguishing number than the one being replaced.

(n) Requests a downgrade from one license class to another (e.g., a Commercial Driver License to a non-commercial Class C driver license).

(o) Requests restoration of a Commercial Driver License following a suspension of the Commercial Driver License or a downgrade to non-commercial driving privileges and the person is eligible for commercial driving privileges.

(p) Requests to correct information on the driver license, driver permit or identification card that was provided to DMV in error.

(3) An applicant for a replacement driver license, driver permit, or identification card must present to DMV proofs of age and identity as set forth in OAR 735-062-0020.

(4) An applicant at a DMV field office for a replacement driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current residence address is the address where the person actually lives and DMV will include that address on the license, permit, or identification card issued.

(5) An applicant for a replacement driver license, driver permit, or identification card must surrender the license, driver permit or identification card replaced to DMV, if possible.

(6) Before issuing a replacement driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a replacement commercial driver license or commercial driver permit, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(7) If the applicant's driving privileges are suspended, revoked, canceled or otherwise invalid in any other jurisdiction, DMV will not issue a replacement driver license or driver permit until the applicant submits a clearance letter that complies with OAR 735-062-0160 or a DMV inquiry to the NDR/PDPS or CDLIS, or both, shows that the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(8) Notwithstanding section (7) of this rule, DMV will issue a replacement license or driver permit to an applicant whose driving privileges are suspended, revoked, canceled or otherwise invalid if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.160
Stats. Implemented: ORS 807.160, 807.220, 807.230, 807.280 & 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05

735-062-0115

Non-Issue of a Driver License Following Confiscation

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will not issue a driver license to a person whose driving record indicates a pending Implied Consent Law suspension under ORS 813.100.

(2) DMV will issue a temporary driving permit, Form 45, instead of a driver license if the person is eligible for driving privileges.

(3) The permit issued under section (2) of this rule is valid until the Implied Consent Law suspension takes effect or until the person's driver license expires.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.110
Stats. Implemented: ORS 807.160, 813.100 & 813.110
Hist.: MV 5-1990, f. & cert. ef. 3-5-90; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05

735-062-0120

Standards for Issuance of Driver's Licenses Without a Photograph

(1) The Administrator of the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV), may, upon receipt of a written request, and for good cause, provide for issuance of a valid driv-

er license without a photograph to any person qualified to hold an Oregon driver license:

(a) Who is a member of a religious denomination that prohibits photographing of its members because it is contrary to its religious tenets;

(b) Who has severe facial disfigurement; or

(c) Who is temporarily absent from Oregon.

(2) Any person who receives a driver license without a photograph because of being temporarily absent from Oregon must make application to DMV within 30 days after returning to Oregon, surrender the license that was issued without a photograph, and pay for a replacement license bearing a photograph.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.110
Stats. Implemented: ORS 807.110
Hist.: MV 80, f. & ef. 10-4-77; MV 15-1986, f. 9-16-86, ef. 10-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0038; DMV 21-2001, f. & cert. ef. 10-18-01; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05

735-062-0135

Voluntary Surrender of Driving Privileges

A person may surrender all or part of the driving privileges granted to that person by the State of Oregon, through the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV).

(1) To surrender all or part of a person's driving privileges, that person must sign a DMV form and must surrender to DMV any license or permit issued for the driving privilege. DMV will allow the person to surrender all driving privileges, or part of the driving privileges granted to that person under any class of license, endorsement or driver permit.

(2) When driving privileges are surrendered, the driving privileges are immediately withdrawn and the person is no longer authorized to operate vehicles pursuant to those driving privileges. A person who surrenders all driving privileges may not exercise any driving privileges, except those granted by statute under ORS 807.020. A person who surrenders part of the person's driving privileges may exercise only those driving privileges retained. Operation of a vehicle on Oregon highways or premises open to the public without appropriate driving privileges is a violation of law under ORS 807.010.

(3) In accordance with OAR 735-062-0010, DMV may issue an identification card to a person who has surrendered all driving privileges.

(4) A person may surrender only part of the driving privileges granted by DMV by canceling any endorsements or driver permits granted to the person. The person must specify those driving privileges the person seeks to surrender. A person who surrenders an endorsement must pay the renewal or replacement license fee for issuance of a license that reflects the driving privileges the person retains.

(5) Surrender of driving privileges means the driving privileges are canceled as defined in ORS 801.175(2). When a voluntary surrender of driving privileges is accepted, DMV will cancel driving privileges without providing further notice or an opportunity for hearing to the person. The person's driving record will show that the driving privileges have been surrendered.

(6) A person who seeks to regain surrendered driving privileges must reapply for the privileges and establish eligibility and qualification as provided by law, including payment of all required fees.

Stat. Auth.: ORS 184.616, 184.619 & 802.010
Stats. Implemented: ORS 802.010(1)(c)
Hist.: DMV 1-2003, f. & cert. ef. 2-13-03; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05

735-070-0010

Reinstatement Following Cancellation or Suspension Under ORS 807.220, 807.230, 807.350, 809.310 and 809.320

(1) DMV will reissue the driver permit, driver license or identification card canceled because the person is not entitled to a license, permit or identification card under ORS 809.310(1) to the person only after the person corrects the condition that caused the cancellation. For example, the person must prove he or she no longer has driving privileges withdrawn by another jurisdiction if the cancellation was based on a suspension or revocation of the person's driving privilege in another jurisdiction.

(2) DMV will reinstate the person's driving privileges or right to apply for privileges or an identification card or right to apply for a card when DMV suspends a person's driver permit, driver license or identification card for any of the reasons cited in ORS 809.310(3) when:

(a) One year has elapsed since the date the suspension became effective; and

(b) The person pays a reinstatement fee.

(3) When DMV cancels a person's driver permit or driver license for withdrawal of consent under ORS 809.320, DMV will reinstate driving privileges when the person:

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(a) Pays a replacement driver permit or driver license fee or a renewal fee, if applicable; and

(b) Submits one of the following if the person is still under 18 years of age:

(A) An application for a driver permit or driver license that is signed by the person's mother, father or guardian, or if the person has no mother, father or guardian, by the person's employer;

(B) Court papers showing that the person is declared emancipated by the court; or

(C) Evidence that the person is married.

(4) When DMV cancels a person's driving privileges because the person is not qualified or does not meet the requirements under ORS 807.350, DMV will not grant driving privileges until the person meets the requirements and demonstrates qualification for a driver license under ORS 807.040, 807.060, 807.062, 807.065, 807.066 and 807.070.

(5) When a person's student or emergency driver permit is canceled, DMV will reissue a new driver permit or driver license only when the person meets the requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0000 to obtain a driver permit or driver license.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.220, 807.230, 807.400, 809.310 & 809.320

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0064; MV 14-1992, f. & cert. ef. 10-16-92; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05

Adm. Order No.: DMV 24-2005

Filed with Sec. of State: 11-18-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 10-1-05

Rules Adopted: 735-150-0033

Rules Amended: 735-150-0010, 735-150-0040, 735-150-0050, 735-150-0055, 735-150-0110, 735-150-0120, 735-150-0130, 735-150-0140

Subject: OAR Chapter 735, Division 150, establishes procedures and requirements for the administration and enforcement of laws relating to the regulation of Oregon vehicle dealers. DMV is updating Division 150 rules to bring them into compliance with statutory changes made during the 2005 Legislative Session. The following explains legislative changes and DMV rule changes.

Many Oregon consumers choose to purchase vehicles directly from motor vehicle brokers to avoid the work of locating a vehicle and negotiating the best sales price. For consumer protection purposes, the legislature amended ORS 822.047 to specify the responsibilities of a dealer who is providing brokerage services. Oregon Laws 2005, chapter 190 (HB 2740). DMV is amending OAR 735-150-0010, OAR 735-150-0110, 735-150-0120, 735-150-0130 and OAR 735-150-0140 to conform its rules to these legislative amendments. Specifically, adding new definitions, sanctions and changing civil penalty and sanction schedules.

Current law requires a vehicle dealer to obtain a supplemental certificate if the dealer opens an additional place of business or uses a vehicle as part of an advertisement at a location other than the dealer's principal place of business. The fee for a supplemental certificate is \$230 per location. Some dealers display vehicles for sale at retail stores and shopping malls strictly for purposes of advertisement - vehicles are not sold at the display site. A customer interested in purchasing a display vehicle is referred to the dealer whose vehicle is on display. Chapter 133, Oregon Laws 2005 (HB 3089), clarifies that the display of vehicles for purposes of advertising is permitted without obtaining a supplemental dealer certificate. In addition, the law change authorizes DMV to adopt rules to establish display requirements. Accordingly, DMV is adopting OAR 735-150-0033, and amending OAR 735-150-0110 and OAR 735-150-0140 to establish the requirements for the display of vehicles for purposes of advertising and to change the schedule of violation penalties to include a violation of display requirements.

Sections 1 & 2, chapter 375, Oregon Laws 2005 (SB 997) amends ORS 802.033 which authorizes DMV to adopt rules to limit the fee amounts that a licensed vehicle dealer may charge to prepare title and registration documents on behalf of a buyer or lessee. DMV is

amending ORS 735-150-0055 to limit the dealer service fee to a maximum of \$75, if the dealer submits title and registration information to DMV using an integrator - a third party independent contractor facilitating the electronic submission of title and registration paperwork between a dealer and DMV - or a maximum of \$50 if the dealer does not use an integrator and prepares hardcopy title and registration documents submitted to DMV. DMV is also amending OAR 735-150-0040 and 735-150-0050 to clarify the responsibility of dealers who, as DMV's agent, collect and submit fees on behalf of DMV.

The rule changes also update terms and definitions consistent with the legislative amendments and make other non-substantive changes to simplify rule language.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-150-0010

Definitions

As used in this division and ORS Chapter 822:

(1) "Additional (or supplemental) place of business" or "additional (or supplemental) location" means a location, other than one exempted under OAR 735-150-0020, that is more than 500 feet from any other business location of the dealer, and which is operated under the same name as the main business location.

(2) "Advertise" means to offer a vehicle for sale or to communicate to the public that a person is acting as a vehicle dealer, by any oral, written, or graphic means including, but not limited to, handbills, the Internet, newspapers, signs, television, billboards, radio, and telephone directories.

(3) "Agent" means any dealer possessing a current valid vehicle dealer certificate issued under ORS 822.020, who accepts applications and fees for the titling and the registration of vehicles sold by the dealer and who performs such other duties related to the titling and registration of vehicles as DMV authorizes under the rules set forth in division 150.

(4) "Broker" has the same meaning as "motor vehicle broker" as defined in ORS 822.047(1).

(5) "Brokerage services" has the same meaning as defined in ORS 822.047(1).

(6) "Business day" means Monday through Saturday and does not include Sundays or State of Oregon and Federal legal holidays.

(7) "Buyer," "purchaser" and "lessee" have the same meaning as "owner" as defined in ORS 801.375.

(8) "Cancellation" has the same meaning as "revocation" as defined in section (29) of this rule.

(9) "Certified dealer" means a dealer who holds a valid dealer certificate issued under ORS Chapter 822.

(10) "Circumstances beyond the dealer's control," as used in ORS 822.045(3) and OAR 735-150-0050(5) means:

(a) That the dealer could not get the title from any state and the prior security interest holder was paid in full by the dealer; and

(b) The delay was a result of the security interest holder failing to release title; or

(c) DMV may consider the follow mitigating circumstances, if those circumstances result in the physical destruction of, or inaccessibility to vehicle records necessary to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5):

(A) The direct result of clearly-established fraud or other criminal activity against the vehicle dealer, 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 the person who actually engaged in the criminal activity. This mitigating circumstance does not apply if the dealer is the perpetrator of the wrongdoing described in this paragraph; or

(B) The direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to vehicle records to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5).

(11) "Closure" means a vehicle dealership that no longer has legal authority to conduct dealer-related activity. For example, a dealer's certificate issued under ORS 822.020 is expired, cancelled, suspended or revoked.

(12) "Clearly marked" means the notice and dealer contact information required under ORS 822.040(4)(b) and OAR 735-150-0033 is conspicuously posted on the window of each display vehicle, is in plain view of the public and is legible at a distance of six feet or more.

(13) "Date of sale," or use of similar terms to indicate the day that the sale occurred, means the date on which the purchaser takes possession of the vehicle except, for those sales made by auto auction companies which only allow certified dealers to act as purchasers. With respect to auto auctions and for purposes of consignor payment under ORS 822.060(1)(d),

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“date of sale” means, the date upon which the consigning party delivers the necessary title documents to the purchasing dealer.

(14) “Dealer” means a person who engages in any of the activities described in ORS 822.005, except those persons exempted by ORS 822.015.

(15) “Dealership,” “place of business” or “business location” means a location within the State of Oregon where activities specified in ORS 822.005 take place.

(16) “Designated dealer” means a certified dealer who has been authorized to act as an agent of DMV under OAR 735-150-0040.

(17) “DMV” means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(18) “DMV Administrator” means the administrator of the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.

(19) “Employee” means a person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:

- (a) Determining the frequency, method and amount of compensation;
- (b) Determining whether the person’s work is continuous or intermittent;
- (c) Determining the hours or frequency of a person’s work; or
- (d) Retaining the ability to terminate the relationship.

(20) “Good faith effort” as used in ORS 822.045(3) means action satisfactory to DMV that a vehicle dealer complied with the requirements set forth in OAR 735-150-0050(1) and (2).

(a) DMV will determine that the dealer’s efforts are in good faith if written documentation is provided that verifies:

- (A) Action(s) was taken by the dealer within ten (10) days of sale to resolve problems with providing transfer of ownership; and
- (B) The dealer provided complete and timely information to the customer concerning any problems encountered and actions being taken to resolve them.

(b) DMV will not accept a good faith effort by a dealer if, before the sale of the vehicle, the dealer knows or reasonably should know that title transfer could not be completed within 30 days.

(21) “Location,” “main business location” or “main dealership” means a location identified and listed as the dealer’s main business location on the most current application for vehicle dealer certificate.

(22) “Normal business hours” means all times during which a dealer engages in any of the activities described in ORS 822.005, except as exempted by ORS 822.015.

(23) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

(24) “Permanent revocation” means to permanently revoke a vehicle dealer certificate and the right to apply for a vehicle dealer certificate.

(25) “Probation” means a period of time specified by DMV during which a vehicle dealer may continue to operate, but only under the terms or conditions established by DMV.

(26) “Principal” means an owner, partner, corporate officer or other person who controls or manages the business organization or the employees or agents of the business organization.

(27) “Purchaser” has the same meaning as buyer or a lessee.

(28) “Rebuilder” means a person engaged in conducting a “vehicle rebuilding business” as specified in ORS 822.070.

(29) “Revocation” means to void and terminate a vehicle dealer certificate. Unless permanently revoked, DMV will specify the period of time before the person subject to the revocation may apply for a new vehicle dealer certificate.

(30) “Sanction” means an action taken against a vehicle dealer by DMV in cases of non-compliance, fraud, misuse or abuse of privileges granted by a vehicle dealer certificate pursuant to a violation of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers or the operation of a vehicle dealership.

(31) “Suspension” means a period of time specified by DMV during which a vehicle dealer is prohibited from:

- (a) Buying, selling, trading, exchanging any vehicle or providing brokerage services. This includes, but is not limited to, providing information about price, quality, availability, payment terms, or any other information specific to the sale of a vehicle; and
- (b) Acting as DMV’s agent.

(32) “Violation” means any violation by a person or vehicle dealer of the Oregon Vehicle Code or any rules adopted by DMV in accordance with ORS 822.009(1) & (2).

(33) “Warning” means a documented oral warning to the principal of a dealership or a written correction notice issued to the principal or an employee of the dealership.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 822.005 - 822.080

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 17-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0033

Display of Vehicles for Advertising

In addition to the requirements of ORS 822.040(4), to display a vehicle for advertising at a location other than a dealership, a dealer must meet the following requirements:

(1) Have a signed agreement with the owner of the property before a vehicle is displayed that includes all of the following:

(a) The beginning and ending date of the display, not to exceed 30 calendar days;

(b) The name, address and phone number of the dealer or dealership and the certificate number of the dealer’s main business location;

(c) The name of the dealer or dealer’s representative who signs the agreement;

(d) A description of each vehicle to be displayed, including vehicle identification number, make, model and year;

(e) A signed and dated certification, stating that both the dealer and the property owner will abide by all applicable laws, rules and ordinances;

(f) The name, address and phone number of the business or property owner where a vehicle will be displayed. If a business, the business name must be the name registered with the Oregon Secretary of State; and

(g) The name of the signatory authorized to enter into agreements on behalf of the business or property owner.

(2) No more than five vehicles may be displayed on the property at the same time for advertising purposes. This total includes vehicles from any vehicle dealership.

(3) In addition to records required under OAR 735-150-0035, the dealer must maintain records that include copies of the agreement and notice required under ORS 822.040(4) and this rule. Records must be maintained at the business or property where vehicles are displayed for the duration of the agreement. Upon expiration of the agreement, records must be maintained for a period of two (2) years on the premises of the dealer’s main business location.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.009, 822.035 & 822.045

Stats. Implemented: ORS 822.009, 822.030, 822.035 & 822.045

Hist.: DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0040

Designation of Dealers as Agents

(1) Persons issued a dealer certificate under ORS 822.020 and who meet the qualifications set forth in OAR 735-150-0039, are designated as DMV’s agent pursuant to ORS 802.031 and may perform the duties of an agent as identified in section (4) of this rule.

(2) Snowmobile dealers and Class I and Class III all-terrain vehicle dealers are designated as agents of DMV pursuant to ORS 802.031.

(3) DMV may impose sanctions against a dealer’s agent status as provided in OAR 735-150-0120.

(4) DMV’s agent may:

(a) Prepare, submit, or prepare and submit documents and collect fees necessary to title and register vehicles they sell, as provided in OAR 735-150-0050;

(b) Perform vehicle identification number inspections on vehicles they sell, as provided in OAR 735-022-0070 when the vehicle has been registered or titled in another jurisdiction subject to the limitations of OAR 735-022-0070;

(c) Issue temporary registration permits for unregistered vehicles they sell, as provided in ORS 803.625 and OAR 735-150-0060;

(d) Issue trip permits for unregistered vehicles they sell, as provided for in OAR 735-150-0070 and 735-150-0080;

(e) Issue 10-day trip permits for registered vehicles they sell, as provided in ORS 803.600, OAR 735-150-0070, 735-150-0080 and 735-034-0010. When issuing a 10-day trip permit as described in this subsection, a vehicle dealer:

(A) Must insure the Oregon registration stickers have been removed in accordance with ORS 803.600;

(B) May not issue more than two permits for the same motor vehicle; and

(C) Must require the person applying for the permit to provide the insurance company name and policy number on the permit, and sign the certificate on the permit stating that the motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid; and

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(f) Prepare, submit, or prepare and submit documents and collect fees for transfers of registration plates except as provided in section (9) of this rule.

(5) A dealer who, on behalf of a purchaser, prepared, submitted, or prepared and submitted documents and collected fees necessary to title and register a vehicle and who then receives from DMV the registration plates, stickers or temporary registration for the vehicle, must ensure delivery of the items obtained to the purchaser. Within five working days of receipt from DMV the dealer must:

- (a) Deliver the items to the purchaser;
- (b) Mail the items to the purchaser; or
- (c) Advise the purchaser the items are at the dealership and, if the purchaser agrees, arrange to have the items picked up at the dealership.

(6) The dealer must document in the dealer's records the actions taken by the dealer to notify the purchaser or to deliver the registration plates, stickers and temporary registration.

(7) No dealer may, as a result of a dispute between the purchaser and dealer or for any other reason, withhold registration plates or stickers or temporary registration from the purchaser.

(8) Designated agents must only charge title, registration or plate transfer fees in the amount authorized by Oregon Revised Statutes and Oregon Administrative Rule when collecting such fees on behalf of DMV.

(9) A dealer may not prepare, submit, or prepare and submit an application and collect fees for the transfer of plates under subsection (4)(f) of this rule if the dealer determines that the plates that the purchaser wants to transfer are not from a current issue of plates, are not customized plates described under ORS 805.240 or are so old, damaged, mutilated or otherwise rendered illegible as to be not useful for purposes of identification.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.031, 803.530, 803.600, 803.625, 821.060 & 821.080

Stats. Implemented: ORS 802.031, 803.565, 803.600, 803.602, 803.645, 821.060, 821.080, 822.005 & 822.080

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 2-1985, f. & ef. 1-30-85; MV 20-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0007; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 5-1998(Temp), f. & cert. ef. 4-30-98 thru 10-26-98; DMV 13-1998, f. & cert. ef. 10-15-98; DMV 7-2000, f. & cert. ef. 8-10-00; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0050

Preparation and Submission of DMV Documents and Fees

(1) A dealer who elects to submit DMV documents and fees necessary to title or register a vehicle, must submit them to DMV within 30 calendar days of the transfer of interest in the vehicle. This includes all fees and documents required to obtain title and, if applicable, registration on behalf of the purchaser.

(2) If a dealer does not elect to submit the DMV documents and fees necessary to title or register a vehicle, but instead allows the purchaser to submit the documents and fees, the dealer must within 25 calendar days of the date of transfer furnish to the new owner the title or other acceptable ownership documents. This includes all the documents needed to apply for title to the vehicle.

(3) Snowmobile dealers who sell snowmobiles that are subject to title and registration requirements must collect fees and submit to DMV title and registration applications on behalf of the purchaser. Class I ATV dealers who sell ATVs that are subject to title and registration requirements must collect fees and submit title and registration applications to DMV on behalf of the purchaser. If a snowmobile or Class I ATV being sold by a dealer is exempt from Oregon title and registration, section (2) of this rule applies.

(4) A dealer who does not comply with sections (1) or (2) of this rule must provide written notice of delay to all owners and parties of interest within 25 business days of the date of transfer of title or interest. The notice of delay must contain:

- (a) The reason for the delay;
- (b) The anticipated extent of the delay; and

(c) A statement of the rights and remedies available to the purchaser if the delay becomes unreasonably extended. DMV will consider "unreasonably extended" to mean 45 calendar days from the date of sale. The statement must inform the purchaser of his or her right to file complaint against the dealer with DMV if the delay goes beyond 45 days from date of purchase.

(5) A dealer must maintain records that show compliance with the requirements of this rule. If a dealer does not comply with the requirements of sections (1) or (2) of this rule, the dealer's records must contain sufficient documentation to establish that the dealer made a good faith effort to comply and that the dealer's inability to comply is due to circumstances beyond the dealer's control.

(6) A dealer must refund any collected fee that exceeds the appropriate fee within five (5) calendar days of discovery.

Stat. Auth.: ORS 184.616, 802.031, 821.060, 802.010, 821.080, 822.035 & 822.042

Stats. Implemented: ORS 821.060, 821.080, 822.035 & 822.042

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 20-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0008; MV 39-1989, f. & cert. ef. 10-3-89; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 1-1997, f. & cert. ef. 1-17-97; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0055

Dealer Title and Registration Document Preparation Service Fee; Inspection

(1) In accordance with ORS 802.033 and this rule, a vehicle dealer who elects to prepare DMV documents necessary to issue or transfer vehicle title and registration on behalf of a buyer or lessee, may charge the buyer or lessee a service fee not to exceed:

- (a) \$75, if the vehicle dealer uses an integrator; or
- (b) \$50, if the vehicle dealer does not use an integrator.

(2) DMV may inspect dealer records for compliance with the fee limitations described in section (1) of this rule. DMV may refer information related to non-compliance with the requirements of ORS 802.033 and this rule to the Department of Justice, or any other enforcement agency

(3) Dealers must implement procedures to ensure that the fees described by this rule do not exceed \$50 and \$75, respectively, as set forth in section (1) of this rule. Fee amounts that exceed the authorized limit must be promptly refunded to the consumer.

Stat. Auth.: ORS 184.616, 814.619, 802.010, 822.009, 822.035 & 822.045

Stats. Implemented: ORS 822.009, 822.030, 822.035 & 822.045

Hist.: DMV 22-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DMV 26-2001 f. 12-14-01, cert. ef. 1-1-02; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0110

Dealer Offenses Subject to Civil Penalty or Sanction

In addition to any other penalties provided by law, a dealer will be subject to the civil penalties or sanctions in OAR 735-150-0120 to 0140 if the dealer:

(1) Allows or assists a person who is not an employee of the dealer to imply or represent an affiliation with the vehicle dealership in order to engage in any activity pursuant to ORS 822.005.

(2) Fails to submit all taxes or fees due this state, another state or a political subdivision in connection with the sale or transfer of a vehicle.

(3) Signs a name or allows any other person to sign a name of the owner, security interest holder, or lessor on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title without first obtaining a properly signed Power of Attorney. This section does not apply to a dealer who as an owner, security interest holder or lessor signs their own name on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title.

(4) Purchases, sells, disposes of or has in the dealer's possession, any vehicle that the dealer knows or with reasonable diligence should have known has been stolen or appropriated without the consent of the owner.

(5) Fails to comply with state or federal laws, rules or regulations pertaining to the construction or safety of motor homes, trailers or campers.

(6) Buys, sells, receives, disposes of, conceals or has in the dealer's possession any vehicle or component from which an identification number has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle.

(7) Violates any provision of state or federal law, rule or regulation concerning odometer tampering, repair, readings or notices.

(8) Prints or produces or causes to be printed or produced any certificate of title or certificate of registration without authority, or holds or uses any such certificate or assignment knowing that it has been printed or purchased without authority.

(9) Commits any offense specified in ORS 822.045.

(10) Acts as a vehicle dealer anytime between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance.

(11) Issues a temporary registration permit to a person not domiciled in Oregon or who is otherwise not subject to or eligible for Oregon registration.

(12) Fails to notify DMV on a form or in a format approved by DMV within seven (7) calendar days of receipt of a vehicle in inventory, that a vehicle has been transferred to the dealer.

(13) Fails to immediately remove registration plates from vehicles registered in other jurisdictions that are in the dealer's inventory. The dealer may retain the plates until the vehicle is sold.

(14) Fails to destroy registration plates removed from vehicles registered in other jurisdictions at the time of sale if the vehicle is to be titled in Oregon or in a jurisdiction other than that in which the vehicle was

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previously registered. If the vehicle will be re-registered in the former jurisdiction, the plates may be placed back on the vehicle following the sale.

(15) Completes or allows an employee to complete a DMV Vehicle Identification Number (VIN) Inspection form without physically inspecting the vehicle for its vehicle identification number.

(16) Sells a vehicle of a type not authorized by the dealer's certificate.

(17) Fails to comply with any provision of ORS 822.060 through 822.065 concerning consignment sales.

(18) Fails to comply with any provision of ORS 822.040(4) or OAR 735-150-0033 concerning the display of a vehicle at a location other than the dealer's place of business for the purpose of advertising.

(19) Provides brokerage services and fails:

(a) To provide the written disclosure described in ORS 822.047(2);

(b) To provide the written statement described in ORS 822.047(3); or

(c) To comply with the requirements for broker fees described in ORS 822.047(4).

(20) Makes a false statement of material fact in:

(a) An application for a dealer certificate or attachments thereof;

(b) Any investigation by DMV or law enforcement; or

(c) Any DMV document.

(21) Commits a felony by violating ORS 822.605.

(22) Fails to maintain records described in OAR 735-150-0050(5) or fails to make those records available to DMV, law enforcement personnel or investigators of the Oregon Department of Justice upon their request.

(23) Fails to comply with the requirements of the Oregon Vehicle Code with reference to notices or reports of the transfer of vehicles or campers.

(24) Allows or permits the unlawful use of any certificate or registration plate.

(25) Falsely certifies under ORS 822.033 that the dealer is exempt from filing a certificate of insurance as required by ORS 822.020 or 822.040.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.370, 803.600, 803.625, 821.060, 821.080 & 822.035

Stats. Implemented: ORS 822.005 - 822.080

Hist.: MV 3-1980, f. 2-15-80, ef. 4-1-80; Suspended by MV 5-1980(Temp), f. & ef. 4-2-80; MV 4-1981, f. 4-1-81, ef. 4-10-81; MV 7-1982, f. & ef. 3-3-82; MV 7-1987, f. & ef. 7-13-87; MV 1-1988, f. & cert. ef. 1-5-88; Administrative Renumbering 3-1988, Renumbered from 735-071-0003; MV 39-1989, f. & cert. ef. 10-3-89; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0120

Sanctions

(1) DMV may impose sanctions when it determines that a dealer has violated any provision of the Oregon Vehicle Code or rules adopted by DMV relating to:

(a) The operation of a vehicle dealership;

(b) Providing brokerage services; or

(c) Vehicle title and registration.

(2) Sanctions imposed may be against any or all of the following:

(a) A vehicle dealer's certificate;

(b) A dealer's status as DMV's agent; or

(c) An owner, partner, corporate officer or other principal of the dealership.

(3) Factors DMV may consider in determining the sanctions to impose include:

(a) The severity of a violation or its impact on the public;

(b) The number of similar or related violations;

(c) Whether a violation was willful or intentional;

(d) The history of all sanctions, civil penalties and oral or written warnings issued or imposed by DMV against the dealer or principals of the dealership.

(4) If DMV determines that a sanction is warranted, the type of sanction imposed may include one or more of the following:

(a) Probation under conditions set by DMV pertaining to the dealer's authority to act as an agent of DMV for up to one (1) year;

(b) Suspension of the dealer's authority to act as an agent of DMV for up to one (1) year;

(c) Permanent revocation of the dealer's authority to act as an agent of DMV;

(d) Probation under conditions set by DMV, for up to three (3) years;

(e) Suspension of the dealer's vehicle dealer certificate and the right to apply for a certificate for up to three (3) years including the right to renew the certificate until the period of suspension has been served;

(f) Permanent revocation of the dealer's vehicle dealer certificate;

(g) Cancellation of the dealer's vehicle dealer certificate;

(h) Suspension of the right of a principal of a dealership to apply for a vehicle dealer certificate for a different vehicle-related business or in a different business name for up to three (3) years;

(i) Permanent revocation of the right of a principal of a dealership to apply for a vehicle dealer certificate for a different vehicle-related business or in a different business name;

(j) Immediate suspension as provided in ORS 183.430(2).

(5) A dealer or principal whose vehicle dealer certificate or privileges have been placed on probation, suspended, canceled or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(6) Except as provided for in sections (7) and (8) of this rule, a dealer's request for a hearing must be submitted in writing to, and received by DMV within 20 days of the date of the notice of penalty. A hearing request received in a timely manner will result in a withdrawal of the penalty, pending the outcome of the hearing.

(7) In the instance of an immediate suspension as provided by, ORS 183.430(2) a dealer's request for a hearing must be submitted in writing to, and received by DMV within 90 days of the date of notice of suspension. A hearing request received in a timely manner will not result in a withdrawal of the suspension, pending the outcome of the hearing.

(8) In the instance of cancellation as provided by ORS 822.050(2) or (3) for failure to satisfy the bond or insurance requirements established by ORS 822.030 and 822.033, a dealer's request for a hearing must be submitted in writing to, and received by DMV within 90 days of the date of the notice of cancellation. A hearing request received in a timely manner will not result in a withdrawal of cancellation, pending the outcome of the hearing.

(9) When a timely request for a hearing is not received, the dealer will have defaulted, waived the right to a hearing and DMV's file will then constitute the record of the case.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.430, 184.616, 184.619, 802.010, 802.030, 802.370, 803.600, 803.625, 821.060, 821.080 & 822.005 - 822.080

Stats. Implemented: ORS 822.050

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 7-1987, f. & ef. 7-13-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0013; MV 8-1991, f. & cert. ef. 7-19-91; MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0130

Civil Penalty Consideration; Certified Vehicle Dealers

(1) A dealer, who violates any provision of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers, the operation of a vehicle dealership, providing brokerage services or vehicle title and registration, may incur, in addition to any other penalty or sanction provided by law, a civil penalty in an amount of not more than \$1,000 for each violation.

(2) DMV will assess a penalty amount determined by DMV to be appropriate for the particular violation. In determining an appropriate penalty amount, DMV may use the schedule set forth in OAR 735-150-0140 as a guideline and may consider the following:

(a) The severity of the violation or its impact on the public;

(b) The number of similar or related violations;

(c) Whether a violation was willful or intentional;

(d) The prior history of all civil penalties and sanctions imposed by DMV against the dealer or principals of the dealership;

(e) The number of violations compared to the volume of transactions at the dealership; or

(f) Other circumstances determined by DMV to be applicable to the particular violation.

(3) Upon review of the criteria listed in section (2) of this rule, and prior to the issuance of a final order, DMV may reassess a civil penalty amount and agree to a civil penalty amount other than that assessed in the Notice of Imposition of Civil Penalty. After review of the criteria listed in section (2) of this rule DMV may:

(a) Cancel, refuse to renew, or refuse to issue a certificate to any person who fails to pay a civil penalty assessed by DMV; or

(b) Waive the imposition of a civil penalty, or modify the amount, and request that a dealer attend specialized training, as determined by DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 183.430, 822.009, 822.045 & 822.050

Hist.: MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 8-2000, f. & cert. ef. 8-10-00; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

735-150-0140

Schedule of Civil Penalties for Certified Dealers

DMV adopts the following civil penalty schedule as a guide to the imposition of civil penalties pursuant to ORS 822.009. While this schedule is the primary source used to determine the amount of the civil penalty, a

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civil penalty assessed against a certified dealer may be modified in accordance with the provisions of OAR 735-150-0130. As used in this rule, an offense will be considered a second or subsequent offense if a dealer was notified in writing within the three (3) previous years of the occurrence of the same offense:

- (1) Failure to comply with any provision of OAR 735-150-0030(1) through (3), concerning dealer location regulations:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (2) Failure to comply with the provisions of OAR 735-150-0030(4) concerning dealer location regulations:
 - (a) For the first violation: \$500;
 - (b) For the second and subsequent violation(s): \$1,000.
- (3) Failure to comply with OAR 735-150-0040(5), (6) or (7), concerning the delivery of registration items:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (4) Failure to comply with any provision of OAR 735-150-0050, concerning acceptance and submission of title or registration application fees:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (5) Failure to comply with any provision of OAR 735-150-0060, concerning issuance of temporary registration permits:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$50;
 - (c) For the third violation: \$100;
 - (d) For the fourth and subsequent violation(s): \$250.
- (6) Failure to comply with any provision of OAR 735-150-0070, concerning trip permits issued by dealers:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$50;
 - (c) For the third violation: \$100;
 - (d) For the fourth and subsequent violation(s): \$250.
- (7) Failure to comply with any provision of OAR 735-150-0080, concerning requirements for issuing light vehicle or recreational vehicle trip permits:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$50;
 - (c) For the third violation: \$100;
 - (d) For the fourth and subsequent violation(s): \$250.
- (8) Failure to comply with OAR 735-150-0110(1), prohibiting a dealer from allowing a person not employed by the dealership to engage in dealer activity:
 - (a) For the first violation: \$250;
 - (b) For the second violation: \$500;
 - (c) For the third and subsequent violation(s): \$1,000.
- (9) Failure to comply with OAR 735-150-0110(2), concerning failing to submit all taxes and fees:
 - (a) For the first violation: \$250;
 - (b) For the second violation: \$500;
 - (c) For the third and subsequent violation(s): \$1,000.
- (10) Failure to comply with OAR 735-150-0110(3), concerning a dealer who signs a name or allows any other person to sign a name of an owner, security interest holder or lessor on title or transfer documents without a Power of Attorney:
 - (a) For the first violation: \$500;
 - (b) For the second and subsequent violation(s): \$1,000.
- (11) Failure to comply with OAR 735-150-0110(4), concerning dealing in stolen vehicles. For the first and subsequent violation(s): \$1,000.
- (12) Failure to comply with OAR 735-150-0110(6), concerning altered vehicle identification numbers. For the first and subsequent violation(s): \$1,000.
- (13) Failure to comply with OAR 735-150-0110(7), concerning odometers, except violations of ORS 815.410, 815.420 and 815.430:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (14) Violation of ORS 815.410, 815.420 and 815.430, concerning odometer tampering and notices: For the first and subsequent violation(s): \$1,000.

(15) Failure to comply with OAR 735-150-0110(8), concerning fraudulent title or registration documents. For the first and subsequent violation(s): \$1,000.

(16) Except as otherwise provided in OAR 735-150-0140, the following apply for any violation of ORS 822.045, including the failure to comply with OAR 735-150-0110(10), concerning acting as a vehicle dealer any time between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(17) \$1,000 civil penalty for the first and subsequent violation(s) of ORS 822.045(1)(d), (e) or (k) or OAR 735-150-0039.

(18) Failure to comply with OAR 735-150-0110(11), concerning issuance of temporary registration permits to persons not eligible:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(19) Failure to comply with OAR 735-150-0110(12), concerning failure to notify DMV of a vehicle transferred to the dealer:

- (a) For the first violation: warning;
- (b) For the second violation: \$50;
- (c) For the third violation: \$100;
- (d) For the fourth violation: \$250;
- (e) For the fifth and subsequent violation(s): \$500.

(20) Failure to comply with OAR 735-150-0110(13), concerning failure to remove foreign registration plates:

- (a) For the first violation: warning;
- (b) For the second violation: \$50;
- (c) For the third violation: \$100;
- (d) For the fourth and subsequent violation(s): \$250.

(21) Failure to comply with OAR 735-150-0110(14), concerning failure to destroy foreign registration plates:

- (a) For the first violation: warning;
- (b) For the second violation: \$50;
- (c) For the third violation: \$100;
- (d) For the fourth and subsequent violation(s): \$250.

(22) Failure to comply with OAR 735-150-0110(15), concerning the physical inspection of vehicle identification numbers:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(23) Failure to comply with OAR 735-150-0110(16), concerning sale of vehicles of a type not allowed:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(24) Failure to comply with ORS 822.060(1)(a), (b), (c), (e), (h) or (i), concerning consignment sales:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(25) Violations of ORS 822.060(1)(d), (f) or (g) or 822.065, concerning consignment sales:

- (a) For the first violation: \$500;
- (b) For the second and subsequent violation(s): \$1,000.

(26) Failure to comply with OAR 735-150-0110(18) concerning making a false statement of material fact:

- (a) For the first violation: \$500;
- (b) For the second and subsequent violation(s): \$1,000.

(27) Any violation of the Oregon Vehicle Code or OAR chapter 735 not otherwise classified in this rule:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(28) Violations of OAR 735-150-0035 concerning dealer records:

- (a) For the first violation: warning;
- (b) For the second violation: \$500;
- (c) For the third and subsequent violation(s): \$1,000.

(29) Violations of OAR 735-150-0045 and, ORS 822.082 through 822.084 concerning special rules and statutory provisions for RV dealers:

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- (a) For a certified dealer or person acting as a show organizer that conducts a show without a license:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (b) For failing to display a show license at a show:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (c) For a certified dealer or person acting as a show organizer that fails to include a dealer in a show license application:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (d) For selling a new RV without maintaining a service facility:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (e) For selling a new RV while maintaining a service facility that is not primarily engaged in the service and repair of RVs:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (f) For failing to prominently display the location of the dealer's service facility at a sales facility or RV show:
- (A) For the first violation: Warning;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (g) For subcontracting a service facility rather than directing the service operation:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (h) For a certified dealer or person acting as a show organizer that conducts a show beyond the scope of the show license. For example, for additional days or hours:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (i) For submitting an application that contains a false statement or omission of material fact:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (j) Except as otherwise provided in OAR 735-150-0140, the following apply for any violation of OAR 735-150-0045 and ORS 822.082 to 822.084:
- (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
- (30) Violation of OAR 735-150-0055 concerning charging document processing fees for submitting titles and registrations to DMV:
- (a) For the first violation: \$250;
 - (b) For the second violation: \$500;
 - (c) For the third and subsequent violation(s): \$1000.
- (31) Violation of OAR 735-150-0037 concerning records; satisfying prior interest; providing clear title:
- (a) For the first violation: Warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1000.
- (32) Violation of OAR 735-150-0110(22), concerning the unlawful use of any certificate or registration plate:
- (a) For the first violation: \$100;
 - (b) For the second violation: \$500;
 - (c) For the third violation: \$750;
 - (d) For the fourth and subsequent violation(s): \$1000.
- (33) Failure to comply with any provision of ORS 822.047 or OAR 735-150-0110(19), concerning the requirements for providing brokerage services:
- (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (34) Violations of OAR 735-150-0033 and, ORS 822.040(4) concerning the display of a vehicle at a location other than the dealers place of business for the purpose of advertising:
- (a) For the first violation: Warning;

- (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1000.
- Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.009 & 822.035
Stats. Implemented: ORS 822.009, 822.035 & 822.045
Hist.: MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 12-1998(Temp), f. & cert. ef. 9-14-98; DMV 12-1998(Temp), f. & cert. ef. 9-14-98 thru 3-12-99; DMV 2-1999, f. & cert. ef. 2-19-99; DMV 8-2000, f. & cert. ef. 8-10-00; DMV 10-2001, f. & cert. ef. 6-14-01; DMV 22-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DMV 26-2001 f. 12-14-01, cert. ef. 1-1-02; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06

Adm. Order No.: DMV 25-2005
Filed with Sec. of State: 12-14-2005
Certified to be Effective: 1-1-06
Notice Publication Date: 11-1-05
Rules Adopted: 735-160-0003

Subject: OAR Chapter 735, Division 160 rules outline the requirements and qualifications for commercial driver training school operators and driver training instructors and the business requirements for commercial driver training schools. Certain entities and persons are exempt from the requirements to hold a driver training school certificate or a driver training instructor certificate. Chapter 155, Oregon Laws 2005 (SB 178) amends ORS 822.500 and 822.525 and adds an exemption for persons that provide limited education or training for a specialized purpose. The Department of Transportation is required to determine by rule who qualifies for this exemption. This proposed rule sets forth the purpose of the Chapter 735, Division 160 rules, the persons or entities exempt from the certification requirement, and describes those persons who are exempt because they provide limited education or training for a specialized purpose.
Rules Coordinator: Brenda Trump—(503) 945-5278

735-160-0003

Purpose and Exemptions

(1) The purpose of chapter 735, division 160 rules is to outline the requirements for a Commercial Driver Training School Certificate pursuant to ORS 822.515 and a Driver Training Instructor Certificate pursuant to ORS 822.530.

(2) Except as provided in ORS 822.500(2) and section (4) of this rule a person must obtain a Commercial Driver Training School Certificate to operate, for consideration, a business or non-profit enterprise engaged in educating and training persons in the driving of motor vehicles, either practically or theoretically or both.

(3) Except as provided in ORS 822.525(2) and section (4) of this rule, a person must obtain a Driver Training Instructor Certificate if, for compensation, the person teaches, conducts classes, gives demonstrations to or supervises practice in the driving of motor vehicles. This section applies to persons acting on their own behalf, or acting as an operator of or on behalf of, any business, nonprofit enterprise, or school engaged in educating and training persons in the driving of motor vehicles, either practically or theoretically or both.

(4) The following persons are exempt from the requirement to obtain either a Commercial Driver Training School Certificate or a Driver Training Instructor Certificate.

(a) The operator of, or a person acting on behalf of, a business or non-profit enterprise engaged in educating and training persons for a profession;

(b) The operator of, or person acting on behalf of, an accredited secondary school, college or university; or

(c) A person that provides limited driver education or training for a specialized purpose.

(5) For purposes of ORS 822.500, 822.525 and this rule, the following are persons who provide limited driver education or training for a specialized purpose:

(a) A rehabilitation specialist engaged in evaluating, assessing or retraining drivers to compensate for a physical or mental condition or impairment.

(b) A provider of a DMV approved accident prevention course offered primarily for insurance discount purposes pursuant to ORS 742.490.

(c) A provider who teaches specialized driving skills to drivers of emergency vehicles as defined by ORS 801.260.

(d) An operator or employee of a business, non-profit enterprise or school who provides defensive driving training to employees of the business, nonprofit enterprise or school who hold valid driver licenses.

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(e) A federal, state, county or city agency that provides driver safety training to members of the public who hold valid driver licenses, including, but not limited to teaching people how to drive in adverse weather conditions, a safe-driving program or a motorcycle safety program.

(f) A provider of off-the-highway instruction in the operation of off-road racing vehicles to persons holding valid driver licenses.

(g) A provider of off-the-highway instruction in the operation of off-road all terrain vehicles (ATVs).

(h) Providers of training conducted exclusively over the internet, if no classroom or behind-the-wheel training is conducted at any physical location in Oregon.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.500 & 822.525
Stats. Implemented: ORS 822.500, 822.515, 822.525 & 822.530
Hist.: DMV 25-2005, f. 12-14-05 cert. ef. 1-1-06

Adm. Order No.: DMV 26-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Amended: 735-062-0190, 735-070-0020

Rules Repealed: 735-062-0190(T), 735-070-0020(T)

Subject: OAR 735-062-0190 was adopted to comply with federal law, specifically 49 USC 5103a (Section 1012 of the USA Patriot Act of 2003) and the Federal Motor Carrier Safety Administration (FMCSA) and the Transportation Security Administration (TSA) regulations implementing this law. The federal law specifies that a person may not hold a hazardous materials endorsement on a commercial driver license (CDL) unless the driver obtains a security threat assessment from TSA. DMV implemented the requirements of the federal law by administrative rule on January 30, 2005. The 2005 Legislature clarified the state requirements by passage of Section 33, Chapter 649, Oregon Laws 2005 (HB 2107), which required DMV to refuse to issue or renew a hazardous materials endorsement or to cancel a CDL if the driver has not completed and passed a TSA security threat assessment. The new Oregon law specifies that a person is entitled to administrative review under ORS 809.440 when the department does not issue or renew a commercial driver license with a hazardous materials endorsement or cancels a commercial driver license with a hazardous materials endorsement. The amendments to OAR 735-062-0190 and 735-070-0020 align these rules with statute and authorize DMV to provide an administrative review rather than a contested case hearing. This law change became effective July 27, 2005. The rules changes were adopted as temporary rules effective August 18, 2005. These amendments replace the temporary rules.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0190

Requirements for Issuance and Retention of a Hazardous Materials Endorsement

(1) To obtain, retain or renew a hazardous materials endorsement on an Oregon commercial driver license (CDL), a person must be qualified. To qualify for a hazardous materials endorsement a person must:

(a) Qualify for commercial driving privileges and be issued or have a valid Oregon CDL;

(b) Pass a hazardous materials endorsement knowledge test for an original endorsement or a renewal;

(c) Complete and pass a security threat assessment (security check) from the Transportation Security Administration (TSA) in accordance with 49 CFR Part 1572, including receipt by DMV of a notice from TSA which shows the person does not pose a security threat. A person must pass a TSA security check at the following times:

(A) Before DMV will issue an original hazardous materials endorsement;

(B) Four years prior to the date the CDL with a hazardous materials endorsement expires. Four years and six months prior to the expiration of a hazmat endorsement, DMV will notify the person that he or she must complete and pass a TSA security check within six months in order to retain commercial driving privileges with a hazardous materials endorsement;

(C) At the time of renewal of the CDL with a hazardous materials endorsement. Six months prior to expiration, DMV will notify the person that he or she must complete and pass a TSA security threat assessment before expiration of the CDL in order to retain commercial driving privileges with a hazardous materials endorsement; and

(D) Any other time required by DMV.

(d) Pay all required fees, which include, but may not be limited to, any applicable issuance fee and a hazardous materials knowledge test fee.

(2) To complete a TSA security check, a person must complete a security check application, submit fingerprints, provide proof of citizenship or lawful immigration status, and payment of fees as specified by TSA. To pass a TSA security check, DMV must receive a notice from TSA which shows the person does not pose a security threat.

(3) While waiting to receive the results of the security check from TSA, DMV may issue a CDL without a hazardous materials endorsement to a person required to obtain a TSA security check. A person issued a CDL without a hazardous materials endorsement is not authorized to transport hazardous materials. Upon receipt of a notice from TSA showing the person poses no security threat, DMV will issue, at no charge, a replacement CDL with a hazardous materials endorsement when the person surrenders the CDL that was issued pending the security check.

(4) A person is no longer qualified for a hazardous materials endorsement if:

(a) DMV receives a notice of threat assessment from TSA requiring immediate cancellation of the hazardous materials endorsement; or

(b) DMV receives notice from TSA indicating the person did not pass the security threat assessment.

(5) If DMV determines a person is no longer qualified for a hazardous materials endorsement, DMV must immediately cancel the person's hazardous materials endorsement. Upon cancellation of the hazardous materials endorsement, the person must:

(a) Immediately surrender to DMV the CDL showing the hazardous materials endorsement; and

(b) Pay the required fee for issuance of a replacement driver license. DMV will issue a commercial driver license without a hazardous materials endorsement if the person qualifies for commercial driving privileges.

(6) A person is no longer qualified for commercial driving privileges with a hazardous materials endorsement if when required, the person fails to complete and pass a TSA security check as described in section (2) of this rule. DMV will cancel the person's commercial driving privileges as set forth in OAR 735-070-0020.

(7) If the person does not surrender his or her CDL showing the hazardous materials endorsement within 60 days of the date of the notice of immediate or final cancellation, DMV will cancel the person's commercial driver license pursuant to ORS 809.310(2).

(8) The person may request an administrative review on the immediate cancellation of his or her hazardous materials endorsement. The issues for the administrative review are limited to whether:

(a) When required, the person completed and passed a TSA security check as described in section (3) of this rule;

(b) DMV received a notice from TSA showing the person does not qualify for a hazardous materials endorsement; and

(c) Whether the person is the same person named on the notice.

(9) When the results of the TSA security check are received, DMV will update the person's driving record to indicate the results of the security check and whether a hazardous materials endorsement was issued or denied. DMV will also notify the Commercial Drivers License Information System (CDLIS) of the results of the security check.

(10) An applicant for an Oregon CDL with a hazardous materials endorsement who presents a valid CDL with a hazardous materials endorsement issued by another state must still qualify for an original hazardous materials endorsement as set forth in this rule, including but not limited to a TSA security check.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 2005HB 2107, Sec. 33

Stats. Implemented: ORS 807.170, 807.350, 807.370, 2005 HB 2107, Sec. 33 & 49 USC § 5103a

Hist.: DMV 3-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 13-2005, f. 5-19-05, cert. ef. 5-31-05; DMV 18-2005(Temp), f. & cert. ef. 8-18-05 thru 2-13-06; DMV 26-2005, f. & cert. ef. 12-14-05

735-070-0020

Hearing Following a Cancellation

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will grant a contested case hearing for cancellation actions in accordance with sections (5) and (6) of this rule.

(2) A request for a hearing on the cancellation of a driver permit, driver license or identification card must comply with the requirements established in OAR 735-070-0110.

(3) When DMV receives a timely request for a hearing on the cancellation of a driver permit, driver license, or identification card, the cancellation will not go into effect pending the outcome of the hearing, except in the following situations:

(a) When DMV determines that there is a serious danger to the public health, safety, or welfare;

(b) When the cancellation is for withdrawal of parent's consent; or

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(c) When the cancellation has gone into effect.
(4) For the purposes of this rule, a serious danger to the public health, safety or welfare includes, but is not limited to, the following:

(a) A false or fraudulent driver permit, driver license or identification card has been issued and it could be used to facilitate:

- (A) A minor's acquisition of alcoholic beverages;
- (B) The cashing of forged checks;
- (C) The acquisition of property under false pretenses; or
- (D) Any other unlawful activity.

(b) A driver permit or driver license is issued to a person whose driving privileges are suspended or revoked at the time the driver permit or driver license is issued. This applies to a situation where DMV would not have issued the driver permit or driver license had it known at the time that the person's driving privileges were suspended or revoked.

(c) A person determined by DMV to be an endangerment to persons or property and denied further testing through cancellation of driving privileges under ORS 807.350 and OAR 735-062-0073(5).

(5) The Office of Administrative Hearings will conduct hearings held on identification card cancellations under ORS 807.400 as contested cases in accordance with ORS 183.310 to 183.550.

(6) The Office of Administrative Hearings will conduct hearings held on driver permit or driver license cancellations under ORS 809.310 not based on a conviction as contested cases in accordance with ORS 183.310 to 183.550.

Stat. Auth.: ORS 183.415, 184.616, 814.619, 802.010, 809.440 & 2005 HB 2107, Sec. 33
Stats. Implemented: ORS 809.310 & 2005 HB 2107, Sec. 33
Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0067; MV 9-1989, f. & cert. ef. 2-1-89; MV 5-1992, f. & cert. ef. 4-16-92; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 3-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 18-2005(Temp), f. & cert. ef. 8-18-05 thru 2-13-06; DMV 26-2005, f. & cert. ef. 12-14-05

Adm. Order No.: DMV 27-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Amended: 735-062-0000, 735-070-0010

Subject: OAR 735-062-0000 sets forth certain requirements for issuance of a driver license or driver permit. Chapter 143, Oregon Laws 2005 (SB 76) amends ORS 807.060 to clarify that a "legal" guardian may sign an application for driving privileges for a minor and removes the authority of a minor's employer to sign the application. OAR 735-062-0000 and 735-070-0010 are amended to implement these statutory amendments, which are effective January 1, 2006.

Section 1, Chapter 140, Oregon Laws 2005 (SB 70), effective January 1, 2006, amends ORS 807.060 to make the language relating to mental or physical conditions or impairments, consistent with the language in ORS 807.710, the mandatory reporting statute. DMV will implement this statutory change by asking three questions related to the person's mental or physical condition or impairments on the application for driving privileges or a replacement license or permit. OAR 735-062-0000 is amended to specify that a person who answers yes to one of these questions is not eligible for driving privileges unless the person establishes eligibility by passing tests or obtaining a Certificate of Eligibility from the State Health Officer as required by DMV.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0000

Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040, and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

- (A) Mother means the biological or adoptive mother of the applicant;
- (B) Father means the biological or adoptive father of the applicant;

and

(C) Legal guardian means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Present to DMV documentary proof of the person's age and identity as described in OAR 735-062-0020;

(d) Present to DMV documentary proof of the person's residence address as described in OAR 735-062-0030;

(e) Present to DMV proof, as described in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(f) Surrender to DMV all driver permits and driver licenses in the person's possession that have been issued by:

- (A) Another state;
- (B) A Canadian province or territory; or
- (C) A U.S. territory.

(g) In addition to all requirements in subsections (a) through (f) of this section, a person who holds a commercial driver license from another jurisdiction must satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200.

(2) A person is not eligible for driving privileges under ORS 807.060(4) or (5) and DMV will not issue or renew driving privileges or replace a driver license or driver permit if on an application for driving privileges or a replacement license or permit a person:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?" and the person is unable to pass a DMV vision screening;

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?"

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(3) A person who is denied issuance or renewal of driving privileges or replacement of a driver license or driver permit under section (2) of this rule will be allowed to establish or reestablish eligibility by passing DMV examinations under ORS 807.070, by getting a certificate of eligibility from the State Health Officer under ORS 807.090 or both, as determined by DMV. The requirement may be waived if DMV determines the application was completed in error and the person is eligible for driving privileges.

(4) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(6) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(7) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

(8) A driver license of an applicant with a February 29th birth date expires:

- (a) On February 29th if the expiration year is a leap year; or
- (b) On March 1st if the expiration year is not a leap year.

Stat. Auth.: ORS 184.616, 184.619, 807.040, 807.050, 807.060, 807.120 & 809.310
Stats. Implemented: ORS 807.040, 807.060 & 807.066

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06

735-070-0010

Reinstatement Following Cancellation or Suspension Under ORS 807.220, 807.230, 807.350, 809.310 and 809.320

(1) DMV will reissue the driver permit, driver license or identification card canceled because the person is not entitled to a license, permit or identification card under ORS 809.310(1) to the person only after the person

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corrects the condition that caused the cancellation. For example, the person must prove he or she no longer has driving privileges withdrawn by another jurisdiction if the cancellation was based on a suspension or revocation of the person's driving privilege in another jurisdiction.

(2) DMV will reinstate the person's driving privileges or right to apply for privileges or an identification card or right to apply for a card when DMV suspends a person's driver permit, driver license or identification card for any of the reasons cited in ORS 809.310(3) when:

(a) One year has elapsed since the date the suspension became effective; and

(b) The person pays a reinstatement fee.

(3) When DMV cancels a person's driver permit or driver license for withdrawal of consent under ORS 809.320, DMV will reinstate driving privileges when the person:

(a) Pays a replacement driver permit or driver license fee or a renewal fee, if applicable; and

(b) Submits one of the following if the person is still under 18 years of age:

(A) An application for a driver permit or driver license that is signed by the person's mother, father or legal guardian;

(B) Court papers showing that the person is declared emancipated by the court; or

(C) Evidence that the person is married.

(4) When DMV cancels a person's driving privileges because the person is not qualified or does not meet the requirements under ORS 807.350, DMV will not grant driving privileges until the person meets the requirements and demonstrates qualification for a driver license under ORS 807.040, 807.060, 807.062, 807.065, 807.066 and 807.070.

(5) When a person's student or emergency driver permit is canceled, DMV will reissue a new driver permit or driver license only when the person meets the requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0000 to obtain a driver permit or driver license.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.220, 807.230, 807.400, 809.310 & 809.320

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0064; MV 14-1992, f. & cert. ef. 10-16-92; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06

Adm. Order No.: DMV 28-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Amended: 735-064-0220

Rules Repealed: 735-064-0220(T)

Subject: ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes. Amendments to this rule: update the code used by states to send information on out-of-state convictions; implement an amendment to ORS 815.240 enacted by the 2005 Legislature; and incorporate 2003 Legislative changes, now codified, into Section (2) of the rule.

Convictions received by Oregon drivers in another state or jurisdiction may be sent to DMV using an AAMVAnet Code Dictionary (ACD) code. AAMVA (American Association or Motor Vehicle Administrators) is making changes to the ACD codes effective October 1, 2005. These changes to the ACD codes are part of the implementation of the Motor Carrier Safety Improvement Act of 1999. Four Oregon convictions are added to align with new ACD code A41.

Chapter 572, Oregon Laws 2005 (HB 2811) amends ORS 815.240 and makes it unlawful to use any image display device, not just a television. DMV proposes to include the offense of unlawful use of image display device, but does not intend to remove the offense of unlawful use of vehicle television equipment, as either offense could appear on a person's driving record and could result in a suspension

under the driver improvement program or revocation as a habitual offender.

Offenses created by the 2003 legislature (previously in section (3)) have been incorporated into section (2) of the rule.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-064-0220

Traffic Offenses Used in Habitual Offender, Driver Improvement, CMV Serious Violations and Hardship/Probationary Driver Permit Programs

(1) A conviction for an offense listed in this rule counts toward:

(a) The Habitual Offender Program pursuant to ORS 809.600(2);

(b) The Provisional and Adult Driver Improvement Programs outlined in OAR Chapter 735, division 72;

(c) Motor vehicle traffic control violations connected to a fatal accident as defined in ORS 801.477(9) that can lead to a suspension of commercial motor vehicle driving privileges;

(d) Revocation of a probationary driver permit pursuant to ORS 807.270(7); and

(e) Revocation of a hardship permit pursuant to OAR 735-064-0100 and 735-064-0110.

(2) This section lists the offenses and the statutory citations for Oregon offenses used in the programs identified in section (1) of this rule: [Table not included. See ED. NOTE.]

(3) Offenses from other states may be posted to driver records using an AAMVAnet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS reference covering an equivalent offense(s) for Oregon: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 809.480 & 809.605

Stats. Implemented: ORS 807.240, 807.270, 809.480, 809.600(2) & 809.605

Hist.: MV 17-1986, f. & ef. 10-1-86; MV 33-1987, f. & ef. 11-2-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0180; MV 32-1989, f. & cert. ef. 10-3-89; MV 7-1990, f. & cert. ef. 5-16-90; MV 18-1991, f. 9-18-91, cert. ef. 9-29-91; MV 26-1991, f. & cert. ef. 11-18-91; DMV 8-1995, f. & cert. ef. 6-19-95; DMV 5-1997, f. & cert. ef. 2-20-97; DMV 8-1998, f. & cert. ef. 6-19-98; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 33-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 4-2004, f. & cert. ef. 2-23-04; DMV 21-2005(Temp), f. 9-19-05, cert. ef. 10-1-05 thru 3-29-06; DMV 28-2005, f. & cert. ef. 12-14-05

Adm. Order No.: DMV 29-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Adopted: 735-010-0215, 735-010-0240

Rules Amended: 735-010-0008, 735-010-0210

Subject: Oregon Laws 2005, Chapter 291, Section 1 (HB 3464) amends ORS 802.179(13)(b)(B) to specify that a disseminator may only provide personal information from motor vehicle records to a person authorized by DMV to receive the information. DMV has amended OAR 735-010-0008(10) to add the statutory requirement to the definition of disseminator. HB 3464 also amends ORS 802.181 to require resale or redisclosure of personal information only to a person authorized by DMV to receive it. DMV has adopted a new rule, OAR 735-010-0240, to describe how a person becomes authorized to receive personal information. DMV is also amending OAR 735-010-0210 to clarify what a business must provide to DMV to establish it is a legitimate business for purposes of ORS 802.179. The amendment also clarifies that the information may only be obtained by an owner or employee of the business and only used by the business for the purposes set forth in ORS 802.179(3). Finally, DMV has adopted OAR 735-010-0215 to specify the evidence necessary to establish that a person is a disseminator for purposes of ORS 802.179(13).

Rules Coordinator: Brenda Trump—(503) 945-5278

735-010-0008

Definitions

As used in Division 10 rules, the following definitions apply:

(1) "Bulk distribution" means the distribution of surveys, marketing materials and solicitations, regardless of the medium used for distribution, including but not limited to:

(a) Material distributed to a targeted group of people to tell them about the suitability or quality of a product or service;

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- (b) Market research which involves contacting individuals;
- (c) Nonprofit entities seeking donations of labor, products or money;

or

(d) Political material designed to encourage membership in a political organization, or to gain support for individuals seeking election to public office, or solicit money or labor for a political campaign or election.

(2) "Business entity" means a corporation, organization, firm, association, partnership, governmental agency, lawful commercial enterprise or other legal entity, other than an individual.

(3) "Business address" means the physical address of the place in which or from which a business entity operates.

(4) "Business name" is the name, including an abbreviation or acronym, by which a business is designated in official records and under which it conducts business.

(5) "Conducting business with DMV" includes any business with DMV that results in the creation of a customer record or change to an existing customer record.

(6) "County of use" means the county in which a vehicle is primarily used, when that county is:

(a) Other than the county of the owner's residence or business address; and

(b) Other than the county of the vehicle address provided to DMV.

(7) "Customer number" means the distinguishing number assigned by DMV to each individual or business entity for which a customer record has been created.

(8) "Customer record" means the computer record created by DMV at the time an individual or business entity first does business with DMV.

(9) "Descriptive address" means information sufficient to identify the location of a residence or business entity if there is no actual street or rural route address, or to explain where a person lives if the person has no fixed residence.

(10) "Disseminator," means a person whose primary business function is the sale or distribution of information, including personal information in response to an individual record inquiry from a person who is authorized by DMV to receive the information under ORS 802.179.

(11) "DMV" means the Oregon Department of Transportation, Driver and Motor Vehicle Services Division.

(12) "Employment address" means the address of the public agency employing a police officer or eligible public employee as provided in ORS 802.250.

(13) "Insurance support organization," as used in ORS 802.179(6), means a person who regularly engages in assembling or collecting information about a natural person for the primary purpose of providing the information to an insurer or insurance agent in connection with claims investigation activities, antifraud activities, underwriting or rating. "Insurance support organization" does not include an insurer, an insurance agent, a governmental institution, medical care institution or medical professional.

(14) "Legitimate business" means a lawful business enterprise operating in compliance with federal, state and local law.

(15) "Mailing address" means an address other than an actual residence or business address to which a person or business entity mail delivered, including a post office box or address of a service provider.

(16) "Motor vehicle record" means any record that pertains to a grant of driving privileges, an identification card, vehicle title or vehicle registration issued by DMV. "Motor vehicle record" does not mean a record pertaining to a manufactured structure.

(17) "Person" means an individual, an organization or an entity but does not include the State of Oregon or any agency thereof.

(18) "Personal information" means the following information that identifies an individual:

- (a) Driver license, driver permit or identification card number;
- (b) Name;
- (c) Address (excluding five-digit zip code); and
- (d) Telephone number.

(19) "Primary residence" means the state, jurisdiction or physical location where an individual lives, during any 12-month period, more than he or she lives elsewhere during that period.

(20) "Records list" means a list of driver or vehicle records compiled by selecting records that meet one or more general criteria, where the criteria is not specific to any one person or vehicle. Records lists would include such things as a list of vehicle records of a given manufacturer or a list of licensed drivers over the age of 65. A records list would not include records that were selected by a specific identifier, such as an individual's driver license number or a vehicle's registration plate number.

(21) "Registration address" means the vehicle address, if one is provided or is a vehicle address is not provided:

(a) The vehicle owner's residence address if the owner is an individual; or

(b) The vehicle owner's, business address if the owner is other than an individual. Some examples may include a business, school district, organization or church.

(22) "Residence address" means the actual address at which an individual resides more than he or she lives elsewhere during a 12-month period. If an individual resides an equal amount of time at two or more addresses, the individual shall determine which address is his or her residence address and use that as the residence address in conducting business with DMV. A residence address shall not be that of a service provider, except for purposes of titling or registering a vehicle owned by the service provider or obtaining an Oregon driver license, driver permit or identification card by the service provider.

(23) "Service Provider" means a business which facilitates the collection or delivery of mail, or businesses that provide vehicle registration services for another party. A mail service shall be considered to be a Service Provider.

(24) "True name" means the name an individual uses to conduct his or her business, such as the name used when filing tax forms, in social security records, or to obtain an insurance policy, bank account, mortgage or drivers license.

(25) "Vehicle address" means the residence or business address where the vehicle is primarily housed, or from where the vehicle is primarily dispatched when different than the actual residence or business address of the owner.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179, 802.183, 803.370 & 807.050
Stats. Implemented: ORS 802.175 - 802.270, 803.220, 803.370, 807.050, 807.420, 807.560 & 821.080
Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 6-1999, f. & cert. ef. 12-17-99; DMV 10-2000, f. & cert. ef. 9-21-00; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06

735-010-0210

Requests for Personal Information by a Legitimate Business

(1) In order for DMV to make a determination of whether a business is legitimate under ORS 802.179(3), the business must provide evidence to DMV's satisfaction which includes:

(a) One of the following:

(A) A current and valid business, professional, occupational or commercial license issued by a governmental body that regulates that type of business, profession, trade or commercial activity;

(B) A Certificate of Existence or Authorization issued by the Secretary of State under ORS 60.027, 62.065, 63.027, or 65.027;

(C) A current copy of the Articles of Incorporation or Articles of Organization, including proof that they have been filed with the Secretary of State, or if a foreign corporation or foreign limited liability company, proof that it has been authorized by the Secretary of State to transact business in Oregon or that it has been formed in accordance with the laws of the jurisdiction in which it is incorporated or organized;

(D) A current copy of the business Partnership Agreement;

(E) A copy of the business income tax form filed for the latest tax period for which filing was required;

(F) A certification from the Office of Minority, Women and Emerging Small Businesses or similar governmental organization; or

(b) At least two of the following:

(A) A business invoice issued by the business within the last three months showing the sale of a product or service the business provides;

(B) A current business card;

(C) A resume of work completed or products sold within the last three months, with names and phone numbers of customers who may be contacted for verification;

(D) A copy of a signed contract for work performed within the last six months;

(E) A copy of a current rental, lease or purchase agreement for the business premises, or proof of ownership of the business premises;

(F) A copy of a current rental or lease agreement for business equipment or a receipt or purchase agreement showing the purchase of business equipment. "Business equipment" means equipment necessary for the business to manufacture or provide a product or deliver a service and includes such things as a computer, photocopier, business vehicle, cash register, etc;

(G) A copy of a business related loan agreement;

(H) A copy of or reference to a current business advertisement, including but not limited to the yellow pages, newspaper, television or other media of general circulation. If from a reference DMV is unable to verify the advertisement, documentation of the advertisement may be required.

(2) Personal information obtained from DMV by a legitimate business may be used for the purposes specified in ORS 802.179(3).

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(3) Only an individual who is an employee or owner of the business may obtain personal information from DMV. No other business or individual may act as a third party to obtain personal information on behalf of a legitimate business.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179 & 802.183
Stats. Implemented: ORS 802.179
Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06

735-010-0215

Determination that a Person is a Disseminator

(1) In order for DMV to determine if a person is in the business of disseminating information, the person must provide the following:

(a) Sufficient evidence that the person is a legitimate business as set forth in OAR 735-010-0210(1);

(b) A description of the business;

(c) A description of the method used to ensure that personal information will be resold or redisclosed only to qualified persons or entities who are authorized by DMV to receive personal information;

(d) A copy of or reference to a current business advertisement, including but not limited to the yellow pages, newspaper, television, internet or other media of general circulation. If from a reference DMV is unable to verify the advertisement, documentation of the advertisement may be required; and

(e) Names and phone numbers of customers who may be contacted for verification.

(2) DMV may periodically require a disseminator to update the information described in section (1) of this rule and may use the information to monitor the disseminator's compliance with the requirements for the resale and redisclosure of personal information.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 192.440, 802.179 & 802.183
Stats. Implemented: ORS 802.179
Hist.: DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06

735-010-0240

Authorization by DMV to Resell or Redisclose Personal Information

(1) A person or government agency authorized under ORS 802.179 to receive personal information from motor vehicle records may only resell or redisclose personal information to a person or government agency authorized by DMV to receive the information. To be authorized by DMV, a person must provide evidence to DMV sufficient to establish that the person is qualified to obtain personal information under ORS 802.179.

(2) A government agency that uses personal information for a governmental purpose is authorized by DMV and does not need to establish that it is qualified to obtain personal information.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 192.440, 802.179 & 802.183
Stats. Implemented: ORS 802.179
Hist.: DMV 29-2005, f. 12-14-05, cert. ef. 1-1-06

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Adm. Order No.: DMV 30-2005(Temp)

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 1-1-06 thru 6-29-06

Notice Publication Date:

Rules Amended: 735-062-0130

Subject: Chapter 241, Oregon Laws 2005 (SB 74) amends ORS 807.160 and ORS 807.400 to require DMV to establish by rule the reasons DMV will issue a driver license, driver permit or identification card with a different distinguishing number from the one being replaced. The proposed amendments to OAR 735-062-0130 set forth the reasons DMV will issue a different distinguishing number which are: (1) fraudulent use of the person's current number and name; and (2) when a victim of abuse, stalking, or physical violence is taking steps to protect his or her identity. The proposed amendments also set forth the evidence necessary to establish the person qualifies for a different distinguishing number.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0130

Issuance of a Replacement Driver License, Driver Permit or Identification Card with a New Number

(1) For purposes of this rule:

(a) "Customer number" means the distinguishing number assigned to a driver license, driver permit or identification card;

(b) "Fraudulent use" means the use of another person's name and customer number for the purpose of misrepresenting a person's identity in order to commit the crime of identity theft, to receive financial gain, or to

avoid legal responsibility after committing an offense. Examples include but are not limited to:

(A) Fraudulent use of a person's name and customer number to open a bank account, order checks or cash a forged check;

(B) Fraudulent use of a person's name and customer number to open a credit card account; or

(C) Giving another person's name and customer number to a police officer who is enforcing the motor vehicle laws in order to avoid legal responsibility for a traffic offense, resulting in a conviction(s) being posted to the other person's driving record.

(2) Upon request, the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) will issue a person a replacement driver license, driver permit or identification card with a different customer number if the person provides evidence satisfactory to DMV to show:

(a) The fraudulent use of the person's name and customer number; or

(b) That the person is a victim of abuse, stalking, or physical violence and the person is taking steps to protect his or her identity including a legal name change.

(3) Evidence submitted to DMV of the fraudulent use of a name and customer number must show that both the name and the customer number have been used for a fraudulent purpose. The person must provide at least one of the following types of documents:

(a) A copy of a police report or letter from a police agency;

(b) A report or letter from a credit card company, credit reporting bureau or financial institution;

(c) A report or letter from the Oregon Department of Revenue or Internal Revenue Service;

(d) A document issued by a Court; or

(e) A letter from a District Attorney.

(4) A person who is the victim of abuse, stalking, or physical violence must provide a court judgment showing a legal name change and at least one of the following types of documents that show the person has been a victim of abuse, stalking, or physical violence:

(a) A copy of a police report or letter from a police agency;

(b) A document issued by a Court;

(c) A letter from a District Attorney;

(d) A letter or report from a state agency or a community crisis center for domestic violence or physical or sexual abuse; or

(e) A letter or report from a physician, physician assistant, nurse practitioner, psychologist, licensed clinical social worker or licensed professional counselor who provided treatment or counseling services to the person.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.160, 807.400

Stats. Implemented: ORS 807.160, 807.400

Hist.: MV 26-1989, f. & cert. ef. 10-3-89; DMV 30-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

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Adm. Order No.: DMV 31-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Amended: 735-060-0000, 735-060-0030, 735-060-0040, 735-060-0050, 735-060-0055, 735-060-0057, 735-060-0060, 735-060-0105, 735-060-0110, 735-060-0120, 735-060-0130, 735-062-0080, 735-062-0320, 735-064-0235, 735-070-0030, 735-070-0037, 735-070-0054

Rules Repealed: 735-070-0180

Subject: HB 2107, amends several statutes to bring Oregon into compliance with federal requirements related to the commercial driver licensing program. As such, it requires many administrative rule amendments, some which have nothing to do with commercial driver licenses, but are due to section changes within statutes. The rule amendments are described below.

The following rules in OAR Chapter 735, Division 60, which establish the Commercial Driver License (CDL) Third Party Testing Program, are amended:

735-060-0000 (1)(b) and (d) to add language for an endorsement related to a CDL and 735-060-0000 (1)(i) to correct the reference for the term "disqualification."

735-060-0030 (1) to add subsection (g) to require an applicant for a CDL Third Party Tester Certificate to submit a fee schedule to DMV that lists all testing services that will be offered to customers. This requirement enhances the ability of DMV to detect occurrences of fraudulent testing.

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735-060-0055 (1)(a) to add paragraph (E). Establishes the responsibility for Third Party Testers to notify DMV of changes to testing service fees to support the anti-fraud intent of OAR 735-060-0030 (1)(g).

735-060-0057 (1)(b) adds a requirement that the CDL Certificate of Test Completion specifies whether an exam was given in a school bus.

735-060-0060 to correct the rule subject. The rule actually addresses sanctions for both Third Party Testers and Examiners. Sections (6) and (7) to clarify that a hearing request must be received by DMV.

735-060-0105 (1) to add subsections (n) and (o) which prohibits a Third Party Examiner from conducting a test which has not been scheduled and requires submission of the examiner's test schedule to DMV at least 48 hours prior to the administration of a test and requires submission of the examiner's test schedule to DMV at least 48 hours prior to the administration of a test. The amendment also includes conditions that will require submission of updates to this schedule and exempts examiners who test only for the Oregon Department of Education or who test only employees of the Tester. These provisions provide DMV with an enhanced ability to conduct the covert or no-notice audits of examiners and examinations permitted by rule and crucial to effective oversight of the CDL Third Party Testing program.

735-060-0105 (3) to add subsection (i). Imposes a responsibility for Examiners to ensure, before testing, that each applicant has either: (1) a valid CDL Instruction Permit and a valid Oregon Driver License that was issued at least 21 days prior to testing or; (2) a valid Oregon CDL. The intent of this revision is to reduce the number of applicants who fraudulently claim residency in Oregon to quickly obtain a CDL and then return to their actual state of residency. Section (4) exempts examiners who conduct tests only for the Oregon Department of Education (ODE) or who only conduct tests for employees of the Tester. Training for ODE pupil transportation employment and employment with a Tester represents strong evidence that the applicant is actually a resident of Oregon.

735-060-0110 adds the violations set forth in OAR 735-060-0105(1)(n), (o) and (3)(i) to the table of sanctions.

735-060-0120 (1) to update the reference to federal regulations; (3)(a) to make the certification drive test requirements consistent with revised provisions in OAR 735-060-0105 (3)(i) and (4) above; and (4)(b)(B) to include that a test could be for an endorsement.

Amendments to other rules are as follows:

OAR 735-062-0080 establishes when DMV will waive the drive test portion of a driver license examination. Section (2) is amended to include that a commercial driver license that contains an endorsement that requires a drive test, i.e. a school bus endorsement will be accepted to waive the drive test portion if conditions are met.

OAR 735-070-0030 establishes when DMV will suspend or revoke driving privileges based on an out-of-state conviction, suspension or revocation. Section (4) is amended to align the rule with the law as amended by HB 2107.

OAR 735-070-0037 establishes when a violation connected to a fatal accident will be defined as a serious traffic violation. The rule is amended to align the rule with the law as amended by HB 2107.

OAR 735-070-0054 establishes what must be included in a police report for an implied consent suspension. Subparagraphs (vi) and (vii) to paragraph (2)(b)(A) are added to align the rule with the law as amended by HB 2107.

OAR 735-070-0180, Suspension for Violations of Out-of-Service Orders, is repealed because the rule is simply restating what is clearly established in statute.

Amendments to other rules correct grammar and punctuation errors, make minor editorial changes, or are necessary to clarify existing requirements.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-060-0000

Definitions

(1) The following definitions apply to terms in OAR 735-060-0000 through 735-060-0130:

(a) "CDL" means commercial driver license.

(b) "CDL Certificate of Test Completion" is a document that certifies an individual is competent to safely exercise the commercial driving privileges granted by a Class A, Class B, Class C CDL, or an endorsement related to a CDL and that is issued by a CDL Third Party Examiner as authorized by ORS 807.080.

(c) "CDL Third Party Examiner" or "CDL Examiner" is an individual issued a Third Party Examiner Certificate by DMV that authorizes the individual to conduct certified drive tests to determine a driver's qualification to obtain a CDL and issue CDL Certificates of Test Completion.

(d) "CDL Third Party Examiner Certificate" or "Examiner Certificate" is a certificate issued by DMV that authorizes an individual to conduct certification drive tests to determine a driver's qualification to obtain a CDL, endorsement related to a CDL, or both and to issue CDL Certificates of Test Completion.

(e) "CDL Third Party Tester" or "CDL Tester" is an individual or entity issued a CDL Third Party Tester Certificate by DMV for the purpose of certifying the competency of drivers to safely exercise commercial driving privileges. For purposes of OAR 735-060-0000 to 735-060-0130 the term includes, but is not limited to, an individual, corporation, association, firm, company, business, partnership, limited liability company, employer, federal or state agency, municipal corporation as defined by ORS 33.710, including a mass transit or transportation district, a publicly owned and operated educational facility and the Oregon Department of Education.

(f) "CDL Third Party Tester Certificate" or "Tester Certificate" is a driver competency testing certificate issued by DMV as authorized by ORS 807.080(2).

(g) "Calendar day" is a period that begins at 12:01 a.m. and ends at 11:59 p.m. on the same day.

(h) "Commercial truck or bus driver training school" means any school that trains the general public in driving commercial motor vehicles and has been licensed by the Oregon Department of Education as a licensed private career school.

(i) "Disqualified" means a person's CDL has been suspended, revoked, cancelled or withdrawn by a State or other jurisdiction, or the person is not qualified to operate a commercial motor vehicle under 49 CFR part 391. "Disqualified" has the same meaning given the term "disqualification" in 49 CFR part 383.5.

(j) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(k) "Employee" means a person who works for another for compensation, but does not include an independent contractor.

(l) "Employer" includes any of the following:

(A) An individually owned business;

(B) A company;

(C) A corporation;

(D) An association;

(E) A cooperative; and

(F) A federal, state, county or municipal agency, including a publicly owned and operated education facility and the Oregon Department of Education.

(m) "Major traffic crime" means a conviction under Oregon statute or city ordinance, or a comparable statute or city ordinance of any other jurisdiction, for any traffic offense that is punishable by a jail sentence and includes the following offenses:

(A) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle;

(B) Driving under the influence of intoxicants;

(C) Reckless driving as defined in ORS 811.140;

(D) Failure to perform the duties of a driver involved in an accident or collision under ORS 811.700 or 811.705;

(E) Criminally driving while suspended or revoked, as defined under ORS 811.182;

(F) Fleeing or attempting to elude a police officer, as defined in ORS 811.540;

(G) Vehicular assault of bicyclist or pedestrian under ORS 811.060;

(H) Reckless endangerment of highway workers, as defined in ORS 811.231;

(I) False accident report under ORS 811.740;

(J) Knowingly violating an out-of-service notice under ORS 825.990(2); or

(K) A violation of ORS 825.990(3).

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(n) "Motor carrier" means for-hire carrier or private carrier as those terms are defined in ORS 825.005 and who is subject to the Federal Motor Carrier Safety Regulations.

(o) "Under the influence of intoxicants" means a person's physical or mental faculties are adversely affected by use of over the counter drugs or a lawfully prescribed controlled substance to a noticeable or perceptible degree, unlawful use of a controlled substance or consumption of an intoxicating liquor within six hours of or while conducting or taking a certification drive test.

(2) The terms of "employer" and "employee" are only applicable as used in OAR 735-060-0010 through 735-060-0130. They are not intended to affect any employer or employee rights, responsibilities or obligations.

Stat. Auth.: ORS 184.616, 184.619, 807.072 & 807.080

Stats. Implemented: ORS 807.040, 807.070, 807.072 & 807.080

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; MV 23-1987, f. & ef. 9-28-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0600; MV 6-1990, f. & cert. ef. 4-2-90; MV 9-1991(Temp), f. & cert. ef. 7-26-91; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0030

Qualifications for Third Party Testers

(1) An applicant must meet the following qualifications for a CDL Third Party Tester Certificate:

(a) Sign and abide by all terms and conditions of a written CDL Third Party Tester Agreement with DMV;

(b) Maintain a business office or facility in which driver testing records are securely kept and are available for inspection or audit by DMV, the Oregon Secretary of State's Office or the Federal Highway Administration. To qualify as a business office or facility, it must be staffed and open during posted business hours and/or have a business phone with an answering service, answering machine or voice mail service, with the ability to return all business related messages no later than the following business day;

(c) Have a DMV approved testing program to administer standardized behind the wheel drive tests to applicants for a CDL license which complies with all the requirements set forth in OAR 735-060-0120;

(d) Have an owner who is certified as a CDL Third Party Examiner or has applied for certification as a Class CDL Third Party Examiner or employ a certified CDL Third Party Examiner. For purposes of this rule, owner does not include a shareholder of a corporation;

(e) Be in compliance with all federal, state and local laws or regulations, including all business and zoning requirements;

(f) Pass the inspection described in OAR 735-060-0040; and

(g) Submit to DMV a schedule of all testing services offered to the public and the fee charged for each of those services.

(2) To qualify as a Third Party Tester, an applicant must not:

(a) Have a Third Party Tester Certificate, a Third Party Examiner Certificate or equivalent authorization, issued by any jurisdiction, that is currently suspended or revoked;

(b) Have had a Third Party Tester Agreement, issued by any jurisdiction, involuntarily terminated. This section does not apply if the agreement was terminated more than five years from the date an application for a CDL Third Party Tester Certificate is submitted to DMV;

(c) Have had a Third Party Tester Certificate, a Third Party Examiner Certificate or equivalent authorization, issued by any jurisdiction, that was suspended, revoked or involuntarily canceled or otherwise involuntarily terminated for conduct that would result in permanent revocation in Oregon;

(d) Have a driver training school certificate or driver training instructor certificate or equivalent authority, issued by any jurisdiction, that is currently suspended or revoked; or

(e) Have a partner, owner or shareholder who owns 20% or more of the business or an officer, director, agent or manager who:

(A) Has a Third Party Tester Certificate, Third Party Examiner Certificate, Driver Training School Certificate, Driver Training Instructor Certificate or equivalent authorization, issued by any jurisdiction, that is currently suspended or revoked;

(B) Has had a Third Party Tester Certificate, Third Party Examiner Certificate, Driver Training School Certificate, Driver Training Instructor Certificate or equivalent authorization, issued by any jurisdiction, that has been suspended, revoked or involuntarily canceled or otherwise involuntarily terminated within the five years immediately preceding the date an application for a CDL Third Party Tester Certificate is submitted to DMV; or

(C) Has been convicted of a crime involving moral turpitude, including but not limited to, homicide, assault, kidnapping, a sexual offense, robbery, child pornography, fraud, forgery, perjury and theft or of a crime punishable as a felony involving the use of a motor vehicle, or a crime punish-

able as a felony involving possession, manufacture or distribution of a controlled substance, if DMV determines from the facts and intervening circumstance of the conviction that the person is not fit to perform the responsibilities of a CDL Third Party Tester and/or poses a risk to the safety of persons while performing those responsibilities.

(D) Has engaged in conduct that is substantially related to the person's fitness to hold a CDL Third Party Tester Certificate and which demonstrates unfitness and inability to perform the responsibilities of a CDL Third Party Tester.

(3) In addition to the requirements listed in sections (1) and (2) of this rule, the applicant, if a publicly-owned and operated educational facility, must have a campus located in Oregon.

(4) In addition to the requirements listed in sections (1) and (2) of this rule, an applicant, if a motor carrier, must not have an unsatisfactory safety rating from the Federal Motor Carrier Administration or the Oregon Department of Transportation, Motor Carrier Transportation Division.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 18-1986, f. & ef. 10-16-86; MV 4-1987, f. & ef. 5-18-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0630; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0040

Inspection

(1) To insure compliance with all relevant statutes, administrative rules and regulation, before issuing a CDL Third Party Tester Certificate, an authorized representative of DMV shall, during regular business hours, inspect the applicant's:

(a) Business office, facility or campus;

(b) CDL drive test route and testing procedures; and

(c) Vehicles used for testing purposes that are owned or leased by the applicant.

(2) DMV or the Federal Motor Carrier Safety Administration may conduct a random inspection of the business premises, records and equipment of a CDL Third Party Tester to review compliance with Oregon statutes, administrative rules and federal regulation requirements for CDL Third Party Testers and CDL Examiners. No notice will be given to the CDL Tester prior to the random inspection. The CDL Tester must consent to and fully cooperate with the random inspection.

(3) In addition to any other inspection, DMV shall annually conduct an on-site inspection of each CDL Tester to review compliance with Oregon statutes, administrative rules and federal regulations pertaining to the third party tester and examiner program.

(4) An onsite inspection shall include, but may not be limited to:

(a) CDL Third Party Tester records, including records of all persons for whom a CDL drive test was conducted by the CDL Third Party Tester and Examiner, regardless of whether the person passed or failed the test and class rosters if the tester is also a commercial truck or bus driver training school licensed by the Oregon Department of Education;

(b) The business office, facility or campus;

(c) Testing procedures;

(d) Testing equipment, including vehicle(s) owned or leased by the CDL Tester and used for certification drive testing;

(e) A review of the CDL Third Party Tester's qualifications as listed in OAR 735-060-0030;

(f) The testing procedures used by CDL Examiners of the CDL Third Party Tester;

(g) The CDL drive test route(s);

(h) Review of the CDL Third Party Tester's compliance with all terms of the CDL Third Party Tester Agreement; and

(i) Any other related areas the DMV representative may deem necessary at the time of the inspection.

(5) As part of an inspection, a DMV representative may accompany a CDL Third Party Examiner on a certification drive test or retest a sample of the drivers who were tested by the CDL Examiner to compare pass/fail results.

(6) A DMV representative may pose as a customer of a CDL Third Party Tester without identifying himself or herself as an employee of DMV in order to observe the manner in which testing is conducted.

(7) To pass an inspection the CDL Third Party Tester must be in compliance with the statutes, rules and regulations pertaining to the CDL Third Party Tester and Examiner program and the provisions of the CDL Third Party Tester Agreement.

(8) The DMV inspector shall prepare a written report and specify any deficiencies that must be corrected. The CDL Third Party Tester will be given a copy of the report. Deficiencies identified must be corrected by the CDL Third Party Tester within 30 days of receipt of the report.

Stat. Auth.: ORS 184.616, 814.619 & 807.080

ADMINISTRATIVE RULES

Stats. Implemented: ORS 807.040, 807.070 & 807.100
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0635; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0050

Application for and Issuance of CDL Third Party Tester Certificate

(1) To apply for a CDL Third Party Tester Certificate, an applicant must:

(a) Meet all the requirements set forth in OAR 735-060-0030(1) and (2);

(b) Submit the following to DMV, CDL Third Party Testing, 1905 Lana Avenue NE, Salem, Oregon 97314:

(A) A completed application for a CDL Third Party Tester Certificate, DMV Form 6766;

(B) A signed original CDL Third Party Tester Agreement between the Department of Transportation and the applicant;

(C) A proposed drive test route(s) for each test location which meets the criteria set forth in OAR 735-060-0120;

(D) At least one application for an Examiner's Certificate; and

(E) Proof of comprehensive commercial liability insurance and proof of comprehensive auto liability insurance, if applicable, that meets the requirements specified in the CDL Third Party Tester Agreement. A public agency covered by the Oregon Tort Claims Act and which is self insured must submit a statement of self-insurance.

(2) To apply for a CDL Third Party Tester Certificate, the Oregon Department of Education must:

(a) Meet all the requirements set forth in OAR 735-060-0030;

(b) Submit the following to DMV, CDL Third Party Testing, 1905 Lana Avenue NE, Salem, OR 97314:

(A) A completed application for a CDL Third Party Tester Certificate, DMV Form 6766;

(B) A signed original CDL Third Party Tester Agreement between the Department of Transportation and the Department of Education; and

(C) Drive test route(s) for each test location meeting the criteria set forth in OAR 735-060-0120.

(3) When issued by DMV a CDL Third Party Tester Certificate is valid for two years, unless suspended, cancelled or revoked. The certificate shall expire two years from the end of the month it is issued or renewed. For example, a certificate issued or renewed on April 2, 2003 will expire on April 30, 2005.

(4) A CDL Third Party Tester Certificate may be renewed. The following apply to renewal of the certificate:

(a) DMV will notify the CDL Third Party Tester of the pending expiration of the CDL Third Party Tester Certificate at least 60 days prior to the expiration date of the certificate;

(b) The CDL Third Party Tester must meet the qualification requirements set forth in OAR 735-060-0030;

(c) The CDL Third Party Tester must submit a signed CDL Third Party Tester Agreement covering the period the certificate is valid.

(5) A CDL Third Party Certificate may be replaced if the original certificate is lost, mutilated or destroyed. To apply for a replacement certificate, a written request that describes the reason for the replacement must be submitted to DMV CDL Third Party Testing Program, 1905 Lana Avenue NE, Salem, Oregon 97314.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0640; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0055

Responsibilities of a CDL Third Party Tester

(1) A CDL Third Party Tester shall do all of the following:

(a) Notify DMV in writing within 10 calendar days of any change in:

(A) The address of the CDL Third Party Tester's business office, facility or campus;

(B) The location where the testing is conducted or a change in the drive test route(s);

(C) The status of a CDL Third Party Examiner, including an individual who is hired or who has discontinued employment;

(D) The name and address of the designated or registered agent, an owner, partner or shareholder owning 20% or more of the business or officer, director, agent or manager; or

(E) The testing services offered to the public or fees charged for those services.

(b) Notify DMV in writing within 10 calendar days if:

(A) The CDL Third Party Tester goes out of business;

(B) The CDL Third Party Tester no longer meets the qualification requirements set forth in OAR 735-060-0030; or

(C) A CDL Third Party Examiner employed by the CDL Third Party Tester no longer meets the qualification requirements set forth in OAR 735-060-0090 including notification that the CDL Examiner has discontinued employment with the CDL Tester.

(c) Ensure that all CDL Third Party Examiners employed by the CDL Third Party Tester remain in compliance with all statutes, administrative rules and regulations pertaining to the qualifications and responsibilities of CDL Third Party Examiners.

(d) Make any and all business records, vehicles and facilities related to the operation of the CDL Third Party Tester's testing program available for inspection by representatives of DMV and/or the Federal Motor Carrier Safety Administration with or without prior notice.

(e) Correct any deficiencies specified in an inspection report with 30 days of receipt of the report.

(f) Ensure that vehicles provided by the CDL Third Party Tester for testing purposes meet the safety equipment standards of the Oregon Vehicle Code and federal regulations, are maintained in good mechanical condition, and are equipped with the following emergency equipment:

(A) Fire extinguisher; and

(B) Three flares or three approved reflectors.

(g) Comply with all statutes, administrative rules and regulations related to the CDL Third Party Testing program and with all terms of the CDL Third Party Testing Agreement.

(h) Notify DMV within 24 hours of any:

(A) Notice of a civil legal action filed against the CDL Third Party Tester or a CDL Third Party Examiner employed by the tester which is related to the administration of a test;

(B) Criminal investigation, arrest or conviction for an offense described in OAR 735-060-0030(2)(e)(C), a crime involving moral turpitude or any fraudulent activity related to CDL testing; or

(C) A complaint concerning the CDL Third Party Tester or a CDL Examiner employed by the CDL Tester related to CDL testing.

(i) Maintain the eligibility requirements set forth in OAR 735-060-0030 as applicable.

(j) Maintain and submit records as required by OAR 735-060-0057.

(k) Ensure that each CDL Third Party Examiner employed maintain a Third Party Tester Log documenting all CDL certification drive tests conducted by the Third Party Examiner.

(l) Maintain a record, by form control number, showing the disposition of all CDL Certificates of Test Completion issued to the CDL Third Party Tester by DMV.

(2) A CDL Third Party Tester shall not:

(a) Falsify any records or fraudulently issue a CDL Certificate of Test Completion to any person who has not passed a CDL certification drive test;

(b) Permit anyone except a certified CDL third party examiner to conduct a CDL drive test or issue a CDL Certificate of Completion;

(c) Transfer its CDL Third Party Tester Certificate to any other person, employer, or publicly-owned and operated educational facility;

(d) Permit a CDL Third Party Examiner to issue a CDL Certificate of Test Completion to any person who:

(A) Was not tested in accordance with the requirements set forth in OAR 735-060-0120; or

(B) Failed the CDL certification drive test;

(e) Permit an Oregon Department of Education CDL Third Party Examiner to test a person who has not applied for an Oregon Department of Education School Bus Driver's Certificate or Permit;

(f) Knowingly assist a person in fraudulently obtaining driving privileges from DMV;

(g) Violate the Code of Ethics and Rules of Conduct set forth in OAR 735-060-0115;

(h) Knowingly allow a CDL Examiner to conduct a CDL certification drive test while under the influence of intoxicants; or

(i) Permit a CDL Third Party Examiner employed by a commercial driver training school to test a driver who has been trained by the CDL Examiner or trained by anyone employed by the school.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stat. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0050(9) & (13); DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0057

Record Requirements

(1) The CDL Third Party Tester shall ensure records are maintained at the CDL Tester's primary place of business or by each CDL Examiner at each testing location(s) for no less than two years from the date of the test as follows:

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(a) A fully completed copy of the CDL test score sheet for each applicant tested, regardless of whether the individual passed or failed the test. To be fully completed the CDL test score sheet must contain the applicant's full name and driver license number, the drive test location and route identifier, the CDL Examiner's name as well as the test date and test results.

(b) A fully completed copy of the CDL Certificate of Test Completion that was issued to each applicant who passed the test. To be fully completed the CDL Certificate of Test completion must contain: the applicant's full name, date of birth, and driver license number; the CDL Examiner's name, certificate number, signature and date signed; the CDL Tester's name; the type of vehicle used for the test; the date of the test and whether the test vehicle had airbrakes, was a passenger carrying vehicle or a school bus.

(c) Copies of all CDL Certificates of Test Completion that have been voided by the examiner.

(d) Fully completed copies of all CDL Tester Logs for each CDL Examiner. To be fully completed:

(A) Each log must contain the month and year of tests included on the log, the CDL Tester name and city, the CDL Examiner and certificate number and the test route, location and number; and

(B) Each log entry must contain: the start and stop time of the test; the test date; the name and driver license number of the applicant tested; the class of vehicle used for testing and the vehicle's plate number(s), gross vehicle weight rating(s) and brake type; the test results, including the test score; and whether the applicant was a retest due to a previous failure.

(2) The CDL Third Party Tester shall maintain documentation to show the disposition, by form control number, of all CDL Certificates of Test Completion issued to the CDL Tester. This documentation shall be maintained for a minimum of two years after the date the certificate was issued or voided by the CDL Examiner or by DMV.

(3) All records subject to this rule shall be available for inspection by an authorized representative(s) of DMV or the Federal Motor Carrier Safety Administration, Monday through Friday between the hours of 8:30 a.m. to 4:30 p.m. Although DMV will normally arrange an appointment prior to an inspection, records must be available for inspection without an appointment or prior notice. Records may be retained in paper format or electronically but must be maintained in a manner allowing for timely and efficient retrieval and review. DMV may require that any record printed or completed in a language other than English be accompanied by a copy translated into English.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stat. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0050(10), (11) & (12); DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0060

Third Party Tester and Examiner Sanctions

(1) DMV shall impose sanctions when it determines a CDL Third Party Tester or CDL Third Party Examiner has violated provisions of the Motor Vehicle Code, administrative rules promulgated by DMV or federal regulations related to CDL third party testing.

(2) DMV shall impose a sanction determined by DMV to be appropriate for the particular violation. In determining an appropriate sanction, DMV may use the appropriate matrix set forth in either OAR 735-060-0065 or 735-060-0110 as a guideline and may consider the following criteria:

- (a) The severity of the violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether the violations were willful or intentional; and
- (d) The history of prior sanctions imposed by DMV.

(3) DMV shall determine the steps to take or sanctions to impose when it determines violations have occurred or are occurring. These may include one or more of the following:

- (a) A written warning, including correction notices;
- (b) Suspension of the CDL Third Party Tester's Certificate and the right to apply for a certificate for up to one year;
- (c) Suspension of the CDL Third Party Examiner's Certificate and the right to apply for a certificate or renewal of a certificate for up to one year;
- (d) Revocation of CDL Third Party Tester's Certificate and the right to apply for a certificate or renewal of a certificate for up to five years;
- (e) Revocation of the CDL Third Party Examiner's certificate and the right to apply for a certificate or renewal of a certificate for up to five years;
- (f) DMV will immediately suspend a CDL Third Party Tester or Third Party Examiner Certificate if DMV has reason to believe the Third Party Tester or Third Party Examiner participated in any fraudulent or criminal activity related to the issuance of a CDL Certificate of Test Completion or has violated any provision of the Code of Ethics and Rule of Conduct set forth in OAR 735-060-0115. The suspension shall remain in effect pending the outcome of a contested case hearing;

(g) DMV will immediately suspend a CDL Third Party Tester Certificate if the general business liability and/or auto liability insurance

has lapsed or is cancelled, or DMV determines a CDL Third Party Tester's vehicle(s) used for testing is in an unsafe condition; and

(h) DMV will permanently revoke a CDL Third Party Tester or CDL Third Party Examiner Certificate if DMV determines the CDL Third Party Tester or CDL Third Party Examiner participated in fraudulent or criminal activity related to the issuance of a CDL Certificate of Test Completion, including, but not limited to violation of OAR 735-060-0115(1), (3) or (7). No principal, owner, shareholder, or manager of a CDL Third Party Tester whose certificate is permanently revoked shall be eligible for a CDL Third Party Tester or CDL Third Party Examiner Certificate.

(4) A CDL Third Party Tester or CDL Third Party Examiner whose certificate has been suspended or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(5) When DMV takes action to suspend or revoke a CDL Third Party Tester or CDL Third Party Examiner Certificate, DMV will send notice in writing that the suspension or revocation will begin either in five days (an immediate suspension) or 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the most recent address on record with DMV.

(6) Except as provided for in section (7) of this rule, a request for a hearing must be submitted in writing to, and received by, DMV within 20 days of the date of the notice of violation. If a hearing request is received in a timely manner the suspension or revocation will not go into effect pending the outcome of the hearing, unless the certificate is immediately suspended.

(7) If the certificate is immediately suspended as set forth in subsections (3)(f) and (g) of this rule, the request for hearing shall be submitted in writing to, and received by, DMV within 90 days of the date of notice of suspension. The suspension shall remain in effect pending the outcome of the hearing.

(8) Except as provided in OAR 137-003-0003, when no request for a hearing is timely received, the CDL Third Party Tester or CDL Third Party Examiner has waived the right to a hearing, DMV's file shall constitute the record of the case and a default order shall be issued by DMV.

(9) If a CDL Third Party Tester or CDL Third Party Examiner Certificate has been revoked, the CDL Third Party Tester or CDL Third Party Examiner must reapply for an original certificate after the period of revocation and must meet all the requirements set forth in the Division 60 rules. At the end of the suspension period of a CDL Third Party Tester or CDL Third Party Examiner Certificate, DMV will reinstate the certificate unless the certificate has expired or the CDL Tester or CDL Examiner does not meet the qualification requirements for the certificate. If the certificate has expired, the CDL Tester or CDL Examiner must reapply for an original certificate and must meet all the requirements set forth in the Division 60 rules.

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0650; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0105

Responsibilities of a CDL Third Party Examiner

(1) A CDL Third Party Examiner shall:

- (a) Remain in compliance with the eligibility requirements set for in OAR 735-060-0090;
- (b) Properly complete all forms required by DMV;
- (c) Conduct all certification drive tests as set forth in OAR 735-060-0120;

(d) Conduct drive tests and issue CDL Certificates of Test Completion only for the class of vehicles authorized on the Third Party Examiner Certificate by DMV;

(e) Issue CDL Certificates of Test Completion only for the class of commercial license for which the person is tested;

(f) Maintain a CDL Third Party Tester Log of all CDL tests conducted. A copy of the log shall be kept at the CDL third party tester's business office or facility and the original shall be submitted by the CDL Examiner to DMV by the 10th day of the following month;

(g) Comply with the following requirements when issuing a CDL Certificate of Test Completion:

(A) Place the CDL Certificate of Test Completion in an envelope and seal the envelope. The outside of the envelope must have the signature of the CDL Tester or CDL Examiner across the seal of the envelope; and

(B) Verbally instruct the tested driver that the envelope containing the certificate must be submitted to DMV within two years of the date it is issued and will not be accepted if the envelope is opened prior to its delivery to DMV.

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(h) Successfully complete any additional training when required by DMV;

(i) Comply with all statutes, administrative rules, and federal regulations pertaining to the qualifications and responsibilities of a CDL Third Party Examiner;

(j) Except as provided in section (2) of this rule, conduct a minimum of 12 certification drive tests during each 12-month period after the initial issuance date of the CDL Third Party Examiner Certificate;

(k) Be present during any DMV or Federal Motor Carrier Administration inspection of CDL Third Party Tester records if requested by DMV;

(l) Only conduct certification drive tests for the CDL Third Party Tester on the CDL Examiner's Third Party Examiner Certificate;

(m) Notify the CDL Third Party Tester within 24 hours of any notice of a civil legal action, a criminal investigation or arrest, or any complaint concerning administration of a certification drive test or issuance of a certificate of test completion by the CDL Examiner;

(n) Unless prior written approval is obtained from DMV, only conduct a certification drive test that has been scheduled at least 48 hours prior to the administration of the test; and

(o) Submit a list of all certification drive tests scheduled, by facsimile or e-mail, to DMV at least 48 hours prior to administration of the test. The schedule must include the applicant's name, Oregon driver license number, the date and time of the test, the class and type of vehicle to be used for the test and identification of the drive test route. DMV must be notified of changes to the test location, test time, or additions that occur after submission of the schedule. DMV must also be notified of any cancellations that occur more than two hours before a scheduled test. A schedule need not be submitted when:

(A) The Examiner conducts tests only for the Oregon Department of Education; or

(B) The Examiner conducts tests only for employees of the CDL Third Party Tester.

(2) A CDL Third Party Examiner employed by the Oregon Department of Education is not required to conduct a minimum number of certification drive tests in a 12-month period.

(3) A CDL Third Party Examiner shall not:

(a) Issue a CDL Certificate of Test Completion to any individual:

(A) If the CDL Third Party Examiner did not administer a certification drive test to the individual;

(B) If the CDL Third Party Examiner did not administer a certification drive test meeting the requirements of OAR 735-060-0120 to the individual;

(C) If the individual did not pass the certification drive test; or

(D) Who is known to not have valid driving privileges. Acceptable evidence of valid driving privileges are a valid driver license and CDL instruction permit.

(b) Falsify any records;

(c) Conduct drive tests without a valid CDL Third Party Examiner Certificate issued by DMV;

(d) Transfer his or her CDL Third Party Examiner Certificate to any other person;

(e) Knowingly assist a person in fraudulently obtaining driving privileges from DMV;

(f) Violate the Code of Ethics and Rules of Conduct set forth in OAR 735-060-0115;

(g) Allow any person to take a certification drive test if the CDL Examiner has reason to believe the person is under the influence of intoxicants;

(h) Knowingly test a relative or friend of the CDL Tester or a relative or friend of any employee of the CDL Tester; or

(i) Except as provided in section (4) of this rule, conduct a drive test with an individual who does not possess either:

(A) A valid Oregon CDL instruction permit along with a valid Oregon driver license that was issued at least 21 days prior to the date of the test; or

(B) A valid Oregon CDL.

(4) A CDL Third Party Examiner that conducts tests only for the Oregon Department of Education or a CDL Third Party Examiner that conducts tests only for employees of the CDL Third Party Tester is exempt from the requirements of section (3)(i) of this rule except that he or she must not conduct a drive test with an individual who does not possess a valid CDL instruction permit or a valid CDL.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0100(8), (9) & (10); DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0110

Matrix Third Party Examiner Sanctions

DMV adopts the matrix of sanctions in Table 2 for CDL third party examiner violations. Table 2, Examiner Sanctions, is hereby adopted and made a part of this rule. As used in this rule, an offense will be considered a second or subsequent offense if the CDL Third Party Examiner was notified in writing within the three previous years of the occurrence of the same or a substantially similar offense. If more than three years have passed between sanctions for the same or similar offense, DMV will sanction as a first offense.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0690; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0120

The Certification Drive Test

(1) DMV adopts the following Federal Motor Carrier Safety Administration regulations effective July 1, 2005 and prescribes that these regulations establish the standards that must be followed in the testing for a commercial driver license:

(a) 49 CFR § 383.75, Third Party Testing; and

(b) 49 CFR § 383.131 through § 383.135.

(2) The certification drive test conducted under the CDL Third Party Tester program shall be by a CDL Third Party Examiner. The CDL Third Party Examiner shall:

(a) Be certified by DMV; and

(b) Not conduct more than eight CDL Class A, B, or C pre-trip inspection tests and on-road drive tests within a single calendar day;

(c) Begin and end all pre-trip inspection and on-road drive tests during daylight hours;

(d) Conduct all pre-trip inspection and on-road drive tests within the State of Oregon;

(e) Conduct both the pre-trip inspection and on-road drive tests in the same type and class of commercial vehicle. Both the pre-trip inspection and on-road drive tests must be completed on the same calendar day unless the person tested has previously failed the on-road drive test;

(f) Not conduct another on-road drive test until after the minimum waiting period set forth in OAR 735-062-0070(5) has passed, if the person fails a pre-trip inspection test or an on-road drive test;

(g) Conduct the same pre-trip inspection tests and on-road drive tests that are administered by DMV examiners and use test scoring sheets approved by DMV;

(h) Not permit any person who is not a certified examiner, an official with DMV, an official with the Federal Motor Carrier Safety Administration or the person being tested to observe or participate in CDL pre-trip inspection tests or the on-road drive tests without the prior approval of DMV.

(3) The CDL Third Party Examiner shall do the following before administering a drive test:

(a) Ensure the person being tested has a valid CDL instruction permit or CDL and, if the driver does not have a CDL, an Oregon driver license that was issued at least 21 days prior to the test as required by OAR 735-060-0105(3)(i). A drive test shall not be administered if the CDL Examiner has reason to believe that the driver's driving privileges are suspended, revoked, canceled or have otherwise been withdrawn; and

(b) View a Medical Certificate or a Medical Waiver as described in OAR 735-074-0280 issued to the person being tested that meets the requirements of OAR 735-074-0260.

(4) The certification drive test shall be conducted in accordance with the federal regulations adopted by section (1) of this rule and the methods and procedures set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated herein. The certification drive test shall include, but is not limited to, the following:

(a) A pre-trip inspection test. This test is designed to evaluate the tested driver's ability to identify and operate the equipment on the vehicle in which he or she is being tested and to detect and identify unsafe vehicle equipment items. The specific items that must be inspected during a pre-trip inspection are those listed in the Oregon Department of Transportation CDL Examiner's Manual; and

(b) An on-road drive test. This test is designed to evaluate the tested driver's competency to safely operate a commercial motor vehicle or combination of commercial vehicles under actual driving conditions. The tested driver must demonstrate safe and proper driving methods and procedures and knowledge of the traffic laws. The following apply to an on-road drive test:

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(A) It shall be conducted on a drive test route approved by DMV and meeting the specifications set forth in section (5) of this rule:

(B) The commercial motor vehicle or combination of commercial motor vehicles must be of the class for which the tested driver seeks a license or endorsement and must have the proper equipment in safe working order so that the vehicle(s) can be operated safely and legally. The CDL Examiner is not required to verify the safe condition of any commercial motor vehicle provided by the tested driver for an on-road test, but shall not conduct the test if it is apparent the vehicle cannot be operated safely and legally; and

(C) The commercial motor vehicle or combination of vehicles need not be loaded, but the test shall be conducted and scored as if the vehicle or combination of vehicles is loaded.

(5) The on-road drive test route shall:

(a) Be designed to enable the CDL Third Party Examiner to evaluate the ability of the driver to perform the maneuvers listed in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein; and

(b) Meet the specifications for an on-road drive test for commercial driver licensing set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein.

(6) The Oregon Department of Education may establish additional requirement for the pre-trip inspection and on-road drive test for applicants for a school bus driver certificate, but may not modify or omit any of the testing requirements set forth in these rules, including those in the Oregon Department of Transportation CDL Examiner Manual, incorporated by reference herein, without the prior approval of DMV.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0710; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-060-0130

The CDL Certificate(s) of Test Completion

(1) DMV will accept as the actual demonstration of an applicant's ability to drive a Class A, B, or C commercial motor vehicle under ORS 807.070(3)(b) a CDL Certificate(s) of Test Completion issued by a DMV certified CDL Third Party Examiner.

(2) A CDL Certificate(s) of Test Completion, Form 6771, shall be accepted only when it is submitted by an applicant who:

(a) Has passed a Commercial A, B, or C or endorsement drive test meeting the standards set forth in OAR 735-060-0120;

(b) Has valid driving privileges and has passed the necessary CDL knowledge tests and vision screening. A hardship or probationary permit does not constitute valid driving privileges; and

(c) Is applying for a Class A, B, or C commercial driver license or endorsement related to a commercial driver license.

(3) The CDL Certificate(s) of Test Completion shall be:

(a) On DMV Form 6771 CDL Certificate(s) of Test Completion;

(b) Completed in its entirety by a CDL Third Party Examiner with a valid Examiner Certificate issued by DMV; and

(c) Submitted to DMV within two years of the date of the certification drive test in an unopened envelope sealed by the CDL Third Party Examiner.

(4) DMV will not accept a CDL Certificate(s) of Test Completion, Form 6771, when:

(a) The applicant for a CDL failed a drive test(s) for CDL of the same class or a lower class and did not wait the required waiting period under OAR 735-062-0070 before taking a certification drive test from a CDL Third Party Examiner.

(b) The applicant submits a CDL Certificate(s) of Test Completion in an envelope that has been opened prior to its being submitted to DMV;

(c) The applicant submits a CDL Certificate(s) of Test Completion that includes any alterations;

(d) The applicant submits a CDL Certificate(s) of Test Completion that is more than 2 years after the date of the drive test; or

(e) The applicant was not tested by a CDL Third Party Examiner who is certified by DMV.

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0720; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05

735-062-0080

Waiving Drive Test Portion of Driver License Examination

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will waive the actual demonstration

of a person's ability to drive a Class C vehicle required by ORS 807.070(3) if all of the following apply:

(a) The person surrenders to DMV a driver license issued to the person by another state, the District of Columbia, a United States Territory or a Canadian Province that has not been expired for more than one year, or if the person's driver license issued by another jurisdiction, has been lost or stolen, the person submits a letter of clearance, as required in OAR 735-062-0000;

(b) The surrendered, lost or stolen license authorizes the driving of a vehicle other than a moped or motorcycle;

(c) The surrendered, lost or stolen license includes no restrictions other than a single restriction or a combination of restrictions comparable to restrictions imposed on an Oregon driver license;

(d) The person has no physical disabilities or impairments which may necessitate any restrictions other than:

(A) "With corrective lenses";

(B) "Outside or side-view mirror(s)"; or

(C) The restriction(s) imposed on the person's surrendered, lost or stolen driver license issued by another jurisdiction.

(e) The person has no physical or mental condition that provides DMV with reason to question the person's ability to drive a motor vehicle without endangering the safety of persons or property.

(2) DMV will waive the actual demonstration of a person's ability to drive a Class A, B, or C commercial motor vehicle or any endorsement related to a commercial driver license if the person surrenders to DMV a commercial driver license and satisfies the requirements in subsection (a) or (b) of this section:

(a) The person must meet the qualifications set forth in subsections (1)(a) through (e) of this rule and possess an out-of-state commercial driver license approved by the Federal Motor Carrier Safety Administration that authorizes the driving of a commercial motor vehicle included in the Oregon classification for which the application is made; or

(b) The person submits to DMV a Certificate of Competency, Form 6771, in accordance with OAR 735-060-0130.

(3) DMV will waive the actual demonstration of a person's ability to drive a motorcycle if:

(a) The person surrenders to DMV a motor-cycle-endorsed driver license issued to the person by another state, the District of Columbia, a United States Territory or a Canadian Province, or submits a clearance letter as provided for in subsection (1)(a) of this rule; and

(b) The person meets the qualifications in subsections (1)(c), (d) and (e) of this rule.

(4) In addition to section (3) of this rule, DMV will waive the actual demonstration of a person's ability to drive a motorcycle if:

(a) The person passes a motorcycle skills test given during a motorcycle rider education course established by the Transportation Safety Division under ORS 802.320; and

(b) The motorcycle skills test administered during the motorcycle rider education course meets or exceeds the motorcycle skills test administered by DMV.

(5) Evidence of passing the motorcycle skills test identified in section (4) of this rule is a "Motorcycle Rider Course Riding and Street Skills Completion Card" as provided for in OAR 735-062-0140. The completion card must have been issued on or after October 3, 1989, to be considered valid for waiver of the skills test.

Stat. Auth.: ORS 184.616, 807.070, 807.080 & 807.170

Stats. Implemented: ORS 807.070, 807.080 & 807.170

Hist.: MV 61, f. 10-14-75, ef. 11-11-75; MV 15-1986, f. 9-16-86, ef. 10-1-86; MV 15-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0045; MV 26-1988, f. & cert. ef. 11-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1990, f. & cert. ef. 8-16-90; MV 1-1991, f. & cert. ef. 3-18-91; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 6-1992(Temp), f. 5-29-92, cert. ef. 6-1-92; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 4-1995, f. & cert. ef. 3-9-95; DMV 31-2005, f. & cert. ef. 12-14-05

735-062-0320

Special Limited Vision Condition Learner's Permit

(1) DMV will issue a special limited vision condition learner's permit when:

(a) An applicant has submitted a report from a licensed vision specialist certifying that the person meets the visual standards set forth in Section 3, Chapter 277, Oregon Laws 2003, has been fitted with a bioptic telescopic lens mounted on or above a carrier lens, and would be aided by using a bioptic telescopic lens when operating a motor vehicle;

(b) An applicant submits proof to DMV that the person has been accepted and has enrolled in a rehabilitation training program with a specialist certified by DMV to train persons with a limited vision condition using a bioptic telescopic lens;

(c) An applicant has passed the knowledge test required under ORS 807.070(2); and

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- (d) An applicant pays a \$13 fee, as required by ORS 807.370(27).
- (2) The special limited vision condition learner's permit will:
 - (a) Be valid for six months;
 - (b) Be in the form of a letter rather than a laminated card with picture;
 - (c) Specify that the applicant may only drive when accompanied by the specialist(s) named on the permit;
 - (d) Include the following restrictions:
 - (A) The applicant is restricted to driving on roads with a designated or posted speed of 45 miles per hour or lower; and
 - (B) Driving during daylight hours only; and
 - (e) Be mailed to the rehabilitation training program with which the applicant has enrolled.

(3) If a person discontinues the required training or fails to make satisfactory progress toward a Certificate of Competency, the specialist must notify DMV immediately with a recommendation to terminate or extend the person's training program.

(4) If the specialist's recommendation is to terminate the applicant's training program or the applicant withdraws from the program, DMV will cancel the special limited vision condition learner's permit issued to the applicant. If the permit is cancelled, the applicant must reapply for a new permit and satisfy all the requirements set forth in section (1) of this rule. Knowledge test scores remain valid for two years.

(5) If the specialist's recommendation is to extend the applicant's training program, DMV will re-issue a special limited vision condition learner's permit for an additional six-month period if the applicant provides proof of continued enrollment in a rehabilitation training program, as set forth in subsection (1)(b) of this rule, and pays a \$13 fee.

(6) A copy of the special limited condition learner's permit must be kept in the applicant's file at the school offering the rehabilitation training program.

Stat. Auth.: ORS 184.616, 184.619, 807.350 & Sec. 5, Ch. 277, OL 2003

Stat. Implemented: Ch. 277, OL 2003

Hist.: DMV 15-2004, f. 6-24-04, cert. ef. 7-1-04; DMV 31-2005, f. & cert. ef. 12-14-05

735-064-0235

Special Student Driver Permit

(1) A special student driver permit authorizes operation of only those vehicles that the holder of a Class C driver license may operate, and does not include operation of any vehicle for which a commercial driver license is required or operation of a motorcycle.

(2) A special student driver permit authorizes a person to only drive between the person's home and the closest alternate means of transportation, or if alternate transportation does not exist, between home and the school, college or other educational institution in which the person is enrolled and is attending for an educational purpose. An educational purpose includes participation in extra curricular activities as long as the student drives only to his or her school, college or educational institution for which the permit is issued.

(3) A special student driver permit expires when the applicant has other means of transportation to and from school, college or other educational institutions or 60 days after the applicant's 16th birthday, whichever occurs first.

(4) Except as provided in section (5) of this rule, an applicant for a special student driver permit must:

(a) Submit a completed Student Driver's Permit Application, Form 735-0009, signed by the applicant's parent or legal guardian and endorsed by the sheriff of the county in which the applicant resides and the principal of the school or educational institution, or registrar of the college, in which the applicant is enrolled;

(b) Pay the special student driver permit fee established by ORS 807.370(19);

(c) Fulfill all applicable requirements of ORS chapter 807 and OAR 735, division 62 for issuance of a class C driver license; and

(d) Provide proof satisfactory to DMV that the applicant has no other means of transportation available and sufficient driving experience to safely drive the designated route, including but not limited to:

(A) A map(s) showing the route between the applicant's home and alternate transportation or home and the school, college or educational institution in which the applicant is enrolled and public transportation routes;

(B) The hours for which the applicant needs the permit and a copy of public transportation schedules; and

(C) A written statement describing what driving experience the applicant has, and how that experience equates to the applicant being able to safely drive the route.

(5) To be eligible for a special student driver permit, an applicant does not need to:

(a) Possess an instruction driver permit for at least six months prior to applying for a special student driver permit;

(b) Have at least 50 hours of driving experience with a licensed driver over the age of 21; or

(c) Complete a traffic safety education course.

(6) In addition to any other driving restrictions that may be imposed by DMV:

(a) The holder of a special student driver permit may not drive a motor vehicle carrying any passenger under age 20 who is not a member of the permit holder's immediate family; and

(b) The holder of a special student driver permit may not drive between 12 midnight and 5 a.m.

Stat. Auth.: ORS 184.616, 184.619, 807.120 & 807.230

Stats. Implemented: ORS 807.230

Hist.: DMV 12-1996, f. & cert. ef. 12-20-96; DMV 1-2001, f. & cert. ef. 1-17-01; DMV 31-2005, f. & cert. ef. 12-14-05

735-070-0030

Suspension/Revocation for Out-of-State Conviction, Suspension or Revocation

(1) For purposes of ORS 809.400(1):

(a) The date a notice of conviction is received by the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) is:

(A) The date the notice of conviction is date stamped by the Driver Records Unit; or

(B) The date the notice of conviction is electronically transmitted to Oregon DMV from the reporting jurisdiction.

(b) "Initiated" means the date the conviction is entered on the person's Oregon driving record.

(c) A conviction is entered on the person's Oregon driving record when it is manually placed on the record by DMV or when it is transmitted from the reporting jurisdiction if received electronically.

(2) Except as provided in ORS 809.400(1), DMV will suspend or revoke the driving privileges of any resident of this state upon receiving notice of the conviction of the person in another jurisdiction for an offense which, if committed in this state, would be grounds for suspending or revoking of the person's driving privileges.

(3) DMV will suspend the driving privileges of a resident of this state, upon receiving notice from another state, territory, federal possession or district, or province of Canada that the person's driving privileges have been suspended or revoked in that jurisdiction under circumstances which would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon.

(4) DMV will suspend the commercial driving privileges of a resident of this state pursuant to ORS 809.413(12), upon receiving notice that the person's commercial driving privileges have been suspended or revoked in another jurisdiction under circumstances that would require DMV to suspend driving privileges if the conduct had occurred in Oregon. The period of suspension will be the same as would be imposed if the conduct had occurred in Oregon.

(5) A suspension under section (3) of this rule will continue until the person provides acceptable evidence to DMV that the person has complied with the law of the reporting jurisdiction, driving privileges have been restored in the reporting jurisdiction, or the revocation or suspension in the other jurisdiction was not imposed under circumstances that would require DMV to suspend driving privileges under ORS 813.410(1) if the conduct had occurred in Oregon. Acceptable evidence is:

(a) A letter on letterhead from the reporting jurisdiction showing the person has complied with the jurisdiction's law or that driving privileges have been restored.

(b) A certified copy of the driving record from the reporting jurisdiction showing the restoration of driving privileges; or

(c) A copy of the reporting jurisdiction's law and any relevant documents showing the suspension or revocation was not imposed under circumstances that would require DMV to suspend if the conduct had occurred in Oregon.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.400

Stats. Implemented: ORS 802.540, 809.413 & 809.400

Hist.: MV 10-1986, f. & ef. 6-20-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0053; MV 16-1990, f. & cert. ef. 9-25-90; MV 1-1992, f. & cert. ef. 2-18-92; DMV 6-1995, f. & cert. ef. 3-9-95; DMV 22-2004, f. 11-17-04, cert. ef. 1-1-05; DMV 31-2005, f. & cert. ef. 12-14-05

735-070-0037

Fatal Accidents Used as Serious Traffic Violations

Motor vehicle traffic control violations connected to a fatal accident as referred to in ORS 801.477(2)(k), are those offenses listed in ORS 809.600(1) and OAR 735-064-0220, and include city traffic offenses and similar offenses under federal law or the laws of another state as set forth in ORS 809.600(4), but do not include those offenses regulating vehicle weight or equipment.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200
Stats. Implemented: ORS 801.477, 809.413
Hist.: MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 31-2005, f. & cert. ef. 12-14-05

735-070-0054

Police Reports for Implied Consent Suspension Under ORS 813.100, 813.120, 813.132 and 813.410

(1) A police report required by ORS 813.100 must be submitted to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) on forms approved and distributed by the department.

(2) For the Driver Suspensions Unit to suspend a person's non-commercial Class C driving privileges, commercial driver license, or both or right to apply for driving privileges or a commercial driver license under ORS 813.410 for failure of a breath test or for refusal of a breath, blood or urine test, the implied consent form(s) must:

(a) Be received by DMV on or before the 30th day after the date of arrest; and

(b) Contain the following information:

(A) Specify all of the following that apply:

- (i) The person failed a breath test;
- (ii) The person refused a breath test;
- (iii) The person refused a blood test;
- (iv) The person refused a urine test;
- (v) The person was operating a commercial motor vehicle;
- (vi) The person holds a commercial driver license;
- (vii) The person was operating a vehicle transporting hazardous materials.

(B) A date of arrest;

(C) A suspension period that conforms to the type of suspension in accordance with ORS 813.404 or 813.420; and

(D) The reporting officer's signature below the statement, "I affirm by my signature that the foregoing events occurred." The officer's signature will be considered acceptable if located anywhere on the line of the form directly below the statement.

(3) For the Driver Suspensions Unit to suspend a person's non-commercial Class C driving privileges, commercial driver license, or both or right to apply for driving privileges or a commercial driver license under ORS 813.410 for failure of a blood test, the police report form must be received by DMV on or before the 45th day after the date of arrest and must indicate that the person failed a blood test and whether the person was operating a commercial motor vehicle, as well as the information required in paragraphs (2)(b)(B) and (D) of this rule.

(4) If an implied consent suspension has been posted pursuant to this rule and a timely hearing request has not been submitted as provided for in ORS 813.410(3), the driver may have the implied consent suspension withdrawn only by:

(a) Having the police agency or district attorney's office follow procedures outlined in OAR 735-070-0055;

(b) Obtaining and prevailing at a hearing under ORS 813.440; or

(c) The Driver Suspension Unit, when it withdraws the suspension pursuant to ORS 813.460 and OAR 735-070-0060.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 813.100 & 813.120.

Stats. Implemented: ORS 813.100, 813.120, 813.130 & 813.404 - 813.460

Hist.: DMV 7-1995, f. & cert. ef. 3-9-95; DMV 12-1995, f. & cert. ef. 12-14-95; DMV 9-1996, f. & cert. ef. 10-10-96; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 31-2005, f. & cert. ef. 12-14-05

Adm. Order No.: DMV 32-2005(Temp)

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 1-1-06 thru 6-29-06

Notice Publication Date:

Rules Adopted: 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

Rules Amended: 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

Rules Suspended: 735-046-0080, 735-152-0030

Subject: This temporary rulemaking is needed to implement the following statutory changes made by the 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 suspended 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).

Finally, OAR 735-046-0080 (Oregon Trail Registration Plate Series) is being suspended because the statutory authority for the rule no longer exists.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-001-0040

DMV Representation at Contested Case Hearings

(1) An agency officer or employee is authorized to appear on behalf of the agency in a hearing or in a class of contested case hearings in which the Attorney General or designee has given written consent for such representation. Except for hearings held pursuant to ORS 183.430(2), the Attorney General has given written consent as required by ORS 183.450(7)(a) for Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) employees to appear on behalf of DMV in all contested case hearings conducted in accordance with ORS Chapter 183 involving:

(a) Suspensions, revocations and cancellations of driving privileges (except Implied Consent suspension);

(b) Non-issuances of driver licenses and identification cards;

(c) Suspension, revocations, cancellations, probations and denials of certificates;

(d) Suspension, revocation, cancellations and denials of dismantler certificates;

(e) Suspension, revocations, denials and refusal to issue or renew towing company certificates;

(f) Revocations and denials of vehicle transporter certificates; and

(g) Civil penalties assessed under the authority of ORS 822.009 and OAR chapter 735, division 150.

(2) DMV representative may present evidence, ask questions of witnesses, and present factual arguments.

(3) The DMV representative shall not present legal arguments:

(A) Legal arguments include arguments on:

(A) The jurisdiction of DMV to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to DMV; or

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) Legal arguments do not include arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of DMV conducting the proceedings;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; or

(D) The admissibility of evidence or the correctness of procedures being followed.

(4) At the outset of the hearing, the hearing referee shall advise the DMV representative, as well as the petitioner, about the rules and proce-

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dures of the hearing. If the DMV representative makes an objection that involves legal argument, the hearing referee shall provide reasonable opportunity for the DMV representative to consult legal counsel. The hearing referee shall also permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.415, 183.450, 184.616, 814.619, 802.010, Ch. 541, 822 OL 1991
Stats. Implemented: ORS 183.450
Hist.: MV 16-1988, f. & cert. ef. 5-18-88; MV 3-1991, f. & cert. ef. 5-16-91, Renumbered from 735-070-0100; MV 9-1992, f. & cert. ef. 8-17-92; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-020-0010

Perfection of Security Interest; Primary Ownership Document

(1) This rule specifies the documents DMV will consider primary ownership documents for the purposes of perfecting a security interest in a vehicle.

(2) Except as provided in section (3) of this rule, a primary ownership document is:

(a) A manufacturer's certificate of origin (MCO) or equivalent document as described in OAR 735-022-0030 through 735-022-0060. This subsection applies to:

(A) A vehicle or camper built by a manufacturer that has never been titled or registered; and

(B) A vehicle or camper built, assembled, or reconstructed using a component kit that has never been titled or registered. The MCO may only be considered a primary ownership document for the vehicle parts contained in the kit.

(b) A current certificate of title or salvage title issued for a vehicle or camper; or

(c) A Certificate to Obtain Title for a Vehicle (U.S. Government Form SF 97), for a vehicle or camper previously owned by the U.S. Government and where interest is being transferred.

(3) Notwithstanding section (2) of this rule, DMV may, at its discretion, consider other documents to be primary ownership documents when:

(a) DMV is satisfied that the original Oregon title has been lost or destroyed, and that there has been a change in interest;

(b) Interest has been transferred by operation of law under Oregon law, or through court action in a court having jurisdiction over persons or property located in Oregon, and the primary ownership documents described in section (2) of this rule are not otherwise available;

(c) The security interest is in a vehicle or camper not manufactured for sale in the U.S., and that is not currently registered or titled in the U.S.;

(d) The security interest is in a vehicle or camper last titled or registered outside the U.S.; or

(e) DMV is satisfied that a primary ownership document described in section (2) of this rule was never issued, is not obtainable, or has been surrendered to another jurisdiction.

(4) Documents DMV may determine are primary ownership documents under section (3) of this rule include but are not limited to:

(a) A court judgment or decree from a court having jurisdiction over persons or property located in Oregon that awards ownership of a vehicle or camper as a matter of law;

(b) A sheriff's bill of sale;

(c) A certificate of possessory lien foreclosure as described in OAR 735-020-0012;

(d) A completed and signed Inheritance Affidavit (DMV Form 735-516) vesting the interest of a deceased owner in the person designated by all the heirs as the owner of the vehicle or camper;

(e) A completed and signed Certificate of Ownership of an Assembled Light Trailer or Heavy Trailer (DMV Form 735-6644) for a trailer built by someone other than a manufacturer;

(f) A completed and signed Application for Replacement Title (DMV Form 735-515) or Application for Replacement Salvage Title (DMV Form 735-230) where:

(A) The application is accompanied by an Application for Title and Registration (DMV Form 735-226) that includes a release of interest from anyone listed on the original title that will not be listed on the new title; and

(B) Any change in interest is of a type not subject to odometer disclosure requirements under ORS 803.102 and OAR 735-028-0000 through 735-028-0100;

(g) A completed and signed Certification of Ownership Facts (DMV Form 735-550);

(h) An Ownership document issued by the U.S. Armed Forces for a vehicle or camper owned by a member of the U.S. Armed Forces;

(i) A salvage title, salvage bill of sale, or dismantler (wrecker) bill of sale on a vehicle or camper whose title has been surrendered to a jurisdiction; or

(j) For a vehicle or camper described under subsections (3)(c) and (d) of this rule:

(A) A certificate for export purposes issued by a foreign jurisdiction; or

(B) A vehicle or camper registration if the vehicle has been registered but is not currently titled.

(5) When the application for notation of a security interest is for a vehicle or camper that is initially being titled as assembled, reconstructed, or a vehicle replica, the primary ownership document must be specific to the frame or unibody.

(6) When the application for notation of a security interest is for a vehicle or camper manufactured in more than one stage, the primary ownership document(s) must cover each stage of manufacture.

(7) DMV may invalidate a primary ownership document as evidence of ownership if it determines:

(a) The document is fraudulent or contains false information; or

(b) The document does not show the most current ownership interest in the vehicle or camper.

(8) If, after a title has been issued, it is determined that the evidence of ownership is invalid under section (7) of this rule, DMV may cancel the vehicle title. Before a title is cancelled, DMV will send a notice of the proposed cancellation to the vehicle owner or lessee, security interest holder(s) and lessor (if applicable), as listed in DMV records. A cancellation becomes effective 10 days after the date the notice is deposited with the postal service, unless a hearing is requested within that 10-day period. If a timely hearing is requested, the cancellation will be contingent on the outcome of the hearing.

(9) A title cancellation under section (8) of this rule automatically invalidates the security interest(s) noted on that title. A new application for notation for perfection of security interest and valid evidence of ownership must be submitted to DMV before security interest in a vehicle can be perfected pursuant to ORS 803.097.

(10) DMV will not invalidate a primary ownership document as evidence of ownership based solely on missing title requirements (e.g., missing odometer information, and fees).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 801.402, 802.010 & 803.097

Stats. Implemented: ORS 803.097, 184.616, 184.619, 801.402 & 803.097

Hist.: MV 2-1988, f. & cert. ef. 1-7-88; Administrative Renumbering 3-1988, Renumbered from 735-110-0510; MV 18-1988, f. & cert. ef. 6-1-88; MV 9-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 10-2002, f. & cert. ef. 6-24-02; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-020-0070

Junk Titles

(1) Pursuant to ORS 803.045, DMV will not issue an Oregon title or salvage title for a vehicle that has been issued a junk title, junk certificate, or similar ownership document, or junk or similar brand or notation that includes a word, term, brand or notation including but not limited to the following:

(a) Destroyed;

(b) Dismantled or Dismantler only;

(c) Hulk;

(d) Junk;

(e) Non-rebuildable;

(f) Non-repairable;

(g) Parts only;

(h) Scrap; or

(i) Wreck or Wrecker only.

(2) A designation as described in section (1) of this rule is based strictly on a determination made by another jurisdiction, as reflected on the current title or other ownership document issued by that jurisdiction.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 803.045

Stat. Implemented: ORS 803.045

Hist.: DMV 31-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; DMV 7-2004, f. & cert. ef. 5-24-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-022-0000

Standards Establishing Evidence of Ownership to a Vehicle

(1) To ensure compliance with state statutes, the following standards are established as satisfactory evidence of ownership of a motor vehicle. Evidence shall include, but is not limited to the following:

(a) Titles and/or bills of sale from owners of record. "Owner of record" means the person(s) shown on the most current record in the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) files;

(b) Bill of sale from an insurance company or dismantler (wrecker), if the title has been previously surrendered to DMV;

(c) Bills of sale or contracts;

(d) Legal dispositions: sheriff's bill of sale, or court orders of award;

(e) Estate settlement papers;

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(f) Acquisition of vehicle through property rights (vehicle is on property at time the property was purchased);

(g) Bills of sale to the unibody or frame;

(h) Bills of sale to the engine.

(2)(a) For all motor vehicles where evidence of items in subsections (1)(a) through (f) of this rule do not exist, and without a bill of sale as specified in subsection (1)(g) of this rule, no title shall be issued. No title shall be issued for motorcycles where evidence of items in subsections (1)(a) through (f) of this rule do not exist, unless the requirements in both subsections (1)(g) and (h) of this rule can be met. When motorcycles are titled by DMV, a vehicle identification number (VIN) shall be assigned to the frame of the vehicle when no existing frame number is available. The title record shall be based on the existing frame number or the VIN assigned by DMV. Assignment of a VIN shall also apply to mopeds;

(b) Motorcycles which qualify for registration as an antique or special interest vehicle shall be exempt from the assignment of a vehicle identification number on the frame, if:

(A) DMV is satisfied that the vehicle as originally manufactured had no vehicle identification number; and

(B) DMV is otherwise satisfied as to the true identity of the vehicle.

(3) Trailers are subject to the same provisions as motor vehicles under sections (1) and (2) of this rule. In addition, a bill of sale must be provided for the axle or trailer frame for all manufactured trailers or they will not be titled. Special affidavits shall be available for trailers, under certain conditions, as outlined in OAR 735-022-0010.

Stat. Auth.: ORS 802.010(3)(d), 803.045, 803.050 & 821.060

Stats. Implemented: ORS 803.045 & 803.050

Hist.: MV 7-1980, f. & ef. 5-27-80; Administrative Renumbering 3-1988, Renumbered from 735-071-0071; MV 3-1993, f. & cert. ef. 4-16-93; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0015

Definitions; Title Brands

As used in this rule through 735-024-0025, the following definitions apply:

(1) "Brand", "branded title", or "title brand" means a notation, indicator, symbol or phrase that is or has been printed, stamped or otherwise affixed to a certificate of title to indicate the history, condition, or circumstances of a vehicle. A title brand does not necessarily indicate the extent to which a vehicle may have been damaged, whether a vehicle has been repaired or to what degree a damaged vehicle has been repaired.

(2) "Assembled vehicle" as defined in ORS 801.130 and these rules means a vehicle:

(a) With a body that does not resemble any particular year model or make of vehicle;

(b) That is not a vehicle rebuilt by a manufacturer;

(c) That is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(d) That is not an antique vehicle, a vehicle of special interest, a reconstructed vehicle or a replica.

(3) The following title brands defined under this section are adopted pursuant to ORS 803.015 and indicate a determination of a vehicle's condition made by another jurisdiction, or in the case of "glider kit" or "replica vehicle" a determination made by Oregon DMV:

(a) "Branded" means:

(A) A listing of two or more brands on an out-of-state title or similar document; or

(B) A brand not specifically defined or identified under this rule.

(b) "Flood damaged," "flood," or a word of similar import means a brand to indicate that a vehicle has been submerged in water to the point that the vehicle sustained damage;

(c) "Glider kit" or a word of similar import means a brand to indicate:

(A) A kit consisting of a new truck cab or cab and hood assembly, including a front axle assembly and frame rails, with or without an engine, transmission and rear axle, manufactured and sold with a manufacturer's statement of origin, has been used to replace damaged or worn components of an existing heavy truck or tractor; or

(B) A heavy truck or tractor was assembled using a kit consisting of all new component parts, including engine, transmission and rear axle, manufactured and sold with a manufacturer's statement of origin, and assembled by a person other than the manufacturer of the components.

(C) For purposes of this subsection, "heavy truck or tractor" means truck or tractor with a gross vehicle weight rating of more than 16,000 pounds.

(d) "Lemon," "lemon-defective," "lemon-law buy-back," "returned to manufacturer" or a word of similar import means a brand to indicate a vehicle was returned to the manufacturer because of a defect or condition that could not be corrected and that substantially impaired the safety, market value, or the use, or intended use, of the vehicle.

(e) "Previous damage" means a title brand issued by DMV prior to August 20, 2004, to indicate that DMV had received information from another jurisdiction that a vehicle was damage, destroyed, wrecked or salvaged, or words of similar import. The term "previous damaged" does not apply to vehicles issued a junk title or similar ownership document by another jurisdiction as described under OAR 735-020-0070;

(f) "Reconstructed vehicle," or "reconstructed" as defined in ORS 801.405 and these rules, means either:

(A) A vehicle that:

(i) Has a body that resembles and primarily is a particular year model or make of vehicle;

(ii) Is not a vehicle rebuilt by a manufacturer;

(iii) Is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(iv) Is not a replica; or

(B) A motor truck that has been rebuilt using a component kit if the manufacturer of the kit assigns a vehicle identification number and provides a manufacturer's certificate of origin for the kit.

(g) "Totaled vehicle" or "totaled" as defined in ORS 801.527 and these rules means:

(A) A vehicle that is declared a total loss by an insurer that is obligated to cover the loss or that the insurer takes possession of or title to.

(B) A vehicle that is stolen, if it is not recovered within 30 days of the date that it is stolen and if the loss is not covered by an insurer.

(C) A vehicle that has sustained damage that is not covered by an insurer and that is such that the estimated cost to repair the vehicle is equal to at least 80 percent of the retail market value of the vehicle prior to the damage. For purposes of this subsection, "retail market value" shall be as reflected in publications relied upon by financial institutions doing business in this state.

(h) "Replica" as defined in ORS 801.425 and these rules, means a vehicle with a body built to resemble and be a reproduction of another vehicle of a given year and given manufacturer;

(4) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation;

(5) "Oregon Certificate of Title" or "Oregon title" means a certificate of title, as that term is defined in ORS 801.185, issued by DMV.

(6) "Oregon Salvage Title Certificate" means a written document issued by DMV under the provisions of ORS 803.140 and 819.016 as evidence of vehicle ownership. An Oregon Salvage Title Certificate is not a Oregon Certificate of Title.

(7) "Salvage title," "salvage certificate," and "dismantler (wrecker) bill of sale" means a document issued by another jurisdiction to indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. "Salvage title" does not refer to an Oregon salvage title certificate as defined by ORS 801.454 and this rule, unless the Oregon salvage title certificate reflects a brand that indicates the vehicle was damaged in another jurisdiction, before being titled in Oregon.

(8) "Word(s) of similar import" means any word, term, indicator, symbol or phrase that means the same or has the same effect as the terms described under OAR 735-020-0070 (junk titles) and defined under section (2) of this rule.

(9) For purposes of this rule, OAR chapter 735, division 024, division 152, ORS chapters 819 and 822, "Auto Recycler" has the same meaning as "dismantler" as defined under OAR 735-152-0000 and means a person issued a dismantler certificate under ORS 822.110.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.140, 819.016 & 821.060

Stats. Implemented: ORS 803.015 & 803.420

Hist.: DMV 18-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0030

Definitions Relating to Vehicles and Documents for Vehicles that Have Been Damaged, Altered, or Rebuilt

The following definitions and application of terms apply to OAR 735-024-0030 through 735-024-0170:

(1) "Accepting Vehicles as Salvage Material" as used in ORS 819.040, means to receive or purchase a vehicle that has already been wrecked, dismantled, or disassembled.

(2) "Assembled Vehicle" as defined in ORS 801.130 and these rules, means a vehicle:

(a) With a body that does not resemble any particular year model or make of vehicle;

(b) That is not a vehicle rebuilt by a manufacturer;

(c) That is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(d) That is not an antique vehicle, a vehicle of special interest, a reconstructed vehicle or a replica.

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(3) "Brand," "branded title," or "title brand" means a notation, indicator, symbol or phrase that is or has been printed, stamped or otherwise affixed to a certificate of title to indicate the history, condition, or circumstances of a vehicle. A title brand does not necessarily indicate the extent to which a vehicle may have been damaged, whether a vehicle has been repaired or to what degree a damaged vehicle has been repaired.

(4) "Certificate of Title" or "title" is defined in ORS 801.185. A title:

- (a) May be issued by Oregon or some other jurisdiction;
- (b) When issued by Oregon, is issued under ORS 803.045 or as is provided in 821.060;

(c) Except where designated, does not include a "salvage title certificate," "salvage title" or "salvage certificate";

(d) Is not issued to vehicles that:

(A) Are dismantled, disassembled, or substantially altered;

(B) Are otherwise in a condition that would require the title to be surrendered to the DMV for cancellation; or

(C) Have been issued a junk title, junk certificate or similar ownership document or brand as described in OAR 735-020-0070.

(e) Follows the frame or unibody of the vehicle for which the title was originally issued.

(5) "Dismantle" and "Disassemble" are defined in OAR 735-024-0050.

(6) "Frame" or "Unibody" refer to the major component(s) of a vehicle that form the support structure, undercarriage or lower structure of the vehicle, excluding such things as wheels or suspension. "Frame" does not include the body of the vehicle.

(7) "Insurer" as used in ORS 801.527 and 819.014 and in these rules, means a person engaged in the business of entering into policies of insurance. The term does not include persons who are self-insured.

(8) "Primary Ownership Document" is defined in ORS 801.402 and OAR 735-020-0010.

(9) "Proof of Compliance" means a document issued by DMV as evidence that:

(a) The title or primary ownership document was surrendered to DMV in accordance with ORS 819.010, 819.012 or 819.014; and

(b) The title or primary ownership document was marked, or DMV received other documentation that satisfied DMV that the vehicle was wrecked, dismantled, disassembled or totaled.

(10) "Reconstructed Vehicle," or "reconstructed" as defined in ORS 801.405 and these rules, means either:

(a) A vehicle that:

(A) Has a body that resembles and primarily is a particular year model or make of vehicle;

(B) Is not a vehicle rebuilt by a manufacturer;

(C) Is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(D) Is not a replica; or

(b) A motor truck that has been rebuilt using a component kit if the manufacturer of the kit assigns a vehicle identification number and provides a manufacturer's certificate of origin for the kit.

(11) "Replica" as defined in ORS 801.425 and these rules, means a vehicle with a body built to resemble and be a reproduction of another vehicle of a given year and given manufacturer.

(12) "Salvage Title Certificate," "Oregon Salvage Title Certificate" or "salvage title" as defined in ORS 801.454 and this rule means a written document issued by DMV under the provisions of ORS 803.140 and 819.016 as evidence of vehicle ownership. Unless designated otherwise, an Oregon Salvage Title Certificate is not a certificate of title.

(13) "Salvage title," "salvage certificate," and "dismantler (wrecker) bill of sale" means a document issued for a vehicle to indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. "Salvage title" does not refer to an Oregon salvage title certificate as defined by ORS 801.454 and this rule, unless the Oregon salvage title certificate reflects a brand that indicates the vehicle was damaged in another jurisdiction, before being titled in Oregon.

(14) "Substantially Alter the Form" is defined in OAR 735-024-0050.

(15) "Totaled vehicle" and "totaled" as defined in ORS 801.527 and these rules means:

(a) A vehicle that is declared a total loss by an insurer that is obligated to cover the loss or that the insurer takes possession of or title to;

(b) A vehicle that is stolen, if it is not recovered within 30 days of the date that it is stolen and if the loss is not covered by an insurer; or

(c) A vehicle that has sustained damage that is not covered by an insurer and that is such that the estimated cost to repair the vehicle is equal to at least 80 percent of the retail market value of the vehicle prior to the damage. For purposes of this subsection, "retail market value" is determined utilizing publications used by financial institutions doing business in Oregon.

(16) "Wreck" is defined in OAR 735-024-0050.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.0140, 819.016 & 821.060

Stats. Implemented: ORS 803.015 & 803.420

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 18-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0070

Vehicles that Are Wrecked, Dismantled, Disassembled, or Substantially Altered in Form — Responsibility of Parties

(1) The types of vehicles that are subject to the provisions of ORS 819.010 (e.g., wrecked, dismantled, substantially altered) include:

(a) Vehicles of the type that, when operated over the highways of this state, are required to be registered and titled;

(b) Class I or III all-terrain vehicles;

(c) Snowmobiles; and

(d) Any other vehicle that has been issued a title by DMV; or by another jurisdiction.

(2) ORS 819.010 and any related rules apply if the activity described in ORS 819.010 and OAR 735-024-0050 is performed in this state, and the vehicle is of a type covered in section (1) of this rule. This applies to vehicles titled in Oregon, those titled in another jurisdiction, and any vehicle not subject to title requirements.

(3) A person who dismantles, disassembles, wrecks or substantially alters the form of a vehicle, must comply with the provisions of ORS 819.010 and apply for an Oregon salvage title except as provided in ORS 819.016 and OAR 735-024-0130.

(4) Primary ownership documents for vehicles described in section (1) of this rule may be surrendered to DMV, in lieu of the certificate of title where a title does not exist, or where ownership is being transferred by operation of law and the title is not available.

(5) The Oregon title certificate, foreign title certificate, or primary ownership document must be surrendered to DMV together with the application for salvage title, if a salvage title is required.

(6) The Oregon title must be surrendered to DMV along with a written statement that indicates the vehicle was dismantled, disassembled, wrecked or substantially altered, if a salvage title is not required. The statement must be submitted on a DMV Form 735-6017, "Notice of Vehicle to be Dismantled/Proof of Compliance," "if submitted by someone other than a dismantler issued a certificate under ORS 822.110.

(7) Except as provided in section (11) of this rule, registration cards and registration plates that are required to be surrendered, may be submitted with the title or primary ownership document, or submitted separately to DMV, along with information as to why they are being surrendered.

(8) Vehicles that are subject to this rule may not be repaired, rebuilt, transferred, or the frame or unibody used for repairing or constructing another vehicle, until a salvage title is applied for and issued, consistent with ORS 819.016 and 819.018.

(9) If a salvage title is not required, DMV may issue proof of compliance upon request, if:

(a) The title or primary ownership document is surrendered to DMV;

(b) DMV is provided with documentation that indicates the vehicle has been wrecked, dismantled or disassembled; and

(c) DMV is satisfied that a salvage title is not required.

(10) The act of wrecking, dismantling, disassembling or substantially altering a vehicle will not by itself cause a vehicle to be considered a totaled vehicle. Such a vehicle:

(a) Is subject to the requirements under ORS 819.010 and DMV rules; and

(b) Is not considered totaled, and is not subject to requirements that apply to totaled vehicles unless the vehicle was determined to be totaled before the vehicle was dismantled, disassembled, wrecked or substantially altered.

(11) Notwithstanding section (7) of this rule, a dismantler must destroy registration cards and registration plates when the dismantler acquires a motor vehicle. A dismantler that destroys registration cards and registration plates must ensure that all registration cards and registration plates are destroyed to the extent they can never be used again. For purposes of this rule, "acquires" means physical possession of a motor vehicle together with possession of the vehicle's ownership record.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140 & 819.012 - 819.018

Stats. Implemented: ORS 819.010 - 819.040

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

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735-024-0075

Notification of Disposal of Abandoned Vehicle Appraised at \$500 or Less

(1) This rule designates the form of notice that must be submitted to the Driver and Motor Vehicle Services Division of the Department of Transportation for the disposal of an abandoned vehicle appraised at a value of \$500 or less under the provisions of ORS 819.215.

(2) For purposes of this rule the following definitions apply:

(a) "An authority" means a law enforcement or government agency authorized to remove an abandoned vehicle as described in ORS 819.140;

(b) "Dismantler" means a person who is the holder of a valid dismantler certificate issued under ORS 822.110; and

(c) "Tower" means the towing business that tows a vehicle at the request of an authority.

(3) A completed signed Abandoned Vehicle Certificate (DMV Form 271) must be submitted to DMV when an appropriate authority (i.e., a law enforcement agency or government entity), or tower determines to dispose of an abandoned vehicle.

(4) DMV will not accept an Abandoned Vehicle Certificate:

(a) That does not contain the make, plate number, registration state, vehicle identification number, appraised value, name of the dismantler to whom the vehicle will be disposed, and the certification, including the name, address and authorized signature of the authority or tower disposing of the vehicle;

(b) Shows an appraised value of more than \$500; or

(c) That has a form revision date before December 1998.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.215

Stat. Implemented: ORS 819.215

Hist.: DMV 12-2005, f. 5-19-05, cert. ef. 6-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0077

Notification of Request to Dispose of a Vehicle Appraised at \$500 or Less Abandoned on Private Property

(1) This rule designates the form of notice that must be submitted to DMV by an authority requested by a person 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).

(2) For purposes of this rule the following definitions apply:

(a) "An authority" means a law enforcement or government agency authorized to dispose of an abandoned vehicle as described in ORS 819.140(1)(b) or (c).

(b) "Appraiser" means a person who is the holder of a valid vehicle appraiser certificate issued under ORS 819.230.

(c) "Dismantler" means a person who is the holder of a valid dismantler certificate issued under ORS 822.110.

(3) A completed and signed Abandoned Vehicle Certificate - Vehicle Abandoned on Private Property (DMV Form 272) must be submitted to DMV by an authority when the authority chooses to dispose of an abandoned vehicle as described under section (1) of this rule.

(4) An Abandoned Vehicle Certificate — Vehicle Abandoned on Private Property form must include:

(a) The name and address of the authority disposing of the vehicle;

(b) The name and address of the person requesting the disposal;

(c) The vehicle identification number;

(d) The registration plate number, if the registration plates are on the vehicle;

(e) The appraised value of the vehicle; and

(f) The appraiser's certificate number and signature.

(5) DMV will not accept an Abandoned Vehicle Certificate - Vehicle Abandoned on Private Property if the form:

(a) Does not contain all of the information listed in section (4) of this rule;

(b) Shows an appraised value of more than \$500; or

(c) Shows a form revision date before January 2006.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 819.215, Ch. 738, OL 2005 (HB 3121)

Stat. Implemented: ORS 819.215 & Ch. 738, OL 2005 (HB 3121)

Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0080

Abandoned Vehicles Sold Under ORS 819.220

(1) This rule covers situations where an abandoned vehicle is sold under ORS 819.220.

(2) As used in this rule:

(a) "Authority" means the agency described in ORS 819.140, that has the authority to take abandoned vehicles into custody and to dispose of them;

(b) "Dismantler" means a person issued a certificate under ORS 822.110, and may also be a purchaser;

(c) "Purchaser" means the person to whom the authority sold a vehicle under the provisions of ORS 819.220 but does not include a dismantler.

(3) The authority shall:

(a) Comply with the provisions of ORS 819.220; and

(b) Provide the purchaser with Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) Form 735-6017, "Notice of Vehicle to be Dismantled/Proof of Compliance," required under ORS 819.010, when an authority sells a vehicle under ORS 819.220 to someone other than a dismantler.

(4) If the purchaser is someone other than a dismantler, the purchaser shall:

(a) Use one copy of the Form 735-6017 to notify DMV if the purchaser intends to wreck, dismantle, disassemble or substantially alter the form of the vehicle as required under ORS 819.010; and

(b) Submit another copy of the Form 735-6017 to DMV along with the title or primary ownership document (e.g., sheriff's certificate of sale), within 30 days of when the vehicle has been wrecked, dismantled, disassembled or substantially altered, if the vehicle is exempt from salvage title requirements under ORS 819.016 or OAR 735-024-0130.

(5) Dismantlers who purchase vehicles under ORS 819.220, shall comply with the provisions of ORS 819.010 as it applies to dismantlers, and any other provisions of law or rule that apply to dismantlers.

(6) Except as otherwise provided in ORS 819.016 and OAR 735-024-0130, a purchaser shall apply to DMV for a salvage title.

(7) Notwithstanding other provisions of this rule, a person who purchased a vehicle under ORS 819.220 prior to January 1, 1992, shall not be required to apply for salvage title until such time as:

(a) The vehicle is repaired or otherwise operated over the highways, in which case in lieu of applying for a salvage title, a person may apply for a certificate of title showing the vehicle as assembled, reconstructed or a replica;

(b) The vehicle is wrecked, dismantled, disassembled or substantially altered in form; or

(c) Ownership of the vehicle or frame or unibody of the vehicle is transferred.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 819.110, 819.140, & 819.220

Stats. Implemented: ORS 819.220

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0120

Totaled Vehicles — Persons Who Receive or Purchase

(1) Except as otherwise provided by law, a person who receives or purchases a totaled vehicle is required under ORS 819.012 to surrender the title for the vehicle within 30 days of the purchase or receipt of the vehicle. As used in that statute and this rule:

(a) A primary ownership document may be surrendered when a title does not exist or in the case of a transfer by operation of law, is not available;

(b) The requirement that the title or primary ownership document be surrendered does not apply when:

(A) The title or primary ownership document has already been surrendered to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) with information indicating the vehicle was totaled; or

(B) A salvage title has already been issued for the vehicle. This section does not exempt persons from applying for salvage title in their name, if required to do so under OAR 735-024-0170.

(2) Persons who receive or purchase a totaled vehicle, and except as provided in section (1) of this rule, shall within 30 days of receipt or purchase, surrender the title or primary ownership document to DMV, and do one of the following:

(a) Apply for salvage title as required under OAR 735-024-0130 and as provided under OAR 735-024-0140;

(b) Apply for a certificate of title identifying the vehicle as totaled and assembled or reconstructed or vehicle replica;

(c) If a salvage title is not required, and the vehicle is not eligible for or a certificate of title is not being applied for, surrender the certificate of title or primary ownership document, together with assignments of interest or other evidence that the person(s) shown on the current title no longer hold an interest, and a written statement that indicates:

(A) The name and address of the person submitting the title;

(B) That the vehicle was totaled; and

(C) Why the vehicle is exempt from having to be issued a salvage title.

(3) Subsection (2)(c) of this rule only applies to situations where a salvage title is not required because the person does not intend to:

(a) Rebuild or repair the vehicle; or

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(b) Use the frame or unibody in repairing or constructing another vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 819.014
Stats. Implemented: ORS 819.010 - 819.040
Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0130

Salvage Title — Vehicles Subject and When/Who Required to Apply

(1) An Oregon salvage title is an ownership document that is used to assign interest and to make an odometer disclosure on a vehicle, from the time that the certificate of title is required to be surrendered to DMV until:

- (a) The vehicle is repaired, rebuilt or is issued a certificate of title; or
- (b) It is determined that all of the following apply:

(A) The vehicle will not be rebuilt or repaired; and

(B) The frame or unibody of the vehicle will not be used in repairing or constructing another vehicle.

(2) Vehicle types subject to the issuance of salvage titles, include any vehicle:

(a) Of the type required to be titled or registered in this state, if operated over the highways;

(b) Snowmobiles required to be titled and registered by DMV; and

(c) Any other vehicle that has been issued a certificate of title by DMV, or some other jurisdiction.

(3) Except as provided in section (4) of this rule, application must be made for a salvage title on any subject vehicle that is:

(a) Wrecked, dismantled, disassembled, or where the form of the vehicle is substantially altered, as covered in ORS 819.010 and OAR 735-024-0050;

(b) Determined to be a totaled vehicle, and the title is required to be surrendered to DMV under ORS 819.012 or 819.014; or

(c) An abandoned vehicle that is sold under the provisions of ORS 819.220.

(4) When a salvage title is required, application must be made:

(a) For a vehicle that is declared a total loss by an insurer that is obligated to cover the loss, or that the insurer takes possession of or title to:

(A) The insurer must apply for the salvage title if the insurer obtains the title as provided under ORS 819.014, unless a salvage title has already been issued;

(B) The owner must apply for the salvage title if the vehicle owner does not surrender the title to the insurer.

(b) By the owner for a vehicle that is totaled due to damage when the loss is not covered by an insurer;

(c) By any person who purchases an abandoned vehicle sold under ORS 819.220;

(d) By any person who receives or purchases a vehicle subject to salvage title requirements unless:

(A) A salvage title or similar document has already been issued by Oregon or some other jurisdiction, and the person is not required to apply for salvage title in his or her name under OAR 735-024-0170; or

(B) A totaled vehicle was purchased prior to January 1, 1992, and is not subject until the vehicle, frame or unibody is transferred, or the vehicle is wrecked, dismantled, disassembled, or substantially altered in form.

(5) The term "receive" as used in section (4) of this rule and ORS 819.012, does not apply to auctions or other parties who as an agent of another, take possession or control of a vehicle, but who do not actually acquire an interest in the vehicle or vehicle salvage. This section does not:

(a) Relieve insurers or persons who are actually transferring interest in the vehicle or vehicle salvage, from the responsibility to apply for and provide any purchaser with a salvage title, as required under ORS 819.012 through 819.018 and this rule; or

(b) Prevent parties from entering into agreements to allow agents to apply for and provide salvage titles to any purchaser on behalf of another.

(6) An odometer disclosure is required when application is made for the issuance or transfer of a salvage title for motor vehicles, except those exempt from disclosure requirements under OAR 735-028-0010.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140 & 819.012 - 819.018
Stats. Implemented: ORS 803.140, 819.010 - 819.040 & 49 CFR Part 580
Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-024-0170

Salvage Title — Assignment, Transfer, Requirements for Surrender

(1) The salvage title shall be retained by the owner as long as the vehicle or frame or unibody is still subject to salvage title requirements as provided in OAR 735-024-0130, except when ownership is transferred. Upon transfer, the salvage title shall be assigned to the new owner.

(2) If the vehicle is wrecked, dismantled, disassembled, or substantially altered in form, and the parts transferred separately:

(a) The salvage title shall remain with the frame or unibody, if it is still subject to salvage title requirements or is sold to someone in another jurisdiction;

(b) The salvage title shall be surrendered to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) if the frame or unibody is no longer subject to salvage title requirements and has not been sold to someone in another jurisdiction. In this case, the salvage title shall be surrendered to DMV within 30 days of when the vehicle, including the frame or unibody, is no longer subject to salvage title requirements.

(3) The provisions of this rule relating to forms used for assigning interest and making odometer disclosures only apply to a vehicle or frame or unibody remaining in this state. Other states may require assignments and disclosures to be made on the salvage title or on secure assignment forms that may be submitted with the salvage title.

(4) A dealer, dismantler, or insurer shall not be required to apply for salvage title in their name if ownership of a vehicle or frame or unibody for which a salvage title has been issued is transferred to a dealer or dismantler who holds a certificate issued under ORS 822.020 or 822.110, or to an insurer. This section shall not prohibit a dealer, dismantler or insurer from applying for a salvage title in their name:

(a) Except as provided in subsection (4)(b) of this rule, any assignment of interest to the insurer, dealer or dismantler shall be made on:

(A) The current salvage title; or

(B) If all of the assignment spaces on the salvage title are filled up, a separate assignment form, that shall accompany and remain with the salvage title. If ownership is again transferred, any separate assignment documents, or certified copies thereof, shall be given to the new purchaser with the salvage title.

(b) The assignment may be made on the replacement title application or on documents supporting the application for replacement title, if the salvage title is lost, mutilated or destroyed, and where allowed under OAR 735-024-0150, the replacement salvage title is to be issued in a name other than the current owner of record.

(5) If ownership of a vehicle or frame or unibody for which a salvage title has been issued is transferred to anyone other than a dealer or dismantler who holds a certificate issued under ORS 822.020 or 822.110, or an insurer, that person shall be required to apply for salvage title in his or her name. In this case:

(a) Assignments of interest may be made as provided in section (4) of this rule;

(b) Odometer disclosures may be made on the application for salvage title or as otherwise provided in OAR 735-028-0000;

(c) The purchaser shall make application for salvage title as provided in OAR 735-024-0140, or if the salvage title is lost, destroyed or mutilated, as provided in OAR 735-024-0150.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.016
Stats. Implemented: ORS 803.140
Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-028-0010

Vehicles Exempt from Odometer Disclosure Requirements

(1) In addition to the exemptions under ORS 803.102, the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) shall not require odometer disclosures for the following:

(a) Any transfer of a new vehicle prior to its first transfer for purposes other than resale;

(b) Snowmobiles;

(c) Class I all-terrain vehicles;

(d) A vehicle which has been reported stolen, and has not been recovered;

(e) Any vehicle not equipped with an odometer at the time of manufacture;

(f) A vehicle covered by a salvage title, if:

(A) The odometer has been destroyed, removed or is otherwise unreadable; or

(B) The frame is transferred separately from the odometer.

(g) Any vehicle that has been wrecked, dismantled, disassembled or substantially altered, if all of the following apply:

(A) The provisions of ORS 819.010 have been complied with and DMV has issued proof of compliance under ORS 819.030;

(B) The vehicle is sold, conveyed or otherwise assigned to a person who holds a dismantler certificate issued under ORS 822.110, and who crushes, compacts or shreds the vehicle including the frame or unibody; and

(C) The vehicle is therefore exempt from having to be covered by a salvage title, and the assignment of interest to the dismantler is exempt from the definition of "transfer" under OAR 735-024-0130.

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(2) ORS 803.102 exempts any vehicle ten years of age or older. For the purpose of determining the age of a vehicle for odometer disclosure purposes, DMV shall:

(a) Use the model year assigned by the manufacturer, or in the case of an assembled, reconstructed or replica vehicle, use the model year shown on the title; and

(b) Use January 1 of that year as the starting point in determining the age of the vehicle. For example, a 1989 vehicle shall be considered ten (10) years old on January 1, 1999.

(3) DMV may require applicants to certify eligibility for, or submit evidence of, exemption under ORS 803.102 or this rule when DMV cannot determine if the vehicle is eligible for exemption.

Stat. Auth.: ORS 184.616, 803.045 & 803.102

Stats. Implemented: ORS 803.045 & 803.102

Hist.: MV 23-1985, f. 12-31-85, ef. 1-1-86; MV 29-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0410; MV 51-1989, f. & cert. ef. 12-1-89; MV 12-1991, f. 9-18-91, cert. ef. 9-29-91; MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; DMV 1-1997, f. & cert. ef. 1-17-97; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-028-0090

Odometer Disclosure a Requirement for Issuance of Title, Exceptions

(1) If a vehicle is subject to odometer disclosure and there has been a transfer of interest as defined in OAR 735-028-0050, an odometer disclosure shall be required for issuance of title.

(2) Except as otherwise provided in this rule, odometer disclosures required under this rule shall conform to the provisions of OAR 735-028-0050 through 735-028-0080, including but not limited to such things as acceptable forms, content, and who is required to complete and sign the disclosure.

(3) Except as otherwise provided in this rule, if there has been more than one transfer since the last title or other primary ownership document was issued (e.g., the owner sold the vehicle to a dealer who sold it to another person), the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) shall require a disclosure:

(a) Between the owner (seller) in whose name the last title or other primary ownership document was issued and the first buyer; and

(b) Between the person who last transferred the vehicle and the current applicant for title.

(4) If a vehicle is transferred through multiple parties (e.g., a vehicle sold from dealer to dealer), only the first and last disclosure must be submitted to DMV as provided in section (3) of this rule. However, this does not exempt the in-between owners from requirements to obtain, provide, and in some cases, maintain records on odometer disclosures, as otherwise required by DMV rules, federal law or federal rules.

(5) DMV may accept an odometer disclosure from the buyer, rather than the seller, or accept a transfer where only one of the two disclosures required under section (3) of this rule is provided, in the following situations:

(a) The most recent buyer does not receive the required disclosure(s) from the seller or the disclosure is subsequently lost or destroyed, and the seller is not available or refuses to provide the required disclosure(s);

(b) Interest is transferred by operation of law and the person who transferred interest did not have possession of or reasonable access to the vehicle, such as a transfer ordered by a court;

(c) The transfer occurred before July 1, 1992;

(d) DMV is satisfied a disclosure(s) required under section (3) of this rule is otherwise not available;

(e) The owner shown on an out-of-state title does not make a disclosure. This exception does not apply if the owner on an out-of-state title sells the vehicle directly to an Oregon business required to keep records of odometer disclosures, identified in section (7) of this rule;

(f) The owner shown on an Oregon title sells the vehicle to an out-of-state dealer and does not make a disclosure, and the vehicle is subsequently transferred to an Oregon buyer.

(6) When accepting a disclosure from the buyer or accepting a transfer where only one of the two disclosures required under section (3) of this rule is received, DMV may require additional evidence or information as to why a disclosure from the seller or person required to provide the disclosure has not been provided:

(a) When a transfer occurs between private parties or businesses not required by federal rule or law to maintain odometer disclosure records, in lieu of evidence, DMV:

(A) May accept a certification from the buyer that includes, but may not be limited to, a statement that a disclosure from the seller is not available; or

(B) If one of the two disclosures required under section (3) of this rule is provided, DMV may accept the transfer without requiring an additional disclosure or certification.

(b) When a vehicle is sold by or through a business required by federal rule to maintain odometer disclosure records, in addition to the certification described in subsection (6)(a) of this rule, DMV may require any or all of the following:

(A) Evidence of the buyer's attempt to get the required disclosure from the seller, or evidence the seller no longer is in business;

(B) A statement, certification or other evidence from the seller as to why the seller cannot provide the required disclosure; or

(C) A certified copy of the disclosure from the seller's records, if the original disclosure is not available.

(c) When a transfer occurs by operation of law:

(A) DMV shall accept a certification from the buyer as provided in subsection (6)(a) of this rule, without requiring further information or evidence as to the availability of a disclosure from the person who transferred the interest, if the transfer is of the type where the person who is transferring interest would in many cases not have possession of, or reasonable access to, the vehicle (e.g., transfer by court order or bankruptcy trustee);

(B) DMV may require additional evidence or information, such as provided in subsection (6)(b) of this rule, if the transfer is of a type where the person who is transferring interest would in most cases have possession of or reasonable access to the vehicle (e.g., possessory lien sale or sheriff's sale).

(7) Businesses required to maintain odometer disclosure records under federal rule or law include:

(a) Auction companies, which as used in this rule, includes any person who takes possession (whether through consignment or bailment, or through any other arrangement) of a motor vehicle owned by another person for purposes of selling such motor vehicle at an auction;

(b) Dealers, which for the purpose of odometer disclosures under this rule and under federal odometer provisions, includes:

(A) Any person who meets the definition of "dealer" as defined in OAR 735-150-0010, regardless of whether the person holds a business certificate issued under ORS chapter 822; and

(B) Any person who meets the definition of "dealer" in federal rules and laws (i.e., has sold five or more motor vehicles in the past 12 months to purchasers who in good faith purchase such vehicles for purposes other than resale). For the purpose of this rule, DMV shall consider any Oregon dismantler or dealer who holds a certificate issued under ORS chapter 822 to meet this definition.

(c) Distributors, which as used in this rule, means any person who has sold five or more vehicles in the past 12 months for resale; and

(d) Lessors, which as used in this rule, means any person or agent for any person who has leased five or more motor vehicles in the past 12 months.

(8) In addition to any information or documents required under section (6) of this rule, and except as otherwise provided in this rule, disclosures accepted from buyers shall contain at least the following:

(a) The odometer reading, excluding tenths of a mile or kilometer;

(b) Vehicle information sufficient for DMV to identify the vehicle;

(c) A certification as to whether, to the best of the person's knowledge, the odometer reading reflects the actual mileage, is in excess of the designed mechanical odometer limit, or does not reflect the actual mileage;

(d) The printed name and written signature of the buyer; and

(e) The buyer's address.

(9) DMV may accept a disclosure on a form other than required under OAR 735-028-0020 through 735-028-0090:

(a) Examples of situations where DMV may accept alternative forms include, but shall not be limited to:

(A) A disclosure required to be on a title that is in the possession of, and is being retained by DMV;

(B) DMV accepting a disclosure as provided under section (6) of this rule; or

(C) A disclosure made on a secure power of attorney that has not been transferred to a state issued disclosure form.

(b) Examples of situations where DMV shall not accept a disclosure on alternative forms include, but shall not be limited to:

(A) A dealer signs a disclosure as both seller and buyer and does not use a secure power of attorney form; or

(B) A dealer uses a secure power of attorney form to make a disclosure when the title was not lost or in the possession of a lienholder.

(10) DMV may accept an odometer disclosure that does not contain all the information required by rule, if the documents received by DMV contain all of the following:

(a) The odometer reading;

(b) A certification as to whether, to the best of the person's knowledge, the odometer reading reflects the actual mileage, mileage in excess of the designed mechanical limit of the odometer, or does not reflect the actual mileage;

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(c) Vehicle information sufficient for DMV to identify the vehicle; and

(d) The signature of the person making the disclosure.

(11) DMV may accept a secure power of attorney that does not contain all the information required by rule, if the documents received by DMV contain all of the following:

(a) The odometer reading;

(b) A certification as to whether, to the best of the person's knowledge, the odometer reading reflects the actual mileage, mileage in excess of the designed mechanical limit of the odometer, or does not reflect the actual mileage;

(c) Vehicle information sufficient for DMV to identify the vehicle;

(d) The signature of the person granting power of attorney; and

(e) The signature of the named attorney.

(12) DMV may retain a separate power of attorney filing and fee under OAR 735-028-0080(9) that does not contain all the required information.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 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, 803.370, 803.475, 805.120, 815.405, 821.060 & 821.080

Stats. Implemented: ORS 803.120, 815.425 & 49 CFR Part 580

Hist.: MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; MV 18-1992, f. 12-21-92, cert. ef. 1-1-93; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-028-0110

Control of Secure Forms — Definitions, Distribution and Fees

All of the following apply to the control and distribution of the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) secure power of attorney and secure odometer disclosure/reassignment forms:

(1) As used in OAR 735-028-0110 through 735-028-0150, the following definitions apply:

(a) "Vendor" means the person or firm authorized by DMV to print secure forms and to sell them to distributors and DMV;

(b) "Forms distributor" or "distributor" means a person, firm or other entity who has been approved by DMV as provided in this rule to distribute forms to end users;

(c) "End user" means a person or firm routinely involved in the transfer or ownership of vehicles. The term applies to vehicle dealers, dismantlers, insurers and lenders, and shall apply to any other person or firm routinely involved in the transfer of ownership of vehicles. "End user" does not refer to an individual or business transferring ownership of their own vehicles on an occasional basis;

(d) "Application for approval" or "application" means a written application, on a form provided by DMV, to become an approved forms distributor;

(e) "Approval" means a letter or form issued by DMV which indicates the applicant has been approved by DMV as a forms distributor.

(2) Secure forms may be distributed to end users by:

(a) A forms distributor as defined in section (1) of this rule; or

(b) The Oregon DMV. DMV shall not routinely distribute forms directly to end users. DMV may provide for direct distribution of secure forms in situations which include, but are not limited to:

(A) DMV choosing to provide forms directly to forms distributors rather than have the distributors purchase forms from the vendor; or

(B) There are not enough forms distributors to meet distribution needs.

(3) DMV may directly provide secure forms on an individual basis. Providing forms on an individual basis includes, but is not limited to, providing a form to a person to complete a transaction involving the person's own vehicle or providing the form in conjunction with a transfer submitted to DMV. Forms DMV provides under this section shall be provided at no fee.

(4) A fee, established by DMV and revised as necessary, shall be charged for forms provided by a forms distributor or by DMV to end users:

(a) The fee for forms provided by DMV to distributors shall be the cost of the forms to DMV plus the cost of shipping and handling;

(b) The fee determined by DMV for forms provided to end users shall include the direct and indirect costs associated with providing the service, as well as a reasonable profit for the distributor. Costs considered in determining the fee shall include, but may not be limited to, the cost of:

(A) Purchase of forms from the vendor or DMV;

(B) Distribution;

(C) Storage and any costs related to maintaining the forms in a secure manner;

(D) Maintaining records and providing DMV with information on forms distribution and projected inventory needs; and

(E) Instruction and training to end users on the use and control of secure forms and notice of changes in the fee for secure forms.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 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, 803.370, 803.475, 805.120, 815.405, 821.060 & 821.080

Stats. Implemented: ORS 803.124 & 49 CFR Part 580

Hist.: MV 18-1992, f. 12-21-92, cert. ef. 1-1-93; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-032-0020

Plates Considered Void

(1) Registration plates surrendered to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) shall be considered void and shall not be used to register other vehicles:

(a) This includes registration plates:

(A) Surrendered due to cancellation, revocation or suspension of the registration;

(B) Issued by other jurisdictions and surrendered when the vehicle to which the plates are assigned is titled or registered in Oregon;

(C) Surrendered when the vehicle to which the plates are assigned is wrecked, dismantled, disassembled, substantially altered or destroyed; and

(D) Surrendered when the vehicle registration or plate type changes.

(b) This does not include situations where DMV determines the plates were surrendered in error.

(2) When a dismantler issued a certificate under ORS 822.110 acquires a wrecked vehicle and the registration plates issued to that vehicle, the plates shall be considered void and shall not be used to register or operate any other vehicle. For purposes of this rule, "acquires" means physical possession of a motor vehicle together with possession of the vehicle's ownership record.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.210, 803.380, 819.010 - 819.030 & 822.100 - 822.145

Stats. Implemented: ORS 809.080 & 809.110

Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0320; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-046-0080

Oregon Trail Registration Plate Series

(1) The Oregon Trail plate required under Chapter 741, Oregon Laws 1993, shall be issued as provided in section (2) of this rule to:

(a) Motor vehicles registered under ORS 803.420(1). Vehicles registered under these provisions include but are not limited to:

(A) Motor trucks with a loaded weight of 8,000 pounds or less, except armored cars, wreckers, tow vehicles, hearses or ambulances; and

(B) Vehicles commonly known as passenger cars.

(b) Any vehicle covered in section (1) of this rule and registered with a customized plate(s) as provided in ORS 805.240; and

(c) Motor home, travel trailer and camper plates covered under ORS 803.420(16).

(2) At the request of the owner(s), vehicles listed in section (1) of this rule shall be issued a plate bearing the Oregon Trail design:

(a) Upon the initial registration of the vehicle in Oregon;

(b) Upon application for replacement plate(s); or

(c) Any time a plate(s) would normally be issued to a vehicle (i.e., when a change in registration type or change in class occurs, such as when a vehicle with passenger registration changes to custom plate registration under ORS 805.240).

(3) Persons who apply for a plate(s) from the Oregon Trail series, under section (2) of this rule, shall pay a fee of \$2.50 per plate as provided in Subsection 113(2), Chapter 741, Oregon Laws 1993. This fee is in addition to the plate manufacturing fee and any other application fees (i.e., renewal of registration fee, replacement plate fee). The fees as specified in Subsection 113(2), Chapter 741, Oregon Laws 1993 are \$2.50 for each plate issued.

Stat. Auth.: ORS 184.616 & Ch. 741, OL 1993

Stats. Implemented: Ch. 741, OL, Sec. 113 & 114

Hist.: MV 5-1993, f. & cert. ef. 10-21-93; Suspended by DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-150-0005

Oregon Dealer Advisory Committee

(1) The Oregon Dealer Advisory Committee is established pursuant to ORS 802.370.

(2) The committee's membership will consist of the following individuals:

(a) Two individuals who represent franchise dealers of new vehicles;

(b) Two individuals who represent dealers of used vehicles;

(c) Two individuals who represent Oregon dismantlers;

(d) Two individuals who represent the interests of the general public;

(e) One individual who represents recreational vehicle dealers;

(f) One individual who represents vehicle dealership office management interests;

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- (g) One individual who represents auto auctions;
- (h) One individual who represents Oregon towing businesses.

(i) In addition to the committee membership described under subsections (a) through (h) of this section, membership may also include one realtor who is a certified vehicle dealer and one individual, whose term of appointment and interest of representation will be determined by the DMV Administrator.

(3) DMV must annually designate one member listed in section (2) of this rule as chair of the committee.

(4) Members' terms of appointment will be three (3) years. However, members serve at the pleasure of the DMV Administrator. A member may be replaced upon missing two (2) consecutive meetings without good cause. The initial date of expiration of terms will be staggered in a manner determined by DMV.

(5) DMV will seek the recommendation of a trade or professional association generally recognized to represent a membership category before appointing a committee member, however, DMV is not bound by the association's recommendation.

(6) DMV must consult with the committee before:

- (a) Adopting administrative rules under ORS 822.035;
- (b) Taking disciplinary action against a dealer under ORS 822.050 to revoke, suspend or place a dealer on probation;
- (c) Levying a civil penalty against a dealer under ORS 822.009(1); or
- (d) Taking disciplinary action against an Oregon dismantler under OAR 735-152-0050 to revoke, suspend or place a dismantler on probation.

(7) DMV, at its discretion, may consult with the committee or committee member by mail, telephone, or other electronic means, or at a meeting of the committee. However, DMV is not bound by a committee recommendation. DMV must provide members seven (7) days from the date of a mailing to respond to proposed actions, unless DMV determines continued operation of a business jeopardizes public health or safety.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 802.370

Hist.: MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-150-0010

Definitions

As used in this division and ORS Chapter 822:

(1) "Additional (or supplemental) place of business" or "additional (or supplemental) location" means a location, other than one exempted under OAR 735-150-0020, that is more than 500 feet from any other business location of the dealer, and which is operated under the same name as the main business location.

(2) "Advertise" means to offer a vehicle for sale or to communicate to the public that a person is acting as a vehicle dealer, by any oral, written, or graphic means including, but not limited to, handbills, the Internet, newspapers, signs, television, billboards, radio, and telephone directories.

(3) "Agent" means any dealer possessing a current valid vehicle dealer certificate issued under ORS 822.020, who accepts applications and fees for the titling and the registration of vehicles sold by the dealer and who performs such other duties related to the titling and registration of vehicles as DMV authorizes under the rules set forth in Division 150.

(4) "Business day" means Monday through Saturday and does not include Sundays or State of Oregon and Federal legal holidays.

(5) "Cancellation" has the same meaning as "revocation" as defined in section (25) of this rule.

(6) "Certified dealer" means a dealer who holds a valid dealer certificate issued under ORS Chapter 822.

(7) "Circumstances beyond the dealer's control," as used in ORS 822.045(3)(b), OAR 735-150-0050(5) means:

(a) That the dealer could not get the title from any state and the prior security interest holder was paid in full by the dealer; and

(b) The delay was a result of the security interest holder failing to release title; or

(c) DMV may consider the follow mitigating circumstances, if those circumstances result in the physical destruction of, or inaccessibility to vehicle records necessary to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5):

(A) The direct result of clearly-established fraud or other criminal activity against the vehicle dealer, 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 the person who actually engaged in the criminal activity. This mitigating circumstance does not apply if the dealer is the perpetrator of the wrongdoing described in this paragraph; or

(B) The direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to vehicle records to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5).

(8) "Closure" means a vehicle dealership that no longer has legal authority to conduct dealer-related activity. For example, a dealer's certificate issued under ORS 822.020 is expired, cancelled, suspended or revoked.

(9) "Date of sale," or use of similar terms to indicate the day that the sale occurred, means the date on which the purchaser takes possession of the vehicle except, for those sales made by auto auction companies which only allow certified dealers to act as purchasers. With respect to auto auctions and for purposes of consignor payment under ORS 822.060(1)(d), "date of sale" means, the date upon which the consigning party delivers the necessary title documents to the purchasing dealer.

(10) "Dealer" means a person who engages in any of the activities described in ORS 822.005, except those persons exempted by ORS 822.015.

(11) "Dealership," "place of business" or "business location" means a location within the State of Oregon where activities specified in ORS 822.005 take place.

(12) "Designated dealer" means a certified dealer who has been authorized to act as an agent of DMV under OAR 735-150-0040.

(13) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(14) "DMV Administrator" means the administrator of the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.

(15) "Employee" means a person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:

- (a) Determining the frequency, method and amount of compensation;
- (b) Determining whether the person's work is continuous or intermittent;

(c) Determining the hours or frequency of a person's work; or

(d) Retaining the ability to terminate the relationship.

(16) "Good faith effort" as used in ORS 822.045(3)(a) means action satisfactory to DMV that a vehicle dealer complied with the requirements set forth in OAR 735-150-0050(1) and (2).

(a) DMV will determine that the dealer's efforts are in good faith if written documentation is provided that verifies:

(A) Action(s) was taken by the dealer within ten (10) days of sale to resolve problems with providing transfer of ownership; and

(B) The dealer provided complete and timely information to the customer concerning any problems encountered and actions being taken to resolve them.

(b) DMV will not accept a good faith effort by a dealer if, prior to sale of the vehicle, the dealer knows or reasonably should know that title transfer could not be completed within 30 days.

(17) "Location," "main business location" or "main dealership" means a location identified and listed as the dealer's main business location on the most current application for vehicle dealer certificate.

(18) "Normal business hours" means all times during which a dealer engages in any of the activities described in ORS 822.005, except as exempted by ORS 822.015.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

(20) "Permanent revocation" means to permanently revoke a vehicle dealer certificate and the right to apply for a vehicle dealer certificate.

(21) "Probation" means a period of time specified by DMV during which a vehicle dealer may continue to operate, but only under the terms or conditions established by DMV.

(22) "Principal" means an owner, partner, corporate officer or other person who controls or manages the business organization or the employees or agents of the business organization.

(23) "Rebuilder" means a person engaged in conducting a "vehicle rebuilding business" as specified in ORS 822.070.

(24) "Revocation" means to void and terminate a vehicle dealer certificate. Unless permanently revoked, DMV will specify the period of time before the person subject to the revocation may apply for a new vehicle dealer certificate.

(25) "Sanction" means an action taken against a vehicle dealer by DMV in cases of non-compliance, fraud, misuse or abuse of privileges granted by a vehicle dealer certificate pursuant to a violation of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers or the operation of a vehicle dealership.

(26) "Suspension" means a period of time specified by DMV during which a vehicle dealer is prohibited from:

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(a) Buying, selling, brokering, trading or exchanging any vehicle. This includes, but is not limited to, providing information about price, quality, availability, payment terms, or any other information specific to the sale of a vehicle; and

(b) Acting as DMV's agent.

(27) "Violation" means any violation by a person or vehicle dealer of the Oregon Vehicle Code or any rules adopted by DMV in accordance with ORS 822.009(1) & (2).

(28) "Warning" means a documented oral warning to the principal of a dealership or a written correction notice issued to the principal or an employee of the dealership.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 822.005 - 822.080

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 17-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0000

Definitions

As used in this division and chapter 654, Oregon Laws 2005:

(1) "Acquires," "acquired" or "acquisition" means physical possession of a motor vehicle together with possession of the vehicle's ownership record.

(2) "Certificate of sale" has the same meaning as defined in chapter 654, Oregon Laws 2005.

(3) "Date of sale" means the date that a purchaser takes possession of a motor vehicle or major component purchased from a dismantler.

(4) "Destroy" has the same meaning as defined in chapter 654, Oregon Laws 2005.

(5) "Dismantler" has the same meaning as defined in chapter 654, Oregon Laws 2005.

(6) "Dismantle" means one or more parts are removed from a motor vehicle acquired by a dismantler.

(7) "Dispose" or "disposed of" means a motor vehicle acquired by a dismantler is transferred to another person or is dismantled or destroyed.

(8) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(9) "Employee" means a person over whom a dismantler exercises the type of control typically associated with an employer, including:

(a) Determining the frequency, method and amount of compensation;

(b) Determining whether the person's work is continuous or intermittent;

(c) Determining the hours or frequency of a person's work; or

(d) Retaining the ability to terminate the relationship.

(10) "Major component part" has the same meaning as defined in chapter 654, Oregon Laws 2005.

(11) "Ownership record" means a Primary Ownership record as defined in ORS 801.402 and includes those documents described in OAR 735-020-0010 or an abandoned vehicle certificate under OAR 735-024-0077

(12) "Permanent revocation" means to permanently revoke a dismantler certificate and the right to apply for a dismantler certificate. A person subject to permanent revocation of a dismantler certificate is ineligible to apply for a new dismantler certificate.

(13) "Person" means an individual, partnership, corporation, association, or any other business organization if the context in which the term is used could also include these organizational forms.

(14) "Principal" means any owner, partner, corporate officer or other person who controls or manages the business organization or the employees or agents of the business organization.

(15) "Probation" means a period of time specified by DMV that a dismantler may continue to operate, but only under terms or conditions established by DMV.

(16) "Salvage Pool" means a person providing a storage service for salvage vehicles, and who either displays the vehicles for resale or solicits bids for the sale of salvage vehicles for other owners. This definition shall also apply to insurance companies who store and display salvage vehicles for sale. Salvage pools shall be considered dismantlers and shall comply with all requirements of ORS 822.100 through 822.150, and the rules in this division applicable to dismantlers.

(17) "Salvage Vehicle" means a vehicle which has sustained damages sufficient to require it to be rebuilt or disassembled for parts. This definition does not apply to: Campers, boats, canopies, mopeds, travel trailers, motorcycles, snowmobiles or Class I or III all-terrain vehicles or vehicles whose unloaded weight exceeds 8,000 pounds.

(18) "Sanction" means an action taken by DMV against a dismantler certificate for non-compliance with Oregon law or any applicable DMV rule.

(19) "Suspension" means the temporary withdrawal of the authority to act as a dismantler.

(20) "Revocation" means to void and terminate a dismantler certificate. Unless permanently revoked, DMV will specify the period of time before the person subject to the revocation may apply for a new dismantler certificate.

(21) "Vehicle Business" includes vehicle dealers as defined in OAR 735-150-0010(10), dismantlers, towing businesses, vehicle transporters, salvage pools and repair shops.

(22) "Violation" means any violation of Oregon law or a DMV rule applicable to a dismantler issued a certificate or any person engaged in dismantling activities.

(23) "Warning" means a documented warning or correction notice issued to a principal or employee of a dismantler business.

(24) "Wrecked vehicle" has the same meaning as defined in chapter 654, Oregon Laws 2005.

(25) "Written report" means DMV Form 270, Vehicle Dismantler's Notice and the original ownership record for the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125, 822.130 & Ch. 654, OL 2005

Stats. Implemented: ORS 822.125, Ch. 654, OL 2005

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0005

Dismantler Application

(1) In addition to the requirements for an application for a dismantler certificate under ORS 822.110, or a renewal under ORS 822.125, an applicant for a dismantler certificate must submit the following to the DMV Business Regulation Section:

(a) A completed and signed Application for Dismantler Certificate (DMV Form 735-373) that includes;

(A) A certification that the dismantler's business complies with the building, enclosure or barrier requirements under ORS 822.135(1) and OAR 734-040-0030;

(B) A state-issued picture identification (a copy of driver license or identification card) for each owner, partner, principal corporate officer, etc.; and

(C) If the applicant is a corporation, firm or partnership, the Oregon business registry number assigned by the Secretary of State, Corporation Division.

(b) All applicable fees; and

(c) A completed and signed DMV statement of compliance for surety bond or letter of credit.

(2) In addition to the requirements of section (1) of this rule, the applicant must submit a completed and signed Application for Supplemental Dismantler Certificate (DMV Form 735-373A) for each additional business location other than the dismantler's primary business location.

(3) If a dismantler changes the business location or business name on the dismantler's certificate, the dismantler must submit a completed and signed Application to Correct Dismantler Certificate (DMV Form 735-373B) and obtain a corrected dismantler certificate before business can be conducted at the new location or under the new business name.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115 & 822.125, Ch. 654, OL 2005

Stats. Implemented: ORS 802.012, 822.115 & 822.125, Ch. 654, OL 2005

Hist.: DMV 4-1996, f. & cert. ef. 7-26-96; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0010

Investigation of Dismantler Applications

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) shall investigate applications for original or renewal of dismantler certificates on a random basis to determine whether the information contained in the application is accurate and complete and may do so whenever DMV has reason to believe the application is not accurate or complete.

(2) DMV shall investigate all applications for original or renewal of dismantler certificates to determine if any of the principals of the applicant are or have been financially or operationally involved with any other vehicle business whose certificate or right to apply for a certificate is or has been on probation, suspended, canceled or revoked.

(3) DMV may investigate any principal of the applicant to determine whether the principal:

(a) Has been convicted of a violation of any provision of ORS Chapter 822 within the five years preceding the date of the application;

(b) Has been convicted in any jurisdiction outside of the state of Oregon of any violation of that jurisdiction's statutes relating to vehicle

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businesses, vehicle registration, title transfers or stolen vehicles within the five years preceding the date of the application; or

(c) Is currently subject to any type of administrative action relating to vehicle businesses, vehicle registration, title transfers or stolen vehicles in a jurisdiction outside of the state of Oregon.

Stat. Auth.: ORS 802.010, 822.115, 822.125, 822.130 & Ch. 654, OL 2005
Stats. Implemented: ORS 822.115 - 822.125, Ch. 654, OL 2005
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0020

Refusal to Issue and Probationary Status of Dismantler Certificate

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will not issue an original or renewal of a dismantler certificate to any applicant when it determines the application is incomplete or information contained in the application is false.

(2) DMV will not issue an original or renewal of a dismantler certificate to any applicant when it determines a principal of the applicant is financially or operationally involved with any vehicle business whose certificate or right to apply for a certificate is currently suspended, canceled or revoked.

(3) DMV may issue an original or renewal of a dismantler certificate on a probationary basis if a principal of the applicant is financially or operationally involved with another vehicle business whose certificate or right to apply for a certificate is currently on probation.

(4) DMV will not issue an original or renewal of a dismantler certificate to any applicant when it determines a principal of the applicant:

(a) Has been convicted of a violation of any provision of ORS Chapter 822 within the five years preceding the date of the application;

(b) Has been convicted in any jurisdiction outside of the state of Oregon of any violation of that jurisdiction's statutes relating to vehicle businesses, vehicle registration, title transfers or stolen vehicles within the five years preceding the date of the application; or

(c) Is currently affected by any type of administrative sanction or penalty that prohibits the principal from conducting a vehicle business and relates to vehicle businesses, vehicle registration, title transfers or stolen vehicles in a jurisdiction outside of the state of Oregon.

(5) DMV will not issue an original or renewal of a dismantler certificate until such time as it is satisfied the applicant meets all requirements for issuance of a certificate found in ORS chapter 822 and OAR 735, division 152.

(6) DMV will retain the fees paid with an application to cover processing costs when it refuses to issue a certificate.

(7) An applicant who has been refused issuance of a dismantler certificate is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(8) The refused applicant's request for a hearing must be submitted in writing and received by DMV, within 60 days of the date of the refusal. A hearing request received in a timely manner shall not result in issuance of a certificate, pending the outcome of the hearing. In case of a refusal to renew, the dismantler may continue to operate under the old certificate in accordance with ORS 183.430(1), pending the outcome of the hearing, except when DMV finds that such continued operation would constitute a serious danger to the public health or safety and extends the hearing request period to 90 days in accordance with ORS 183.430(2).

(9) When the dismantler or principal of the dismantler business fails to file a timely request for hearing, the charges shall be considered to have been admitted, the dismantler or principal shall be deemed in default as to those charges, DMV's file shall constitute the record of the case, and the order of refusal shall become final.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130, Ch. 654, OL 2005
Stats. Implemented: ORS 822.125, Ch. 654, OL 2005
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0025

Dismantler Business Location Regulations

(1) Each dismantler business location must:

(a) Comply with the building, enclosure or barrier requirements under ORS 822.135(1) and OAR 734-040-0030;

(b) Provide a means for the public to contact the dismantler or an employee of the dismantler at all times during the dismantler's normal business hours;

(c) Display an exterior sign, permanently affixed to the land or a building, that identifies the dismantler business by the name printed on the dismantler certificate, with letters clearly visible to the major avenue of traffic; and

(d) Display, in a publicly accessible and conspicuous manner, the dismantler certificate.

(2) A dismantler must have a certificate or supplemental certificate on display for each location where the dismantler displays vehicles and component parts. A dismantler who uses a supplemental place of business must have a supplemental certificate from DMV before business can be conducted at the supplemental location.

(3) As required by Oregon Laws 2005, chapter 654, section 6(2), if the dismantler takes possession of a wrecked vehicle without an ownership record or salvage title, the vehicle may remain on the business premises if it is:

(a) Confined to an area of the business location that is clearly off-limits to customers for purposes of buying or selling a vehicle or component part; or

(b) Tagged with a "not for sale" notice that is clearly and conspicuously posted on the vehicle in plain view of customers and legible at a distance of 20 feet or more.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130, Ch. 654, OL 2005
Stats. Implemented: ORS 822.115 - 822.125, Ch. 654, OL 2005
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0030

Denial or Suspension of Wrecker Certificate

(1) A person shall be subject to denial or suspension of the person's wrecker certificate:

(a) For a period of one year if the person makes a false statement of material fact in the application for a wrecker's certificate, in any data attached to the application or in any investigation by the Driver and Motor Vehicle Services Division of the Department of Transportation;

(b) For a period of three years if the person has been convicted of a crime directly related to the business of a wrecker.

(2) A person shall be subject to immediate suspension of the person's wrecker certificate for a period not to exceed three years if the person creates a serious danger to the public health and safety, including but not limited to lost or diminished economic interest, security interest or ownership interest in vehicles by the public through the transaction of business with the person.

(3) Any person whose wrecker's certificate has been denied or suspended under this rule shall be granted an opportunity for a contested case hearing as provided in the Oregon Administrative Procedures Act (ORS Chapter 183), except that the provisions of ORS 183.430(2) shall apply if the certificate has been suspended pursuant to section (2) of this rule.

Stat. Auth.: ORS 802.010, 822.115, 822.125, 822.130 & Ch. 820 & 873, OL 1991
Stats. Implemented: ORS 822.125 & 822.145
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; Suspended by DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0031

Dismantler Records

(1) As required by Chapter 654, Oregon Laws 2005 and this rule, motor vehicle dismantlers must maintain records on each motor vehicle or major component part acquired and taken into the inventory of the dismantler's business. Records must be retained at the dismantler's business location for a period of three years from the date of acquisition. Records must include the following:

(a) For a motor vehicle:

(A) If last titled in Oregon, the Oregon title number, or if the title is not available a copy of the vehicle ownership document;

(B) If last titled in another jurisdiction, a copy of the out-of-state title or ownership document;

(C) If available, the registration plate number and the name of the jurisdiction where the vehicle was last registered;

(D) The year, make and model;

(E) The vehicle identification number;

(F) The date the vehicle was acquired as defined under OAR 735-152-0000(1);

(G) The vehicle, stock or yard number assigned to the vehicle by the dismantler; and

(H) Any other information required by DMV.

(2) A description of a major component part that identifies the part, including:

(A) The physical characteristics of the part;

(B) The stock or yard number assigned to the part by the dismantler;

(C) The vehicle identification number of the motor vehicle from which the part came; and

(D) Any other information required by DMV.

(3) Dismantler records subject to this rule must be maintained in a manner that allows for timely retrieval of any record requested by DMV or a police officer for inspection. The dismantler may maintain original records or an exact copy of the original records in hard copy, on film, or electronically. If first approved by DMV, an exact copy of the dismantler's

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original records may be stored in some other manner. DMV or a police officer may require that any record printed or completed in a language other than English be accompanied by a copy translated into English.

(3) DMV may inspect dismantler records including books, contracts, documents, letters and records of any type, including electronic and paper records, of any certified dismantler when DMV is investigating a potential violation of Oregon Vehicle Code or DMV rule.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130, Ch. 654, OL 2005
Stats. Implemented: ORS 822.115 - 822.125, Ch. 654, OL 2005
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0034

Report that Vehicle is Dismantled or Destroyed

(1) This rule designates the form of the written report required under chapter 654, Oregon Laws 2005, section 6 (2)(c).

(2) A dismantler must submit a completed and signed written report to DMV within 30 days of the date that a dismantler destroys or dismantles a motor vehicle acquired by the dismantler.

(3) The written report must include:

(a) A completed and signed Vehicle Dismantler's Notice (DMV Form 270); and

(b) The original ownership record for the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130, Ch. 654, OL 2005
Stats. Implemented: ORS 822.115 - 822.125, Ch. 654, OL 2005
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0037

Late Renewal of Dismantler Certificate

(1) An application to renew a dismantler certificate will not be considered late if the dismantler submits an application for renewal:

(a) Within 15 days of the date that the previous certificate expired, and the application is submitted with a surety bond in effect during that 15-day period; or

(b) No later than 45 days after the previous certificate expired, and the application is submitted with a surety bond in effect during that 45-day period. A dismantler who submits an application for renewal under this subsection will be assessed a late fee of \$100 in addition to the renewal fee.

(2) A dismantler who continues business operations 45 days after their certificate has expired is in violation of ORS 822.005 and is subject to civil penalties under OAR 735-152-0060.

(3) DMV may waive or reduce a penalty described under this rule if the dismantler provides DMV with written documentation that shows that mitigating circumstances prevented the dismantler from renewing their certificate on time. Mitigating circumstances DMV may consider include:

(a) The dismantler took action to renew the license on a date reasonably calculated to complete the process in a timely manner; and

(b) The delay in renewal was due to circumstances beyond the dismantler's ability to control.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130, Ch. 654, OL 2005
Stats. Implemented: ORS 822.115 - 822.125, Ch. 654, OL 2005
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0040

Dismantler Violations Subject to Sanction

A dismantler is subject to OAR 735-152-0050 if the dismantler:

(1) Commits the offense of improperly conducting a motor vehicle dismantling business for any of the reasons set forth in ORS 822.135.

(2) Allows a person who is not an employee of the dismantler to imply or represent an affiliation with the dismantler business in order to engage in any activity that would subject that person to dismantler certification and regulatory requirements.

(3) Fails to allow DMV to conduct an inspection.

(4) Fails to apply for a salvage title if required under ORS 819.016.

(5) Is issued notice that the dismantler's bond under ORS 822.120 is canceled.

(6) Fails to pay any civil penalty imposed under chapter 654, Oregon Laws 2005, sections (5) or (6).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.135, 822.130, 822.145 & Ch. 514, 654, OL 2005
Stats. Implemented: ORS 822.145
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0045

Civil Penalty Consideration; Certified Dismantlers

(1) A dismantler who violates the provisions of chapter 654, Oregon Laws 2005, sections 5 and 6 and any rule adopted by DMV relating to these provisions may incur, in addition to any other penalty or sanction provided by law, a civil penalty in an amount of not more than \$1,000 for each violation.

(2) DMV will assess a penalty amount determined by DMV to be appropriate for the particular violation. In determining an appropriate penalty amount, DMV may use the schedule set forth in OAR 735-152-0060 as a guideline and may consider the following:

(a) The severity of the violation or its impact on the public;

(b) The number of similar or related violations;

(c) Whether a violation was willful or intentional;

(d) The prior history of all civil penalties and sanctions imposed by DMV against the dismantler or principals of the dismantler business;

(e) The number of violations compared to the volume of transactions at the dismantler business; or

(f) Other circumstances determined by DMV to be applicable to the particular violation.

(3) Upon review of the criteria listed in section (2) of this rule, and prior to the issuance of a final order, DMV may reassess a civil penalty amount and agree to a civil penalty amount other than that assessed in the Notice of Imposition of Civil Penalty. After review of the criteria listed in section (2) of this rule DMV may:

(a) Cancel, refuse to renew, or refuse to issue a certificate to any person who fails to pay a civil penalty assessed by DMV; or

(b) Waive the imposition of a civil penalty, or modify the amount, and request that a dismantler attend specialized training, as determined by DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125, 822.130, 822.135, Ch. 654, OL 2005
Stats. Implemented: ORS 183.430, 822.115 - 822.135, Ch. 654, OL 2005
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0050

Sanctions

(1) DMV may impose sanctions when it determines a dismantler has violated provisions of the Motor Vehicle Code or rules promulgated by DMV relating to the operation of a dismantler business.

(2) Sanctions may be imposed against either or both of the following:

(a) A dismantler's certificate;

(b) An owner, partner, corporate officer or other principal of the dismantler business.

(3) Factors DMV may consider when imposing a sanction include:

(a) The severity of the violation or its impact on the public;

(b) The number of similar or related violations;

(c) Whether the violations were willful or intentional; and

(d) Previous sanctions, civil penalties and warnings issued or imposed against the dismantler or principals of the dismantler business.

(4) DMV shall determine the sanction to impose when it determines violations have occurred or are occurring. These may include one or more of the following:

(a) Verbal or written warnings, including correction notices;

(b) A revocation of the dismantler certificate and the right to apply for a dismantler certificate for up to three years;

(c) Permanent revocation of the dismantler certificate and the right to apply for a dismantler certificate. (d) Revocation of the right of a principal of a dismantler business to apply for a dismantler certificate or another vehicle related business, including a vehicle related business with a different business name.

(e) Permanent revocation of the right of a principal of a dismantler business to apply for a dismantler certificate or another vehicle related business, including a vehicle related business with a different business name.

(f) Cancellation of the dismantler certificate if it is determined the applicant or a principal of the business is ineligible for a dismantler certificate.

(g) Immediate suspension or cancellation as provided in ORS 822.145(2) upon receipt of a notice the dismantler's bond under ORS 822.120 is canceled;

(h) Immediate suspension or cancellation for failure to pay a civil penalty imposed under chapter 654, Oregon Laws 2005, sections 5 and 6, and OAR 735-152-0045.

(5) A dismantler or principal whose business certificate or privileges are suspended, canceled or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(6) Except as provided in section (7) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 20 days of the date of the notice of revocation or cancellation. A hearing request received in a timely manner shall result in a withdrawal of revocation or cancellation pending the outcome of the hearing.

(7) In the instance of an immediate suspension or cancellation as provided by section (4)(g) or (h) of this rule, a dismantler's request for a hearing shall be submitted in writing to and received by DMV within 90 days of the date the notice is issued. A hearing request received in a timely

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manner shall not result in a withdrawal of the suspension or cancellation pending the outcome of the hearing.

(8) In order for a request for hearing to be timely, the request must be postmarked or received by DMV within the time periods established in sections (6) and (7) of this rule. If the request for hearing is not timely received, the person waives his or her right to a hearing, except as provided in OAR 137-003-0528. The time periods will be computed as set forth in OAR 137-003-0520(8).

(9) When a timely request for a hearing is not received, the dismantler or principle will have defaulted, waived the right to a hearing and DMV's file will then constitute the record of the case.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125 & 822.130, Ch. 654, OL 2005
Stats. Implemented: ORS 822.125, Ch. 654, OL 2005
Hist.: MV 10-1991, f. & cert. ef. 8-20-91; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0060

Civil Penalty Matrix for Certified Dismantlers

DMV may impose a civil penalty against a motor vehicle dismantler for any violation described under Chapter 654, Oregon Laws 2005 and DMV rules. DMV adopts this civil penalty matrix to determine civil penalty amounts that may be imposed against dismantlers for specific violations. DMV may modify a civil penalty assessed against a dismantler under the provisions of OAR 735-152-0045. Under this rule, an offense is a "second or subsequent offense" if a dismantler committed the same offense within three years of the offense under consideration.

(1) Fraudulently obtaining a dismantler certificate by submission of an application under OAR 735-152-0005 containing a false statement or omission of a material fact: \$1,000, for the first and subsequent violation(s).

(2) Failure to notify DMV of any change in the information provided to DMV in the application submitted under OAR 735-152-0005 within 30 days of the change:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(3) Failure to comply with any provision of chapter 654, Oregon Laws 2005, section 5(2)(f) or OAR 735-152-0031 concerning dismantler motor vehicle records:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500.
- (d) For the fourth and subsequent violation(s): \$1,000.

(4) Failure to comply with any provision of chapter 654, Oregon Laws 2005, section 5(2)(f) or OAR 735-152-0031 concerning dismantler major component part records:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500.
- (d) For the fourth and subsequent violation(s): \$1,000.

(5) Failure to comply with chapter 654, Oregon Laws 2005, section 6(2)(b) concerning removing parts or destroying a motor vehicle prior to obtaining an ownership record for the vehicle:

- (a) For the first violation: \$500.
- (b) For the second and subsequent violation(s): \$1,000.

(6) Failure to comply with Chapter 654, Oregon Laws 2005, section 6(2)(a), by acquiring a motor vehicle or major component part without first obtaining a certificate of sale and, if applicable, a certificate of title:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500.
- (d) For the fourth and subsequent violation(s): \$1,000.

(7) Failure to comply with chapter 654, Oregon Laws 2005 and OAR 735-152-0025(3) concerning physically separating or visually labeling a wrecked vehicle:

- (a) For the first violation: \$250;
- (b) For the second violation: \$500.
- (c) For the third and subsequent violation(s): \$1,000.

(8) Failure to comply with Chapter 654, Oregon Laws 2005, section 5(2)(b), regarding the possession, sale or otherwise disposing of a motor vehicle or any part of a motor vehicle knowing that the vehicle or part has been stolen: \$1,000 for the first violation and subsequent violation(s).

(9) Failure to comply with Chapter 654, Oregon Laws 2005, section 5(2)(c), regarding selling, buying, receiving, concealing, possessing or disposing of a motor vehicle or any part of a motor vehicle having a missing, defaced, intentionally altered or covered vehicle identification number, unless directed to do so by a law enforcement official: \$1,000 for the first violation and subsequent violation(s).

(10) Failure to comply with Chapter 654, Oregon Laws 2005, section 5(2)(d) by committing a forgery in the second degree, as defined in ORS 165.007, or misstating a material fact relating to a certificate of title, registration or other document related to a motor vehicle that has been reassembled from parts of other motor vehicles: \$1,000 for the first violation and subsequent violation(s).

(11) Failure to comply with Chapter 654, Oregon Laws 2005, section 5(2)(e) by fraudulently creating or modifying a dismantler certificate: \$1,000 for the first violation and subsequent violation(s).

(12) Failure to comply with chapter 654, Oregon Laws 2005, section 5(2)(h) concerning a dishonest act or omission during the sale of a motor vehicle or major component part that, as determined by DMV, causes a loss to the purchaser: \$1,000 for the first violation and subsequent violation(s).

(13) Failure to comply with chapter 654, Oregon Laws 2005, section 5(2)(i) concerning being convicted of a crime involving false statements or dishonesty that directly relates to the business of the dismantler or suffers any civil judgment imposed for conduct involving fraud, misrepresentation or conversion: \$1,000 for the first violation and subsequent violation(s).

(14) Failure to comply with chapter 654, Oregon Laws 2005 and OAR 735-152-0034 concerning furnishing DMV with a written report, in a form established by DMV by rule, after a wrecked vehicle is dismantled or destroyed:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

(15) Failure to comply with chapter 654, Oregon Laws 2005, section 6(2)(c) concerning failure to demolish the registration plates of a wrecked vehicle at the time the ownership record is received:

- (a) For the first violation: warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1,000.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125, 822.130, 822.135 Ch. 514, 654, OL 2005
Stats. Implemented: ORS 183.430, 822.115 - 822.135 & Ch. 514, 654, OL 2005
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0070

Civil Penalty Considerations; Acting as a Dismantler Without a Certificate

Any person not issued a dismantler certificate under ORS 822.110, who violates the Oregon Vehicle Code or any DMV rule relating to the dismantling of motor vehicles, will incur, in addition to any other penalty provided by law, a civil penalty not to exceed \$5,000 for each vehicle:

(1) DMV will assess penalties in accordance with the schedule set forth in OAR 735-152-0080.

(2) The Business Regulation Section of DMV may evaluate the of the amount of a civil penalty assessed in individual cases and may agree to payment of an amount other than originally assessed. In making such an evaluation, the Business Regulation Section may consider:

- (a) The severity of the violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether the violations were willful or intentional; and
- (d) Any other consideration DMV deems appropriate.

(3) DMV will refuse to issue a certificate under ORS 822.110 or to renew a certificate under ORS 822.110 to any person who fails to pay a civil penalty.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125, 822.130, 822.135 Ch. 514, 654, OL 2005
Stats. Implemented: ORS 183.430, 822.115 - 822.135 & Ch. 514, 654, OL 2005
Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0080

Schedule of Violation Penalties, Unlicensed Dismantler

(1) In addition to any other penalty provided by law, the following civil penalty schedule applies to persons acting as a dismantler without a current dismantler certificate, including a dismantler who sells a vehicle while the dismantler's certificate is expired, suspended, cancelled, or revoked.

(2) This schedule does not apply to a person or dismantler exempt from dismantler certification requirements pursuant to ORS 822.105.

(3) Civil penalties under this schedule are assessed as follows:

- (a) For the first offense: \$2,500 per vehicle;
- (b) For the second and subsequent offenses: \$5,000 per vehicle.

(4) DMV may reduce a civil penalty assessed under subsection (3)(a) of this rule if:

(a) The person or dismantler applies for and is issued a dismantler certificate under ORS 822.110 or a certificate renewal under ORS 822.125,

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within 30 days of the date of notice of imposition of civil penalty for acting as dismantler without a certificate; or

(b) A hearing is requested and held in accordance with ORS Chapter 183, and within 30 days of issuance of a final order upholding the penalty, the person files with DMV a completed dismantler application that meets Oregon requirements for licensure.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.115, 822.125, 822.130, 822.135 Ch. 514, 654, OL 2005

Stats. Implemented: ORS 183.430, 822.115 - 822.135 & Ch. 514, 654, OL 2005

Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

735-152-0090

Contested Case Hearings and Disposition

(1) The Business Regulation Section of DMV may, in accordance with ORS 183.415(5), make an informal disposition of any contested case prior to the conclusion of any hearing, resulting from a sanction or civil penalty assessed under OAR chapter 735, division 152. This disposition may include a stipulation, agreed settlement, consent order or default order.

(2) An informal disposition by stipulation, agreed settlement or consent order must be in writing, signed by any party to the contested case and incorporated into the final order.

(3) The administrative law judge presiding at a contested case hearing may not adjust the amount of a civil penalty imposed by DMV under OAR 735-152-0045 or 735-152-0070.

Stat. Auth.: ORS 183.430, 184.616, 184.619, 802.010 Ch. 654, OL 2005

Stats. Implemented: ORS 183.415 & Ch. 654, OL 2005

Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06

Department of Transportation, Highway Division Chapter 734

Adm. Order No.: HWD 10-2005(Temp)

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05 thru 6-11-06

Notice Publication Date:

Rules Amended: 734-020-0005

Subject: The Oregon Temporary Traffic Control Handbook was adopted by the Oregon Transportation Commission in OAR 734-020-0005 effective July 22, 2005. The handbook had been completely rewritten and reorganized for 2005. Since adoption of the new handbook there have been several errors that have come to the Department's attention that could have a significant impact on the safety of motorists and staff.

It is the intention of the Department to produce an updated handbook with several rewritten portions and errors corrected and bring an updated handbook back to the Commission for adoption in May of 2006. In order to fix several errors to the handbook a Temporary OAR adopting Errata no. 1 is needed.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-020-0005

Manual on Uniform Traffic Control Devices

(1) In accordance with ORS 810.200, the **2003 Edition of the Manual on Uniform Traffic Control Devices** with Revision no. 1 Incorporated, dated November 2004 (U.S. Department of Transportation, Federal Highway Administration) is hereby adopted by reference as the manual and specifications of uniform standards for traffic control devices for use upon highways within this state.

(2) The Oregon Supplement to the **Manual on Uniform Traffic Control Devices** dated July 2005 is hereby adopted by reference as a register of deviations to the **2003 Edition of the Manual on Uniform Traffic Control Devices**.

(3) The **July 2005 Edition of the Oregon Temporary Traffic Control Handbook** with Errata no. 1 Incorporated, dated December 2005 is hereby adopted by reference as a standard for temporary traffic control for operations of three days or less.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619 & 810.200

Stats. Implemented: ORS 810.200

Hist.: HC 1270, f. & ef. 1-18-72; HC 1277, f. & ef. 3-3-72; 1 OTC 80, f. & ef. 12-27-76; 1 OTC 7-1978, f. & ef. 4-27-78; 1 OTC 15-1979(Temp), f. & ef. 7-18-79; 1 OTC 25-1979, f. & ef. 10-30-79; 1 OTC 16-1980, f. & ef. 9-18-80; 1 OTC 22-1980, f. & ef. 11-26-80; 1 OTC 23-1980, f. & ef. 11-26-80; 2HD 9-1983(Temp), f. & ef. 4-20-83; 2HD 16-1983, f. & ef. 9-23-83; 2HD 9-1984(Temp), f. & ef. 10-4-84; 2HD 1-1985, f. & ef. 3-29-85; 2HD 3-1985, f. & ef. 9-13-85; 2HD 1-1986, f. & ef. 2-14-86; 2HD 6-1986(Temp), f. & ef. 7-29-86; HWY 1-1987, f. & ef. 1-9-87; HWY 2-1988(Temp), f. & cert. ef. 5-27-88; HWY 7-1988, f. & cert. ef. 12-2-88; HWY 2-1990(Temp), f. & cert. ef. 2-1-90; HWY 10-1990, f. & cert. ef. 6-29-90;

TO 3-2002, f. & cert. ef. 4-15-02; HWD 6-2005, f. & cert. ef. 7-22-05; HWD 10-2005(Temp), f. & cert. ef. 12-14-05 thru 6-11-06

Adm. Order No.: HWD 11-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Amended: 734-073-0051, 734-073-0130

Subject: Division 73 implements federal laws related to oversize vehicle operating on the National Network of Highways. On August 10, 2005, The Safe, Accountable, Flexible, Efficiency Transportation Equity Act: A Legacy for Users (TEA-LU) became federal law. Section 4141 of TEA-LU imposes a vehicle length limitation of 97 feet on a driveaway saddlemount with fullmount vehicle transporter combination. ODOT rules limited the length to 75 feet. The rules have been amended to adopt federal definitions for clarity and uniformity, and to increase the overall length limit in OAR 734-073-0130 to conform with the provisions of TEA-LU. Other changes reorganize definitions into alphabetical order.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-073-0051

Definitions

As used in division 73 rules, the following definitions shall apply:

(1) "Automobile transporter" means a combination of vehicles that transports vehicles on a semitrailer and may also transport vehicles on the power unit behind the cab or on an over-cab rack.

(2) "Automobile transporter towing stinger-steered semitrailer" means an automobile transporter having the fifth-wheel assembly mounted on a stinger or extension to the framework of the truck. The fifth-wheel connection must be behind and below the axle in front of it.

(3) "Boat transporter" means a combination of vehicles that transports boats on a semitrailer and may also transport boats on the power unit behind the cab or on an over-cab rack.

(4) "Boat transporter towing stinger-steer semitrailer" means a boat transporter having the fifth-wheel assembly mounted on a stinger or extension to the framework of the truck. The fifth-wheel connection must be behind and below the axle in front of it.

(5) "Bus" means a vehicle designed and operated exclusively to transport not less than 10 persons excluding the driver, primarily for hire. The term "bus" does not include motor homes or busses converted or used for any other purpose.

(6) "Drive-away saddlemount vehicle transporter combination" and "drive-away saddlemount with fullmount vehicle transporter" means a combination of vehicles consisting of a truck-tractor that tows not more than three saddlemounted vehicles. These vehicles may also include not more than one fullmounted vehicle.

(7) "Fullmount" means a smaller vehicle mounted completely on the frame of either the first or last vehicle in a saddlemount combination.

(8) "MCTD" means Motor Carrier Transportation Division of the Oregon Department of Transportation.

(9) "Overall length," as used in division 73 is as defined in OAR 734-071-0010(2)(i).

(10) "Saddlemount" means vehicles in which a truck or truck tractor tows one or more trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The saddle is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection.

(11) "Traditional automobile transporter" means an automobile transporter having the fifth-wheel assembly over the drive axle(s) and towing a semitrailer. The power unit may include a framework or other assembly that provides the ability to also transport automobiles.

(12) "Traditional boat transporter" means a boat transporter having the fifth-wheel assembly over the drive axle(s) and towing a semitrailer. The power unit may include a framework or other assembly that provides the ability to also transport boats.

(13) "Truck-tractor semitrailer-semitrailer" means a combination of vehicles consisting of a truck-tractor which also tows two semitrailers connected by kingpin to fifth-wheel assemblies. These combinations of vehicles do not have an intermediate converter dolly between the two semitrailers which is normally used in double trailer operations. This is commonly referred to as a 'B-Train.'

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060 & 818.200

Stats. Implemented: ORS 818.030, 818.200 & 818.220

ADMINISTRATIVE RULES

Hist.: HWY 1-1995, f. & cert. ef. 9-18-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 11-2005, f. & cert. ef. 12-14-05

734-073-0130

Specialized Equipment — Drive-Away Operations

The Federal Highway Administration determines Drive-away saddle-mount vehicle transporter combinations are Specialized Equipment as provided by 23 CFR 658.13(e)(iii).

(1) A Drive-away saddle-mount vehicle transporter combination or a Drive-away saddle-mount with full-mount vehicle transporter may operate without permit on National Network Highways with an overall length limit of 97 feet.

(2) All Drive-away saddle-mount vehicle transporter combinations must comply with all applicable safety regulations of 49 CFR 393.71.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060, 818.200 & 818.220
Stats. Implemented: ORS 818.030, 818.200 & 818.220
Hist.: HWY 1-1995, f. & cert. ef. 9-18-95; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 11-2005, f. & cert. ef. 12-14-05

Adm. Order No.: HWD 12-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Amended: 734-079-0005, 734-079-0015

Subject: Division 79 rules govern conditions under which self-loading log trucks may operate with a variance permit that allows size or weight to exceed statutory maximum limits. The amendments update a form reference and correct a telephone number. Group Map 1 is available online at http://www.oregon.gov/ODOT/MCT/OD.shtml#Route_Maps.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-079-0005

Scope and Purpose

A combination of vehicles consisting of a log truck and pole trailer equipped for self loading and transporting logs may operate with a permit allowing the weight provisions of ORS 818.210(3) only if:

(1) The combination does not exceed the maximum allowable length limitations established in OAR chapter 734, division 71, as indicated on Group Map 1. Group Map 1, dated January 2005, available from the Over-Dimensional Permit Unit, is by reference made a part of this rule; and

(2) The combination meets any other restrictions that may be imposed pursuant to ORS Chapter 818.

[ED. NOTE: Maps referenced are available from the agency]
Stat. Auth.: ORS 184.616, 184.619, 823.011 & 818.200
Stats. Implemented: ORS 818.210
Hist.: 2HD 4-1984, f. & ef. 3-14-84; HWY 11-1997, f. & cert. ef. 12-22-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 12-2005, f. & cert. ef. 12-14-05

734-079-0015

Application for Permit

(1) Application for a permit may be made in person or by mail to the Over-Dimensional Permit Unit, 550 Capitol St. NE, Salem, Oregon 97301-2530.

(2) Telephone applications may be made by calling 1-503-373-0000 and the executed permit will be transmitted electronically for pick-up by the applicant at the nearest state office equipped with a receiving device.

(3) Routine information such as permittee name, address and vehicle identification must be included with the application.

(4) Permits will not be issued when an application is incomplete.
Stat. Auth.: ORS 184.616, 184.619 & 818.200
Stats. Implemented: ORS 818.220
Hist.: TO 2-2001, f. & cert. ef. 6-14-01; HWD 12-2005, f. & cert. ef. 12-14-05

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Adm. Order No.: MCTD 7-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Adopted: 740-010-0020

Rules Repealed: 740-010-0020(T)

Subject: Section 2, chapter 172, Oregon Laws 2005 (SB 595) authorizes the Director of the Department to suspend operation of

certain motor carrier statutes for the purpose of facilitating the movement of persons or property when the Director determines that an emergency has occurred or is imminent. The rule is adopted to designate a line of succession within the Department to act in the Director's absence. This permanent rule replaces a temporary rule adopted August 18, 2005.

Rules Coordinator: Brenda Trump—(503) 945-5278

740-010-0020

Emergency Suspension of Statutes — Delegation

The Director of the Oregon Department of Transportation authorizes the following line of succession to temporarily suspend operation of statutes involving motor carriers as described in Chapter 172, OL 2005 (SB 595) in the event the Director is not available:

(1) Administrator of the Motor Carrier Transportation Division (MCTD);

(2) Manager of the Salem Motor Carrier Services Section of MCTD;

(3) Manager of Investigations/Safety/Federal Programs Section of MCTD;

(4) Manager of Field Motor Carrier Services Section of MCTD.

Stat. Auth.: ORS 823.011 & Sec. 2, Ch. 172, OL 2005

Stat. Implemented: Sec. 2, Ch. 172, OL 2005

Hist.: MCTD 4-2005(Temp), f. & cert. ef. 8-18-05 thru 2-13-06; MCTD 7-2005, f. & cert. ef. 12-14-05

Adm. Order No.: MCTD 8-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 11-1-05

Rules Amended: 740-050-0610, 740-055-0320

Rules Repealed: 740-055-0300

Subject: These rules relate to the process used to determine if a requested general rate increase for motor carrier service is justified. The Department has historically, by order, designated study carriers whose revenue and cost records are analyzed to ensure a requested increase is not detrimental to the public or the motor carrier industry. The process required study carriers to maintain extensive records, the Petitioner to present an analysis supporting the requested increase based on the study carrier records, and the Department to verify through audit that the records and subsequent analysis are accurate. The process was time consuming and costly to both the industry and the Department.

ODOT contracted an independent economist to explore the feasibility of using a cost index comparison in lieu of the revenue and cost study process to determine justification of a recent requested increase. The economist found that past authorized rate increases have closely paralleled the annual increase in the Oregon Consumer Price Index for Urban areas (ORCPI-U), and concluded that it is reasonable to determine justification by comparing requested increases with fluctuations in the ORCPI-U. ODOT and the petitioning rate bureau agreed to use the index approach in lieu of the revenue and cost study, and the Administrative Law Judge at the rate increase hearing concurred with the viability of using the index approach. The streamlined index approach is the methodology preferred by both industry and ODOT to determine if a requested general increase in rates is justified. The rules are amended to adopt the index approach as the standard method to determine justification, rather than as a negotiated exception to the revenue and cost study method. Rules related to study carriers, classification of carriers based on annual revenue and annual reporting of financial information are also repealed or simplified.

Rules Coordinator: Brenda Trump—(503) 945-5278

740-050-0610

Procedures for Changing Tariffs

(1) All rates, fares, charges, classifications and rules and regulations governing the practices or services of a motor carrier participating in joint line rates or transporting household goods or engaging in regular route full-service scheduled transportation of passengers in intrastate commerce in Oregon must be filed as a tariff and fixed by order of the Department. Changes in tariffs must be made pursuant to Division 50 rules.

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(2)(a) Written petitions to amend tariffs may be submitted to the Department by a household goods carrier, a regular route full-service scheduled passenger carrier, carriers participating in a joint line rate, a tariff bureau under OAR 740-050-0640, or by any other party having an interest in the matter;

(b) The Department may permit a tariff change to become temporarily effective if that action is in the public interest.

(3)(a) All petitions for changes in tariffs will be assigned for public hearing. The hearing notice will set the time and place for the hearing;

(b) If the petition is for a general increase, the Department will use the Oregon Consumer Price Index-Urban (ORCPI-U) as the basis for determining if the requested increase is justified. The Department will use a comparison of the ORCPI-U in effect at the time of the last general increase with the current ORCPI-U;

(c) As used in this rule, "general increase" means a general increase in, restructuring of, or substantial change in rates previously approved by the Oregon Public Utility Commission or the Oregon Department of Transportation.

(4)(a) The Department's notice will designate as respondents in petitions for general increases, unless specifically exempted, all carriers who participate in joint line tariffs, or possess authority to transport household goods and who are members of Oregon tariff bureaus pursuant to OAR 740-050-0640; or who publish individual tariffs and generate Oregon intrastate revenues from economically regulated commodities of \$250,000 or more annually;

(b) Exemptions under subsection (4)(a) of this rule may be granted by the Department upon a showing that the territory served by the carrier, or the carrier's method of operation is such that the carrier does not compete with the petitioner;

(c) If the Department approves the petition for general increase, the tariff change will apply to all respondents. A respondent may tender evidence at the hearing justifying independent rates which will apply only to that carrier. Upon giving seven days written notice to the Department, the petitioning carrier and any supporting rate bureau, any respondent may participate at the hearing as a party in opposition to application of the proposed general increases for its account. Upon a proper showing the Department may exclude such respondent from the application of the general increase proposal.

(5)(a) A tariff bureau may support or oppose another tariff bureau's petition at the Department's hearing;

(b) If the Department approves a tariff bureau petition which is not a general increase, the tariff change will apply to members of all Oregon tariff bureaus;

(c) For a tariff bureau petition, other than that described in section (3) of this rule, the notice shall describe as respondents all carriers who possess authority and who are members of Oregon tariff bureaus pursuant to OAR 740-050-0640.

(6) Individual carrier proposals submitted by independent action and approved by the Department shall apply only to the petitioning carrier.

Stat. Auth.: ORS 823.011, 825.200, 825.202, 825.224 & 825.226

Stats. Implemented: ORS 825.200, 825.202 & 825.224

Hist.: PUC 19, f. 7-3-58, ef. 1-1-50 (Order No. 24027); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); Renumbered from 860-037-0300; PUC 10-1981, f. & ef. 10-30-81 (Order No. 81-777); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 10-1983(Temp), f. & ef. 9-1-83 (Order No. 83-538); PUC 3-1984(Temp), f. & ef. 2-15-84 (Order No. 84-113); PUC 14-1984, f. & ef. 7-27-84 (Order No. 84-578); PUC 20-1985, f. & ef. 11-8-85 (Order No. 85-1087); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-067-0300; MCT 3-1996, f. & cert. ef. 3-14-96; MCTB 7-2000, f. 12-15-00 cert. ef. 1-1-01; MCTD 8-2005, f. & cert. ef. 12-14-05

740-055-0320

Carriers of Household Goods

For purposes of reporting annual financial information, the Department requires all intrastate for-hire motor carriers of household goods to complete and submit to the Department ODOT Form 735-9208. Operations conducted pursuant to ORS 825.240 are not subject to the reporting requirement in this rule.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.202 & 825.234

Hist.: PUC 160, f. 2-26-74, ef. 1-1-75 (Order No. 74-108); PUC 171, f. & ef. 12-22-75 (Order No. 75-1028); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); Renumbered from 860-038-0107; PUC 1-1982(Temp), f. & ef. 2-3-82 (Order No. 82-080); PUC 5-1982, f. & ef. 3-15-82 (Order No. 82-162); PUC 3-1991, f. & cert. ef. 1-16-91 (Order No. 90-1916); PUC 16-1994(Temp), f. 12-28-95, cert. ef. 1-1-95 (Order No. 94-2077); PUC 1-1995(Temp), f. & cert. ef. 2-15-95 (Order No. 95-186); PUC 10-1995, f. & cert. ef. 8-30-95; (Order No. 95-882); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-068-0107; MCT 4-1997, f. & cert. ef. 7-15-97; MCTB 7-2000, f. 12-15-00 cert. ef. 1-1-01; MCTD 8-2005, f. & cert. ef. 12-14-05

Economic and Community Development Department Chapter 123

Adm. Order No.: EDD 11-2005

Filed with Sec. of State: 11-30-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 11-1-05

Rules Adopted: 123-006-0030, 123-006-0035, 123-006-0040

Rules Amended: 123-006-0005, 123-006-0020, 123-006-0025

Subject: The agency's current administrative rules governing the selection of personal services contractors refer to model rules that have been repealed. Statutes regarding procedures for selection of contractors (ORS 279A & B) have been revised, and required adoption of new rules. The proposed rules substantially adopt model rules developed by the Oregon Department of Justice for use by agencies with contracting authority, with some exceptions and some additions. Following standard contracting processes avoids the need for both contractors and agency staff to learn a specialized set of contracting processes.

Rules Coordinator: Paulina Bernard—(503) 986-0036

123-006-0005

Purpose

Pursuant to ORS 285A.075(7), the department may enter into personal services contracts as required or appropriate to carry out its authorized mission. This rule sets forth the Department's personal services screening and selection procedures.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

123-006-0020

Standard Procedures and Exceptions

The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, divisions 046, and 047, as applicable, for all its personal services contracts, with the following exceptions:

(1) For Architectural, Engineering, Land Surveying and Related Services contracts, a special class of personal services contracts, the Department will comply with OAR 137, division 048.

(2) For public contracts specified in ORS 285A.075(8), the Department may directly contract with a vendor, or may follow any method of source selection and negotiation allowed in ORS Chapter 279B. For all specified contract review approvals, the Department Director or delegate shall exercise such authority.

(3) For personal services contracts relating to the Department's foreign trade offices operating outside the state, the Department will comply with OAR 123, division 125.

(4) For personal services contracts, other than those identified in (1) to (3) of this rule, that are best implemented as multiple work order contracts under an Agreement-to-Agree, the Department will comply with OAR 123-006-0025.

(5) The provisions of OAR 137-047-0800, 137-047-0265(2) and 137-047-0270(4) (regarding contract amendments) shall not apply to personal services contracts by the Department.

(6) The Public Notice for Sole-source Procurements in OAR 137-047-0275(2) shall be given at least ten (10) days before Award of the Contract, unless the Department determines that a shorter interval is in the public's interest and documents specific reasons to the file.

(7) The provisions of OAR 137-047-0670 (regarding cancelled offers) shall not apply to personal services contracts by the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

123-006-0025

Use of Work Order Contracts

(1) Personal services contracts may be implemented as multiple Work Order Contracts under an Agreement for Services instead of a single contract if that implementation will provide substantial savings in time or cost, or both.

(2) The Department and the selected vendor will sign a non-binding Agreement for Services, in which the vendor acknowledges its readiness to enter into separate work order contracts with the Department that will

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describe, among other things, the specific services to be performed, the timeline for delivery of the services, and the compensation for the services. Each Work Order Contract subsequently executed with the vendor pursuant to the non-binding Agreement for Services must be within the scope of the solicitation, if any, and will constitute a separate legally binding contract between the Department and the vendor.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075 & 279.070
Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

123-006-0030

Electronic Public Notice

For all required public notices or advertisements related to source selection methods, the Department may publish notice or advertisement on the Department of Administrative Services ORPIN Electronic Procurement System instead of publishing notice in a newspaper of general circulation as described in ORS 279B.055(4)(b).

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075 & 279A.070
Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

123-006-0035

Contract Amendments

(1) **General Rule.** The Department may amend any personal services contract without additional competition, including reinstatements and cost overruns, but only when the Department has determined:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract, or in the instance of a Special Procurement, the approval of Special Procurement;

(b) The amended Contract does not adversely affect the competitive conditions for the original contract; and

(c) If the original Contract was selected according to the Small Procurement method, the total compensation does not exceed \$5000, or, if selected according to the Intermediate Procurement method, the total compensation does not exceed \$150,000.

(2) Anticipated Amendments.

(a) "Anticipated Amendment" means the Department has text in any Solicitation Document and the Original Contract that explains:

(A) The possibility of one or more Amendments;

(B) A general description of circumstances that might require an Amendment to be issued under the Contract and any changes to the requirements of the Contract that may be anticipated or even planned for, but not necessarily quantified at the time of Contract execution. These changes may be described in any Solicitation and Contract as: Extra Work; Additional Work; Work to be done if certain situations are encountered; or Changes in terms, conditions, price, or type of Work; etc.; and

(C) The provisions of the Contract that are subject to negotiation in order to finalize the details and costs of such an Amendment.

(b) Anticipated Amendments do not include cost overruns or reinstatements.

(c) An Authorized Agency may make one or more Anticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule.

(3) Unanticipated Amendments.

(a) Unanticipated Amendment" means an Amendment that does not meet the requirements of an Anticipated Amendment. Unanticipated Amendments do not include cost overruns or reinstatements.

(b) Limited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process, provided the cumulative amounts of all Unanticipated Amendments do not exceed 20% of the Original Contract amount, and subject to section (1) of this rule.

(c) Unlimited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Unanticipated Amendment as meeting the following requirements:

(A) The Unanticipated Amendment is due to circumstances that were unforeseen at the time the original Contract was established;

(B) The Unanticipated Amendment does not represent any important general change that alters the essential identity or main purpose of the original Contract, nor is of such importance that it should be a new undertaking; and

(C) The Unanticipated Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed;

to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(4) Cost Overruns.

(a) Unless the Contract provides that the maximum total compensation is based on an estimate and is subject to amendment, if Contractor expends all authorized compensation but the required Work or Services are not complete or are not satisfactory, Contractor is responsible to complete the Work or Services to Department's satisfaction without further compensation.

(b) Notwithstanding the general rule in subsection (4)(a) above, Department may, by Amendment to the Contract, agree to increases in the maximum total compensation, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Cost Overrun Amendment as meeting the following requirements:

(A) The cost overrun arose out of circumstances or conditions encountered in the course of contract performance that were unavoidable and not reasonably anticipated at the time of the original Contract, or the most recent Amendment, if any;

(B) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or Services rendered; and

(C) The Cost Overrun Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed; to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(5) Reinstatements.

(a) "Reinstatement" of an expired Contract means an amendment to restore the full action of the Contract as though the expiration had not occurred, and extend the Contract to a new expiration. A reinstatement may be combined with any other amendment allowed by this rule.

(b) The Department's Designated Procurement Officer may give written approval to reinstate an expired Contract if the following requirements are met:

(A) The failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions, or if due to administrative mistake, the reason for the mistake and the steps taken to prevent similar mistakes;

(B) The expiration occurred in good faith on the part of both the Department and the Contractor;

(C) The reinstatement furthers the public interest, compared to a separate procurement process, including specific reasoning to support that conclusion; and

(D) The request to reinstate must be made no later than 90 days after expiration of the original Contract.

(c) When a Contract is reinstated pursuant to this section, the Department may compensate the Contractor only at the rate or terms of compensation established in the original Contract, for Work or Services performed in the interim between the expiration of the original Contract and the execution of the Reinstatement Amendment.

(6) **Amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services.** This rule shall not apply to amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services. The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, division 048 for amendments to such contracts.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075 & 279.070
Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

123-006-0040

Contracts Must be Authorized Prior to Performance

All personal services Contracts, including any amendments, must be in writing and fully executed before any Work or Services may be performed or payment made. Contractors are not entitled to payment for any Work or Services performed prior to such execution.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.075 & 279.070
Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

Adm. Order No.: EDD 12-2005

Filed with Sec. of State: 11-30-2005

Certified to be Effective: 12-1-05

ADMINISTRATIVE RULES

Notice Publication Date: 11-1-05

Rules Amended: 123-125-0000, 123-125-0020, 123-125-0040

Rules Repealed: 123-125-0060, 123-125-0080, 123-125-0100, 123-125-0120, 123-125-0140

Subject: The agency's current administrative rules governing the operation of foreign trade offices have become outmoded. General statutes regarding procedures for selection of contractors (ORS 279A & B) have been revised, and although they do not directly govern these rules, the proposed changes bring the agency's rules more in line with the revised statutes and the model rules promulgated by other state agencies. Following more standard contracting processes will still allow the agency to meet its contracting needs for operating foreign trade offices, and will simplify procedures for both contractors and agency staff.

Rules Coordinator: Paulina Bernard—(503) 986-0036

123-125-0000

Purpose

These rules specify the source selection methods to be used by the Department for public contracts relating to its Foreign Trade Offices.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.075, 279A.025(2)(s), 285A.090(13) & OL 1999, Ch. 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EDD 2-2000, f. & cert. ef. 1-5-00; EDD 12-2005, f. 11-30-05, cert. ef. 12-1-05

123-125-0020

Definitions

For purposes of this division of administrative rules, the following terms have the following meanings:

(1) "Department" means the Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Economic and Community Development Department.

(3) "Foreign Trade Office" means representation in an office operating outside the state designed primarily to:

(a) Assist Oregon businesses in finding international markets for their goods and services;

(b) Assist local units of government in Oregon in locating foreign businesses within their jurisdiction; or

(c) Promote awareness in foreign countries of Department policy, programs and services and of assistance and economic incentives available from government at all levels.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.075, 279.070, 285A.090(13) & OL 1999, Ch. 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EDD 2-2000, f. & cert. ef. 1-5-00; EDD 12-2005, f. 11-30-05, cert. ef. 12-1-05

123-125-0040

Standard Procedures and Exceptions

The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, divisions 046 and 047, as applicable, for all its public contracts under this division, with the following exceptions:

(1) For Architectural, Engineering, Land Surveying and Related Services contracts, a special class of personal services contracts, the Department will comply with OAR 137, division 048.

(2) For all specified approvals, the Department Director or delegate shall exercise such authority.

(3) For all required public notices or advertisements related to source selection methods, the Department will comply with 123-006-0030.

(4) For personal services contracts that are best implemented as multiple work order contracts under an Agreement-to-Agree, the Department will comply with OAR 123-006-0025.

(5) The provisions of OAR 137-047-0800, 137-047-0265(2) and 137-047-0270(4) (regarding contract amendments) shall not apply to public contracts under this division. The Department will comply with OAR 123-006-0035 for all amendments to public contracts under this division.

(6) The Public Notice for Sole-source Procurements in OAR 137-047-0275(2) shall be given at least ten (10) days before Award of the Contract, unless the Department determines that a shorter interval is in the public's interest and documents specific reasons to the procurement file.

(7) The provisions of OAR 137-047-0670 (regarding cancelled offers) shall not apply to public contracts under this division.

(8) The provisions of OAR 137-047-0700 through 137-047-0760 (regarding legal remedies) shall not apply to public contracts under this division.

Stat. Auth.: ORS 279.051, 279.712(2)(f) & 285A.075(5)

Stats. Implemented: ORS 279.051, 285A.090(13) & OL 1999, Ch. 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EDD 2-2000, f. & cert. ef. 1-5-00; EDD 12-2005, f. 11-30-05, cert. ef. 12-1-05

Adm. Order No.: EDD 13-2005

Filed with Sec. of State: 11-30-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 11-1-05

Rules Repealed: 123-071-0000, 123-071-0010, 123-071-0020, 123-071-0030, 123-071-0040, 123-071-0050

Subject: The funding for the Targeted Training Program was discontinued in 2001. HB2246 revised statutes related to this program. If funding is provided, new rules will have to be adopted.

Rules Coordinator: Paulina Bernard—(503) 986-0036

Employment Department Chapter 471

Adm. Order No.: ED 7-2005

Filed with Sec. of State: 12-15-2005

Certified to be Effective: 12-15-05

Notice Publication Date: 11-1-05

Rules Amended: 471-030-0150

Subject: The Employment Department is amending OAR 471-030-0150 to align with HB 2662 Enrolled (2005 Session) which changes the laws to determine eligibility for Unemployment Insurance benefits for claimants experiencing domestic violence.

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-030-0150

Domestic Violence

(1) As used in ORS 657.176(12) and for purposes of this rule, "minor child" means an unmarried person under 18 years of age, including a stepchild or adopted child.

(2) As used in ORS 657.176(12), "domestic violence" means the physical injury, sexual assault or forced imprisonment, or threat thereof, of a person by another who is related by blood or marriage or has a significant relationship with the other person at the present, or who has been related or has had a significant relationship at some time in the past, to the extent that the person's health, safety or welfare is harmed or threatened thereby.

(3) As used in ORS 657.176(12), "stalking" means:

(a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a minor child in the household thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a minor child in the household

(4) As used in ORS 657.176(12), "sexual assault" means any unwanted touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(5) As used in ORS 657.176(12), the term "reasonable available alternatives" as used in this section means whatever action or series of actions, that in the perception of the individual, best guarantee the safety of the individual or the minor child.

(6) The effective date for implementing this rule shall be retroactive to June 20th, 2005.

Stat. Auth.: ORS 657.176 & 657.610

Stats. Implemented: ORS 657.176 & HB 2767 (OL 2001)

Hist.: ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 3-2005(Temp), f. & cert. ef. 6-24-05 thru 12-17-05; ED 4-2005(Temp), f. & cert. ef. 7-5-05 thru 12-17-05; ED 7-2005, f. & cert. ef. 12-15-05

Employment Department, Child Care Division Chapter 414

Adm. Order No.: CCD 4-2005(Temp)

Filed with Sec. of State: 12-2-2005

Certified to be Effective: 12-15-05 thru 6-11-06

Notice Publication Date:

Rules Amended: 414-700-0060

ADMINISTRATIVE RULES

Subject: The Employment Department, Child Care Division is revising: OAR 414-700-0060 to specify the percent that will be charged to families under ORS 657A.718(1)(g).

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

414-700-0060

Participating Provider Eligibility Requirements

(1) To be eligible for disbursements under this program, child care providers shall:

(a) Be regulated by the Child Care Division;

(b) Accept children for whom child care is paid for through Department of Human Services subsidy;

(c) Provide high quality child care as defined by the Child Care Division in collaboration with the Advisory Council;

(d) Maintain adequate liability insurance, financial records and parent policies and contracts; and

(e) Permit the community agency to conduct visits for monitoring purposes.

(2) If the provider is a home-based business, the provider shall meet the following requirements in addition to those in subsection (1) of this section:

(a) Enter into an agreement with the community agency to continue to provide child care services for at least two additional years; and

(b) Provide care to children from at least two families that have incomes of 85 percent or less of the median income for the region.

(3) If the provider is a child care center, at least 25 percent of the families served by the center must have incomes that are 85 percent or less of the median income for the region.

(4) In selecting participating child care providers, selected community agencies must give preference to providers that provide child care to low and moderate income families.

(5) For care provided to children of families whose income does not exceed the level established by the community agency pursuant to ORS 657A.715(2)(g) the fee charged to the family by an eligible provider shall not exceed ten percent of the family's gross monthly income.

Stat. Auth.: ORS 657A.706

Stats. Implemented: ORS 657A.700 - 657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 2-2005(Temp), f. & cert. ef. 6-16-05 thru 12-13-05; CCD 4-2005(Temp), f. 12-2-05, cert. ef. 12-15-05 thru 6-11-06

Health Licensing Office Chapter 331

Adm. Order No.: HLO 2-2005

Filed with Sec. of State: 12-15-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 11-1-05

Rules Adopted: 331-405-0045

Rules Amended: 331-405-0020, 331-405-0030, 331-410-0000, 331-410-0010, 331-410-0020, 331-410-0030, 331-410-0040

Subject: Amendments address changes resulting from passage of HB 3219 by the 2005 Legislature, which establishes requirements for reciprocal licensure or "licensure by credential" which will reduce barriers to practice by allowing qualified professionals to move to Oregon and be employed without having to meet redundant "qualifiers." The changes allow the agency to be more responsive to denturists licensed in another state who apply for Oregon licensure by streamlining the application process and providing qualified professionals increased opportunity to work immediately.

Proposed rules add clarifying definitions related to application/examination requirements and delete the definition for "general supervision," which is not valid during the training period. Application requirements have been succinctly identified for the three distinct license qualification pathways; examination requirements have been reconstructed to accept passage of a board approved/recognized examination to minimize time delay and potential loss of wages that may occur while a qualified applicant is waiting to take the Oregon examination (conducted annually); examination protocols and requirements have been modified to synchronize with statutory changes to reduce barriers to practice; and information pertaining to the practical examination content/format has been added to the rules.

FEE INCREASE: The initial and renewal license fees are being increased from \$495 to \$695, a \$200 or 40.4% increase. Increasing

fees was proposed earlier in May 2005, but the proposed rulemaking withdrawn to allow thorough assessment and consideration of additional options. However, a fee increase is still necessary to correct depleting revenues resulting from licensee attrition and increased costs of providing services and administering the licensing program. The Board has voted unanimously twice to support a fee increase to maintain current service levels and ensure fiscal stability through means of a reasonable recovery plan.

Administrative Rules are available on the agency's website - <http://egov.oregon.gov/OHLA/> Material is available in alternative formats. Please contact Samantha Patnode, Board Liaison for additional information.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-405-0020

Definitions

The following definitions apply to OAR chapter 331, divisions 400 through 430:

(1) "Affidavit of Licensure" means an original document verifying licensing history and status, including information disclosing all unresolved or outstanding penalties and disciplinary actions. The document is issued and signed by the regulatory authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice.

(2) "Agency" means the Oregon Health Licensing Agency. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(3) "Board" means — The State Board of Denture Technology.

(4) "Clinical procedures" means the tasks and activities that are set forth in ORS 680.500(5)(b).

(5) "Contact hours" means actual academic, classroom, or course work time, including but not limited to workshops, symposiums, seminars, or laboratory exercises. Contact hours do not include travel time to or from the training site, registration or check-in periods, breaks or lunch periods.

(6) "Dentist" as used in 680.545, OAR 331-410-0000 and 331-410-0010 means a person licensed to practice in the jurisdiction in which the practice occurred.

(7) "Direct supervision" means that the supervisor is present in the facility for the purpose of providing oversight and training and is responsible for guiding and monitoring the performance of the individual supervised. Training under the direct supervision of a school means under the direct supervision of a teacher employed by the school.

(8) "Director" means the Director of the Oregon Health Licensing Agency.

(9) "Employed by" means other than independent contractor relationship and does not require remuneration.

(10) "Equivalent" means substantially comparable but not identical, covering the same subject matter.

(11) "Examination", as used in Oregon laws 2005, Chapter 415, Section 2 and OAR 331-410-0020 and 331-410-0030, means a denture technology written or practical examination administered by the Oregon Health Licensing Agency, or a denture technology examination administered by another licensing authority that has been recognized and approved by the Board as being equivalent to the Oregon examination.

(12) "Informed Consent" means the consent obtained following a thorough and easily understood explanation to the patient, or patient's guardian, of the proposed procedures, any available alternative procedures and any risks associated with the procedures. Following the explanation, the licensee shall ask the patient, or the patient's guardian, if there are any questions. The licensee shall provide thorough and easily understood answers to questions asked.

(13) "Laboratory procedures" means those tasks and activities that are set forth in ORS 680.500(5)(a).

(14) "Official transcript" means an original document certified by a school or educational institution, on a form approved by the Department of Education or regulating authority, delivered from the school to the agency by mail or courier, which includes:

(a) School name and location;

(b) Student's name, address and date of birth;

(c) Enrollment and completion or termination dates;

(d) Hours and types of course work;

(e) Final examination scores;

(f) School seal or stamp;

(g) Signature of authorized school representative or registrar.

ADMINISTRATIVE RULES

(15) "Oral pathology" means the pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillo-facial regions. It is a science that investigates the causes, processes, and effects of these diseases.

(16) "Premises" means the structure in which laboratory and/or clinical procedures are performed, not necessarily the same room in which procedures take place.

(17) "Predominant" means located within the place of business and positioned so it may be seen and read without difficulty by consumers who have entered the place of business.

(18) "Restoration" means licensure of a previously licensed person, who has not made application for renewal within three years of expiration of the previous license.

(19) "1,000 hours in the practice of denture technology under direct supervision" or "1,000 hours of clinical and laboratory training in an approved work experience program" means engaging in the clinical and laboratory procedures of the practice of denture technology, over a period of not less than six months and not more than two years pursuant to ORS 680.510(3), with a minimum of 400 hours devoted to clinical procedures. The 1,000 hours under direct supervision shall include construction of no less than 40 units of upper or lower dentures, with a set counting as two units, and must include at least one each of the following: full, immediate, removable partial, removable implant and over-denture.

(20) "Treatment" means the clinical or laboratory procedures in the practice of denture technology.

(21) "Valid license" means the authority to practice pursuant to ORS 680 that has not been revoked, suspended, or expired without renewal.

Stat. Auth.: ORS 680.565

Stats. Implemented: ORS 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 12-1981(Temp), f. & ef. 7-15-81; HD 1-1983, f. & ef. 1-20-83; HD 4-1988, f. & cert. ef. 3-4-88; HD 25-1988 (Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0005; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 1-2003, f. 1-21-03, cert. ef. 2-1-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

331-405-0030

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Health Licensing are as follows:

- (a) \$695 — Initial dentist license or relicensure fee.
- (b) \$695 — Dentist license renewal fee.
- (c) \$50 — Delinquency fee (late renewal).
- (d) \$150 — Restoration of license fee.
- (e) \$50 — Replacement or duplicate license fee.
- (f) \$100 — Application fee (license or training registration).
- (g) Scheduled examination or re-examination fees:
- (A) \$275 — Written examination;
- (B) \$525 — Practical examination.

Stat. Auth.: ORS 676.605, 676.615 & 680.525

Stats. Implemented: ORS 676.605, 676.615 & 680.525

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 11-1981(Temp), f. & ef. 7-15-81; HD 9-1985(Temp), f. & ef. 5-24-85; HD 15-1985, f. & ef. 9-4-85; HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0035; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 3-2003, f. 5-6-03, cert. ef. 5-15-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

331-405-0045

Allocation of Responsibility

As set forth in ORS 680.556, the State Board of Denture Technology advises the Oregon Health Licensing Agency on matters relating to the practice of denture technology. The Director controls the regulatory operations and has decision-making authority on all substantive matters and is responsible for the performance of the agency as defined in ORS 686.610.

Stat. Auth.: ORS 676.605, 676.615 & 680.525

Stats. Implemented: ORS 676.605, 676.615 & 680.525

Hist.: HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

331-410-0000

Training

(1) Training, or formal education, required for licensure is a planned sequence of instruction of specific content, pursuant to ORS 680.515, structured to meet stated curriculum objectives which includes evaluation of attainment of those objectives; offered by a post-secondary educational institution or equivalent training as determined following evaluation by educational professional(s) from the Governor's Office of Education Work

Force Policy/Office of Degree Authorization. The Governor's Office of Education and Work Force Policy/Office of Degree Authorization will be consulted in the evaluation of the program, including but not limited to school accreditation, instructor credentials, and lecture and lab hours as they equate to standard academic credit hours.

(2) The education or training to be approved by the agency pursuant to ORS 680.515(2) in consultation with the Board, shall meet the curriculum objectives as established by the agency. Current lists of the curriculum objectives and approved training courses are available at the agency during regular business hours.

(3) All individuals or institutions requesting approval of a course or training program must submit a copy of the curriculum, a list of educational materials, books audiovisual aids, and a copy of handouts and tests to the agency for review to ensure the program meets established training standards and curriculum objectives. The following conditions will apply:

(a) No curriculum shall be approved without submission of complete curriculum documentation;

(b) The agency shall retain a copy of the approved curriculum on file as part of the official permanent record;

(c) Approved education and training program curricula shall be reevaluated for approval every three years or when any portion of the curriculum is modified, or where changes in denture technology or health practices make it necessary. Approved programs existing on the effective date of this rule are subject to immediate re-evaluation, whichever occurs first; and

(d) The agency shall incur any reasonable duplication costs associated with complying with the provisions mandated in ORS 680.515.

(4) To qualify as "equivalent supervised experience" under ORS 680.515(1)(b) or as an "approved work experience program" under ORS 680.515(1)(c), experience must be under the direct supervision of an approved school, of a dentist, or of a denturist. If the work experience is under the direct supervision of a dentist or denturist, the supervising dentist or denturist must:

(a) Apply in advance on a form approved by the agency, and obtain approval from the agency, before beginning the direct supervision;

(b) Hold a valid license to practice and have been in practice for at least the last three years;

(c) Hold an oral pathology endorsement, if the supervisor is a denturist;

(d) Operate a clinic and an on-site laboratory where the direct supervision and training will occur;

(e) Certify in writing to the agency that the facility where the training will take place complies with OAR chapter 331, division 420, Practice Standards;

(f) Supervise no more than two dentist trainees at a time;

(g) Disclose to the agency all prior disciplinary action by their licensing board and, if previously disciplined by their licensing board, obtain Board approval prior to any supervising dentist trainee;

(h) Provide no more than two years of direct supervision to any individual dentist trainee undergoing the initial training required in ORS 680.515(1)(b), or no more than one year of direct supervision to any applicant undergoing additional clinical training required in ORS 680.515(1)(c);

(i) Obtain signed informed consent from a client or patient before a dentist trainee may perform services for the client or patient;

(j) Ensure that a dentist trainee is clearly identified as a trainee to clients and patients.

(5) Credit for courses completed within the five years immediately prior to making application, which cover those subjects listed in ORS 680.515(1)(a), may be counted toward completion of schooling requirements for a denture technology program.

(6) Documentation to prove completion of an Associate Degree program in denture technology or the equivalent program, shall be official school transcripts from the agency approved schools, and may include published course outlines showing that training included curriculum objectives as determined by the agency in consultation with the Board and the Governor's Office of Education Work Force Policy/Office of Degree Authorization.

(7) Documentation to prove additional training to satisfy ORS 680.515(1)(b) in a work experience program shall be:

(a) Official transcripts from the approved school, and a description of training content, hours of clinical and laboratory training, examination scores, school location, dates of attendance, and the name of the supervisor; or

(b) Signed statement from the dentist or denturist certifying dates of training, places of employment, description of training content, and verification that work included both clinical procedures and laboratory procedures.

ADMINISTRATIVE RULES

(8) Any dentist trainee who makes more than two (2) changes in supervision must receive approval from the Board prior to making another change in their supervision and training.

Stat. Auth.: ORS 676.605, 676.615 & 680.515

Stats. Implemented: ORS 676.605, 676.615 & 680.515

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 1-1983, f. & ef. 1-20-83; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0040; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 1-2003, f. 1-21-03, cert. ef. 2-1-03; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

331-410-0010

Documentation of Experience

(1) Applicants shall document satisfactory completion of at least 1,000 hours of required work experience in the practice of denture technology pursuant to ORS 680.515(1)(b), under the direct supervision of an approved school, a licensed dentist or a licensed dentist, while employed by the dentist or dentist.

(2) Any person making application shall submit documentation of denture technology experience or equivalent in practice as follows:

(a) For practice under the direct supervision of an approved school, transcript or completion document from the school certifying at least 1,000 hours under direct supervision.

(b) For practice in the employment of a dentist or dentist, a statement on forms provided by the Oregon Health Licensing Agency of verification of employment and practice from the dentist or dentist that includes the dates of employment, number of hours worked in each category, and number of denture units constructed and fitted. The statement shall be signed by the dentist or dentist and the individual who received training. The statement shall be mailed or delivered from the dentist or dentist to the agency.

(3) Documentation of denture technology experience will not be accepted if it is incomplete, not signed or includes work experience obtained prior to approval of the direct supervision and training relationship by the Board under OAR 331-410-0000(4).

Stat. Auth.: ORS 680.515 & 680.565

Stats. Implemented: ORS 680.515 & 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0025; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

331-410-0020

Application Requirements

(1) An applicant for a license to practice denture technology must:

(a) Comply with the requirements of OAR 331-030-0000;

(b) Submit a completed application on a form prescribed by the agency;

(c) Pay the fees required by OAR 331-405-0030; and

(d) Submit documentation establishing completion of the requirements of one of the three pathways described in this rule.

(2) PATHWAY ONE Approved Education and Training with an Oregon Examination. An applicant may qualify for licensure by demonstrating:

(a) Completion of a program of education that has been approved by the agency under OAR 331-410-0000;

(b) Completion of 1,000 hours of practice in denture technology under direct supervision of an approved school or the equivalent supervised experience described in OAR 331-410-0000(4); and

(c) Successful completion of the Oregon written and practical examination described in OAR 331-410-0030.

(3) PATHWAY TWO Approved Education and Training with an Examination Recognized or Approved by the Board. An applicant may qualify for licensure by demonstrating:

(a) Completion of a program of education that has been approved by the agency under OAR 331-410-0000;

(b) Completion of 1,000 hours of practice in denture technology under direct supervision of an approved school or the equivalent supervised experience described in OAR 331-410-0000(4); and

(c) Successful completion of a written and practical examination approved or recognized by the Board pursuant to ORS 680.515(1)(c).

(4) PATHWAY THREE License by Credential. An applicant who is licensed to practice denture technology in another state may qualify for licensure in Oregon by:

(a) Satisfying the requirements of Oregon Laws 2005, chapter 415, section 2;

(b) Submitting a signed and completed form prescribed by the agency to document the hours of practice required by Oregon Laws 2005, chapter 415, section 2(4);

(c) Arranging for the licensing authority of the state in which the applicant is licensed to send directly to the agency an original "Affidavit of Licensure" that:

(A) Verifies that the applicant holds a current valid license in good standing to practice denture technology in that state;

(B) Describes the applicant's history of discipline by the licensing authority, including a description of all prior disciplinary actions, all unresolved complaints, and all pending disciplinary actions; and

(C) Is signed before a notary by the person preparing the "Affidavit of Licensure" and sealed with the official seal or stamp of the licensing authority.

(5) The "Affidavit of Licensure" described in paragraph (4)(c) of this rule may be transmitted electronically to the agency so long as the affidavit is transmitted directly from the licensing authority of the other state. The applicant must pay any fee charged by the licensing authority of the other state for producing and transmitting the affidavit.

(6) Any application that is not successfully completed within two years of the initial application date or the date on which the last examination was taken, whichever is later, will be treated by the agency as withdrawn, and the applicant must submit a new application, new supporting documentation, and new application fees to apply for licensure.

Stat. Auth.: ORS 680.515 & 680.565

Stats. Implemented: ORS 680.515 & 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 25-1989(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0015; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HDLP 1-2002, f. 5-31-02, cert. ef. 6-1-02; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

331-410-0030

Examinations

(1) The agency will notify qualified applicants of their eligibility to take the Oregon written and practical licensing examinations. Applicants must take both parts of the examination on their initial attempt, unless the applicant has previously completed and passed a board approved practical examination before submitting application for Oregon licensure.

(2) The Oregon licensing examination consists of two parts: a written examination and a practical examination:

(a) The written examination is comprised of multiple-choice questions covering subject areas specified in ORS 680.515(1)(a) and questions on the Oregon laws and rules regulating the practice of denture technology.

(b) The practical examination requires the applicant to demonstrate skills required to practice denture technology, including but not limited to: patient evaluation, maxillary and mandibular custom tray and final impressions, maxillary and mandibular preliminary and final cast evaluation, evaluation of maxillary and mandibular wax-up on an articulator and evaluation of maxillary and mandibular functional wax try-in.

(3) Practical Exam Requirement: To be scheduled for an Oregon practical examination, applicants must submit documentation and pay required fees at least 30 calendar days prior to the examination date. A schedule of practical examination dates is available at the Oregon Health Licensing Agency.

(4) The Health Licensing Office will notify each applicant, in writing by regular US Postal Service, of the results of his/her examination score within 30 days from the date of the examination. Results will not be given by any other means.

(5) The applicant must satisfactorily complete all parts of the examination to pass. Those that fail may repeat the parts not passed upon submission of a supplemental application for examination, examination fee for each part to be retaken, and documentation of additional training if applicable.

(6) Passing score for the written examination is 70 percent or higher. The practical examination is scored on a pass or fail basis. The portions will be scored individually, not added or averaged together.

(7) Passing scores will be maintained towards meeting licensure requirements only for the periods set forth in OAR 331-410-0020(6).

(8) Applicants taking the examination will be required to present government issued photographic identification such as a driver's license and their original Social Security card at the examination.

(9) Additional Clinical Training: As required in ORS 680.515(1)(c), the Board will prescribe additional hours of clinical and laboratory training in an approved work experience program for applicants who fail the Oregon practical examination.

(a) Additional hours of clinical and laboratory training must meet requirements of OAR 331-410-000(4).

ADMINISTRATIVE RULES

(b) Notwithstanding any other rule, the applicant must complete the additional clinical and laboratory training within one year from the date of the failed practical examination.

(10) An applicant, who fails to pass the written or practical examination on the third attempt, must apply to the Board and receive authorization before application for re-examination will be approved. The Board may require the applicant to undergo additional training before taking the examination a fourth or subsequent time.

(11) Notwithstanding ORS 680.515(1)(c), failed sections of the examination may be retaken at the next available examination date and time as scheduling allows. Retaking a failed examination requires the applicant to register for the examination and submit payment of the examination fees.

Stat. Auth.: ORS 680.520 & 680.565

Stats. Implemented: ORS 680.520 & 680.565

Hist.: HD 11-1979(Temp), f. & ef. 8-23-79; HD 2-1980, f. & ef. 2-14-80; HD 1-1983, f. & ef. 1-20-83; HD 25-1988(Temp), f. & cert. ef. 11-1-88; HD 4-1989, f. & cert. ef. 6-1-89; HD 10-1989, f. & cert. ef. 11-21-89; HD 13-1991(Temp), f. & cert. ef. 9-30-91; HD 3-1992, f. & cert. ef. 3-25-92; HD 22-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 333-020-0030; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HDLP 5-2001, f. & cert. ef. 12-14-01; HDLP 1-2002, f. 5-31-02, cert. ef. 6-1-02; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

331-410-0040

Examination Conduct; Disqualification

(1) Examinations conducted in Oregon are held in a designated area with restricted access. An applicant must obtain authorization from the agency before bringing any material or electronic equipment or devices into the examination. Receiving, attempting to receive, giving, or attempting to give assistance during the examination, including assistance from other individuals, from notes books or devices or taking unauthorized items into the examination area shall invalidate the examination and will result in forfeiture of the examination and fees.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Giving or attempting to give assistance to others in answering questions during the examination;

(b) Receiving or attempting to receive assistance during the examination, including assistance from other individuals from notes, books or devices to answer questions;

(c) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;

(d) Failing to follow directions relative to the conduct of the examination;

(e) Exhibiting behavior which impedes the normal progress of the examination; and

(f) Endangering the health or safety of a person involved in the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. The candidate will be required to reapply, submit additional examination fees, and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification.

Stat. Auth.: ORS 680.520 & 680.565

Stats. Implemented: ORS 680.520 & 680.565

Hist.: HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 2-2005, f. 12-15-05, cert. ef. 1-1-06

Land Conservation and Development Department Chapter 660

Adm. Order No.: LCDD 7-2005

Filed with Sec. of State: 12-13-2005

Certified to be Effective: 1-1-07

Notice Publication Date: 1-1-05, 3-1-05, 11-1-05

Rules Adopted: 660-009-0030

Rules Amended: 660-009-0000, 660-009-0005, 660-009-0010, 660-009-0015, 660-009-0020, 660-009-0025

Subject: The rules clarify and streamline existing requirements for local governments to conduct economic opportunities analyses and inventory industrial and other employment lands to ensure that land is available for a variety of economic uses. The rules provide definitions, provide guidance for planning for a short-term supply of land, and enable multi-jurisdiction coordination.

Rules Coordinator: Shelia Preston—(503) 373-0050, ext. 222

660-009-0000

Purpose

The intent of the Land Conservation and Development Commission is to provide an adequate land supply for economic development and employment growth in Oregon. The intent of this division is to link planning for an adequate land supply to infrastructure planning, community involvement and coordination among local governments and the state. The purpose of this division is to implement Goal 9, Economy of the State (OAR 660-015-0000(9)), and ORS 197.712(2)(a) to (d). This division responds to legislative direction to assure that comprehensive plans and land use regulations are updated to provide adequate opportunities for a variety of economic activities throughout the state (ORS 197.712(1)) and to assure that comprehensive plans are based on information about state and national economic trends (ORS 197.717(2)).

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0005

Definitions

For purposes of this division, the definitions in ORS chapter 197 and the statewide planning goals apply, unless the context requires otherwise. In addition, the following definitions apply:

(1) "Developed Land" means non-vacant land that is likely to be redeveloped during the planning period.

(2) "Development Constraints" means factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include, but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.

(3) "Industrial Use" means employment activities generating income from the production, handling or distribution of goods. Industrial uses include, but are not limited to: manufacturing; assembly; fabrication; processing; storage; logistics; warehousing; importation; distribution and transshipment; and research and development. Industrial uses may have unique land, infrastructure, energy, and transportation requirements. Industrial uses may have external impacts on surrounding uses and may cluster in traditional or new industrial areas where they are segregated from other non-industrial activities.

(4) "Locational Factors" means market factors that affect where a particular type of industrial or other employment use will locate. Locational factors include, but are not limited to, proximity to raw materials, supplies, labor, services, markets, or educational institutions; access to transportation and freight facilities such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes; and workforce factors (e.g., skill level, education, age distribution).

(5) "Metropolitan Planning Organization (MPO)" means an organization designated by the Governor to coordinate transportation planning on urban land of the state including such designations made subsequent to the adoption of this division. The Longview-Kelso-Rainier MPO is not considered an MPO for the purposes of this division. Cities with less than 2,500 population are not considered part of an MPO for purposes of this division.

(6) "Other Employment Use" means all non-industrial employment activities including the widest range of retail, wholesale, service, non-profit, business headquarters, administrative and governmental employment activities that are accommodated in retail, office and flexible building types. Other employment uses also include employment activities of an entity or organization that serves the medical, educational, social service, recreation and security needs of the community typically in large buildings or multi-building campuses.

(7) "Planning Area" means the area within an existing or proposed urban growth boundary. Cities and counties with urban growth management agreements must address the urban land governed by their respective plans as specified in the urban growth management agreement for the affected area.

(8) "Prime Industrial Land" means land suited for traded-sector industries as well as other industrial uses providing support to traded-sector industries. Prime industrial lands possess site characteristics that are difficult or impossible to replicate in the planning area or region. Prime industrial lands have necessary access to transportation and freight infrastructure, including, but not limited to, rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes. Traded-sector has the meaning provided in ORS 285B.280.

(9) "Serviceable" means the city or county has determined that public facilities and transportation facilities, as defined by OAR chapter 660, division 011 and division 012, currently have adequate capacity for development planned in the service area where the site is located or can be upgraded to have adequate capacity within the 20-year planning period.

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(10) "Short-term Supply of Land" means suitable land that is ready for construction within one year of an application for a building permit or request for service extension. Engineering feasibility is sufficient to qualify land for the short-term supply of land. Funding availability is not required. "Competitive Short-term Supply" means the short-term supply of land provides a range of site sizes and locations to accommodate the market needs of a variety of industrial and other employment uses.

(11) "Site Characteristics" means the attributes of a site necessary for a particular industrial or other employment use to operate. Site characteristics include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.

(12) "Suitable" means serviceable land designated for industrial or other employment use that provides, or can be expected to provide the appropriate site characteristics for the proposed use.

(13) "Total Land Supply" means the supply of land estimated to be adequate to accommodate industrial and other employment uses for a 20-year planning period. Total land supply includes the short-term supply of land as well as the remaining supply of lands considered suitable and serviceable for the industrial or other employment uses identified in a comprehensive plan. Total land supply includes both vacant and developed land.

(14) "Vacant Land" means a lot or parcel:

(a) Equal to or larger than one half-acre not currently containing permanent buildings or improvements; or

(b) Equal to or larger than five acres where less than one half-acre is occupied by permanent buildings or improvements.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0010

Application

(1) This division applies to comprehensive plans for areas within urban growth boundaries. This division does not require or restrict planning for industrial and other employment uses outside urban growth boundaries. Cities and counties subject to this division must adopt plan and ordinance amendments necessary to comply with this division.

(2) Comprehensive plans and land use regulations must be reviewed and amended as necessary to comply with this division as amended at the time of each periodic review of the plan pursuant to ORS 197.712(3). Jurisdictions that have received a periodic review notice from the Department (pursuant to OAR 660-025-0050) prior to the effective date of amendments to this division must comply with such amendments at their next periodic review unless otherwise directed by the Commission.

(3) Cities and counties may rely on their existing plans to meet the requirements of this division if they conclude:

(a) There are not significant changes in economic development opportunities (e.g., a need for sites not presently provided for in the plan) based on a review of new information about national, state, regional, county and local trends; and

(b) That existing inventories, policies, and implementing measures meet the requirements in OAR 660-009-0015 to 660-009-0030.

(4) For a post-acknowledgement plan amendment under OAR chapter 660, division 18, that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and:

(a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division; or

(b) Amend its comprehensive plan to incorporate the proposed amendment, consistent with the requirements of this division; or

(c) Adopt a combination of the above, consistent with the requirements of this division.

(5) The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.

(6) The amendments to this division are effective January 1, 2007. A city or county may voluntarily follow adopted amendments to this division prior to the effective date of the adopted amendments.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 4-2001, f. & cert. ef. 10-2-01; LCDD 7-2005,

f. 12-13-05, cert. ef. 1-1-07

660-009-0015

Economic Opportunities Analysis

Cities and counties must review and, as necessary, amend their comprehensive plans to provide economic opportunities analyses containing the information described in sections (1) to (4) of this rule. This analysis will compare the demand for land for industrial and other employment uses to the existing supply of such land.

(1) Review of National, State, Regional, County and Local Trends. The economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends. This review of trends is the principal basis for estimating future industrial and other employment uses as described in section (4) of this rule. A use or category of use could reasonably be expected to expand or locate in the planning area if the area possesses the appropriate locational factors for the use or category of use. Cities and counties are strongly encouraged to analyze trends and establish employment projections in a geographic area larger than the planning area and to determine the percentage of employment growth reasonably expected to be captured for the planning area based on the assessment of community economic development potential pursuant to section (4) of this rule.

(2) Identification of Required Site Types. The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion. Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

(3) Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

(a) For sites inventoried under this section, plans must provide the following information:

(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory; and

(C) For cities and counties within a Metropolitan Planning Organization, the inventory must also include the approximate total acreage and percentage of sites within each plan or zoning district that comprise the short-term supply of land.

(b) When comparing current land supply to the projected demand, cities and counties may inventory contiguous lots or parcels together that are within a discrete plan or zoning district.

(c) Cities and counties that adopt objectives or policies providing for prime industrial land pursuant to OAR 660-009-0020(6) and 660-009-0025(8) must identify and inventory any vacant or developed prime industrial land according to section 3(a) of this rule.

(4) Assessment of Community Economic Development Potential. The economic opportunities analysis must estimate the types and amounts of industrial and other employment uses likely to occur in the planning area. The estimate must be based on information generated in response to sections (1) to (3) of this rule and must consider the planning area's economic advantages and disadvantages. Relevant economic advantages and disadvantages to be considered may include but are not limited to:

(a) Location, size and buying power of markets;

(b) Availability of transportation facilities for access and freight mobility;

(c) Public facilities and public services;

(d) Labor market factors;

(e) Access to suppliers and utilities;

(f) Necessary support services;

(g) Limits on development due to federal and state environmental protection laws; and

(h) Educational and technical training programs.

(5) Cities and counties are strongly encouraged to assess community economic development potential through a visioning or some other public input based process in conjunction with state agencies. Cities and counties are strongly encouraged to use the assessment of community economic development potential to form the community economic development objectives pursuant to OAR 660-009-0020(1)(a).

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

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660-009-0020

Industrial and Commercial Development Policies

(1) Comprehensive plans subject to this division must include policies stating the economic development objectives for the planning area. These policies must be based on the community economic opportunities analysis prepared pursuant to OAR 660-009-0015 and must provide the following:

(a) Community Economic Development Objectives. The plan must state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and other employment uses desired by the community. Policy objectives may identify the level of short-term supply of land the planning area needs. Cities and counties are strongly encouraged to select a competitive short-term supply of land as a policy objective.

(b) Commitment to Provide a Competitive Short-Term Supply. Cities and counties within a Metropolitan Planning Organization must adopt a policy stating that a competitive short-term supply of land as a community economic development objective for the industrial and other employment uses selected through the economic opportunities analysis pursuant to OAR 660-009-0015.

(c) Commitment to Provide Adequate Sites and Facilities. The plan must include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations. The plan must also include policies, through public facilities planning and transportation system planning, to provide necessary public facilities and transportation facilities for the planning area.

(2) Plans for cities and counties within a Metropolitan Planning Organization or that adopt policies relating to the short-term supply of land, must include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed. These policies must describe dates, events or both, that trigger local review of the short-term supply of land.

(3) Plans may include policies to maintain existing categories or levels of industrial and other employment uses including maintaining downtowns or central business districts.

(4) Plan policies may emphasize the expansion of and increased productivity from existing industries and firms as a means to facilitate local economic development.

(5) Cities and counties are strongly encouraged to adopt plan policies that include brownfield redevelopment strategies for retaining land in industrial use and for qualifying them as part of the local short-term supply of land.

(6) Cities and counties are strongly encouraged to adopt plan policies pertaining to prime industrial land pursuant to OAR 660-009-0025(8).

(7) Cities and counties are strongly encouraged to adopt plan policies that include additional approaches to implement this division including, but not limited to:

- (a) Tax incentives and disincentives;
- (b) Land use controls and ordinances;
- (c) Preferential tax assessments;
- (d) Capital improvement programming;
- (e) Property acquisition techniques;
- (f) Public/private partnerships; and
- (g) Intergovernmental agreements.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0025

Designation of Lands for Industrial and Commercial Uses

Cities and counties must adopt measures adequate to implement policies adopted pursuant to OAR 660-009-0020. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, public facility plans, and transportation system plans.

(1) Identification of Needed Sites. The plan must identify the approximate number, acreage and site characteristics of sites needed to accommodate industrial and other employment uses to implement plan policies. Plans do not need to provide a different type of site for each industrial or other employment use. Compatible uses with similar site characteristics may be combined into broad site categories. Several broad site categories will provide for industrial and other employment uses likely to occur in most planning areas. Cities and counties may also designate mixed-use zones to meet multiple needs in a given location.

(2) Total Land Supply. Plans must designate serviceable land suitable to meet the site needs identified in section (1) of this rule. Except as provided for in section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.

(3) Short-Term Supply of Land. Plans for cities and counties within a Metropolitan Planning Organization or cities and counties that adopt policies relating to the short-term supply of land must designate suitable land to respond to economic development opportunities as they arise. Cities and counties may maintain the short-term supply of land according to the strategies adopted pursuant to OAR 660-009-0020(2).

(a) Except as provided for in subsections (b) and (c), cities and counties subject to this section must provide at least 25 percent of the total land supply within the urban growth boundary designated for industrial and other employment uses as short-term supply.

(b) Affected cities and counties that are unable to achieve the target in subsection (a) above may set an alternative target based on their economic opportunities analysis.

(c) A planning area with 10 percent or more of the total land supply enrolled in Oregon's industrial site certification program pursuant to ORS 284.565 satisfies the requirements of this section.

(4) If cities and counties are required to prepare a public facility plan or transportation system plan by OAR chapter 660, division 011 or division 012, the city or county must complete subsections (a) to (c) of this section at the time of periodic review. Requirements of this rule apply only to city and county decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan that change the supply of serviceable land are not subject to the requirements of this section. Cities and counties must:

(a) Identify serviceable industrial and other employment sites. The affected city or county in consultation with the local service provider, if applicable, must make decisions about whether a site is serviceable. Cities and counties are encouraged to develop specific criteria for deciding whether or not a site is serviceable. Cities and counties are strongly encouraged to also consider whether or not extension of facilities is reasonably likely to occur considering the size and type of uses likely to occur and the cost or distance of facility extension;

(b) Estimate the amount of serviceable industrial and other employment land likely to be needed during the planning period for the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:

(A) Projections or forecasts based on development trends in the area over previous years; and

(B) Deriving a proportionate share of the anticipated 20-year need specified in the comprehensive plan.

(c) Review and, if necessary, amend the comprehensive plan and the public facilities plan to maintain a short-term supply of land. Amendments to implement this requirement include but are not limited to the following:

(A) Changes to the public facilities plan to add or reschedule projects to make more land serviceable;

(B) Amendments to the comprehensive plan that redesignate additional serviceable land for industrial or other employment use; and

(C) Reconsideration of the planning area's economic development objectives and amendment of plan objectives and policies based on public facility limitations.

(d) If a city or county is unable to meet the requirements of this section, it must identify the specific steps needed to provide expanded public facilities at the earliest possible time.

(5) Institutional Uses. Cities and counties are not required to designate institutional uses on privately owned land when implementing section (2) of this rule. Cities and counties may designate land in an industrial or other employment land category to compensate for any institutional land demand that is not designated under this section.

(6) Compatibility. Cities and counties are strongly encouraged to manage encroachment and intrusion of uses incompatible with industrial and other employment uses. Strategies for managing encroachment and intrusion of incompatible uses include, but are not limited to, transition areas around uses having negative impacts on surrounding areas, design criteria, district designation, and limiting non-essential uses within districts.

(7) Availability. Cities and counties may consider land availability when designating the short-term supply of land. Available land is vacant or developed land likely to be on the market for sale or lease at prices consistent with the local real estate market. Methods for determining lack of availability include, but are not limited to:

(a) Bona fide offers for purchase or purchase options in excess of real market value have been rejected in the last 24 months;

(b) A site is listed for sale at more than 150 percent of real market values;

(c) An owner has not made timely response to inquiries from local or state economic development officials; or

(d) Sites in an industrial or other employment land category lack diversity of ownership within a planning area when a single owner or entity controls more than 51 percent of those sites.

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(8) Uses with Special Siting Characteristics. Cities and counties that adopt objectives or policies providing for uses with special site needs must adopt policies and land use regulations providing for those special site needs. Special site needs include, but are not limited to large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, sensitivity to adjacent land uses, or coastal shoreland sites designated as suited for water-dependent use under Goal 17. Policies and land use regulations for these uses must:

(a) Identify sites suitable for the proposed use;

(b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities that interfere with development of the site for the intended use; and

(c) Where necessary, protect a site for the intended use by including measures that either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Hist.: LCDC 4-1986, f. & ef. 10-10-86; LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

660-009-0030

Multi-Jurisdiction Coordination

(1) Cities and counties are strongly encouraged to coordinate when implementing OAR 660-009-0015 to 660-009-0025.

(2) Jurisdictions that coordinate under this rule may:

(a) Conduct a single coordinated economic opportunities analysis; and

(b) Designate lands among the coordinating jurisdictions in a mutual-agreed proportion.

Stat. Auth.: ORS 183 & 197, OL 2003 Ch. 800

Stats. Implemented: ORS 197.712

Hist.: LCDD 7-2005, f. 12-13-05, cert. ef. 1-1-07

Adm. Order No.: LCDD 8-2005

Filed with Sec. of State: 12-13-2005

Certified to be Effective: 12-13-05

Notice Publication Date: 11-1-05

Rules Amended: 660-004-0018, 660-014-0040, 660-015-0000, 660-022-0030

Subject: The amendments are to the two applicable versions of Statewide Planning Goal 14 (OAR 660-015-0000(14)) and related administrative rules under OAR chapter 660, division 022; OAR chapter 660, division 004; OAR 660, Division 014; and OAR chapter 660, division 022. These amendments conform the goal and rules to new state laws enacted in 2005, House Bill 2458 (Sections 1-3, chapter 666, Oregon Laws 2005), and in 2003, HB 2614 (Section 1, chapter 688, Oregon Laws 2003).

Rules Coordinator: Shelia Preston—(503) 373-0050, ext. 222

660-004-0018

Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

(2) For “physically developed” and “irrevocably committed” exceptions to goals, plan and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:

(a) That are the same as the existing land uses on the exception site;

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals and are consistent with all other applicable Goal requirements; and

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For which the uses, density, and public facilities and services are consistent with OAR 660-022-0030, “Planning and Zoning of Unincorporated Communities”, if applicable, or

(d) That are industrial development uses, and accessory uses subordinate to the industrial development, in buildings of any size and type, provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved only under provisions for a reasons exception as outlined in section (4) of the rule and OAR 660-004-0020 through 660-004-0022.

(4) “Reasons” Exceptions:

(a) When a local government takes an exception under the “Reasons” section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception;

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a “Reasons” exception, a new “Reasons” exception is required;

(c) When a local government includes land within an unincorporated community for which an exception under the “Reasons” section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, which ever is more stringent.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.732

Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-86; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 8-2005, f. & cert. ef. 12-13-05

660-014-0040

Establishment of New Urban Development on Undeveloped Rural Lands

(1) As used in this rule, “undeveloped rural land” includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected

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jurisdictions and consistent with plans that control the area proposed for new urban development.

(4) Counties are not required to justify an exception to Goal 14 in order to authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, in exception areas that were planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

Stat. Auth.: ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83; LCDD 4-2004, f. & cert. ef. 5-17-04; LCDD 8-2005, f. & cert. ef. 12-13-05

660-015-0000

Statewide Planning Goals and Guidelines #1 through #14

- (1) #1 — Citizen Involvement;
- (2) #2 — Land Use Planning;
- (3) #3 — Agricultural Lands;
- (4) #4 — Forest Lands;
- (5) #5 — Natural Resources, Scenic and Historic Areas, and Open Spaces;

- (6) #6 — Air, Water, and Land Resources Quality;
- (7) #7 — Areas Subject to Natural Hazards;
- (8) #8 — Recreational Needs;
- (9) #9 — Economy of the State;
- (10) #10 — Housing;
- (11) #11 — Public Facilities and Services;
- (12) #12 — Transportation;
- (13) #13 — Energy Conservation; and
- (14) #14 — Urbanization.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 197 & 215

Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240 & 197.245

Hist.: LCDC 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-010-0060; LCDC 6-1980, f. & ef. 9-15-80; LCDC 10-1983, f. & ef. 12-30-83; LCDC 5-1984, f. & ef. 10-19-84; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 5-1992, f. 8-21-92, cert. ef. 8-7-93; LCDC 2-1994, f. & cert. ef. 3-1-94; LCDC 4-1994, f. & cert. ef. 3-18-94; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 8-2000, f. 10-3-00, cert. ef. 10-4-00; LCDD 6-2001, f. 11-2-01, cert. ef. 6-1-02; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05; LCDD 4-2005, f. & cert. ef. 6-28-05; LCDD 8-2005, f. & cert. ef. 12-13-05

660-022-0030

Planning and Zoning of Unincorporated Communities

(1) For rural communities, resort communities and urban unincorporated communities, counties shall adopt individual plan and zone designations reflecting the projected use for each property (e.g., residential, commercial, industrial, public) for all land in each community. Changes in plan or zone designation shall follow the requirements to the applicable post-acknowledgment provisions of ORS 197.610 through 197.625.

(2) County plans and land use regulations may authorize any residential use and density in unincorporated communities, subject to the requirements of this division.

(3) County plans and land use regulations may authorize only the following new or expanded industrial uses in unincorporated communities:

- (a) Uses authorized under Goals 3 and 4;
- (b) Expansion of a use existing on the date of this rule;
- (c) Small-scale, low impact uses;
- (d) Uses that require proximity to rural resource, as defined in OAR 660-004-0022(3)(a);

(e) New uses that will not exceed the capacity of water and sewer service available to the site on the effective date of this rule, or, if such services are not available to the site, the capacity of the site itself to provide water and absorb sewage;

(f) New uses more intensive than those allowed under subsection (a) through (e) of this section, provided an analysis set forth in the comprehensive plan demonstrates, and land use regulations ensure:

(A) That such uses are necessary to provide employment that does not exceed the total projected work force within the community and the surrounding rural area;

(B) That such uses would not rely upon a work force employed by uses within urban growth boundaries; and

(C) That the determination of the work force of the community and surrounding rural area considers the total industrial and commercial employment in the community and is coordinated with employment projections for nearby urban growth boundaries;

(g) Industrial uses, including accessory uses subordinate to industrial development, as provided under either paragraph (A) or (B) of this subsection:

(A) Industrial developments sited on an abandoned or diminished industrial mill site, as defined in ORS 197.719 that was engaged in the processing or manufacturing of wood products, provided the uses will be located only on the portion of the mill site that is zoned for industrial uses; or

(B) Industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, in an area planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

(4) County plans and land use regulations may authorize only the following new commercial uses in unincorporated communities:

(a) Uses authorized under Goals 3 and 4;

(b) Small-scale, low impact uses;

(c) Uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.

(5) County plans and land use regulations may authorize hotels and motels in unincorporated communities only if served by a community sewer system and only as provided in subsections (a) through (c) of this section:

(a) Any number of new motel and hotel units may be allowed in resort communities;

(b) New motels and hotels up to 35 units may be allowed in an urban unincorporated community, rural service center, or rural community if the unincorporated community is at least 10 miles from the urban growth boundary of any city adjacent to Interstate Highway 5, regardless of its proximity to any other UGB;

(c) New motels and hotels up to 100 units may be allowed in any urban unincorporated community that is at least 10 mile from any urban growth boundary.

(6) County plans and land use regulations shall ensure that new or expanded uses authorized within unincorporated communities do not adversely affect agricultural or forestry uses.

(7) County plans and land use regulations shall allow only those uses which are consistent with the identified function, capacity and level of service of transportation facilities serving the community, pursuant to OAR 660-012-0060(1)(a) through (c).

(8) Zoning applied to lands within unincorporated communities shall ensure that the cumulative development:

(A) Will not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations; and

(B) Will not exceed the carrying capacity of the soil or of existing water supply resources and sewer services.

(9) County plans and land use regulations for lands within unincorporated communities shall be consistent with acknowledged metropolitan regional goals and objectives, applicable regional functional plans and regional framework plan components of metropolitan service districts.

(10) For purposes of subsection (b) of section (4) of this rule, a small-scale, low impact commercial use is one which takes place in an urban unincorporated community in a building or building not exceeding 8,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 4,000 square feet of floor space.

(11) For purposes of subsection (c) of section (3) of this rule, a small-scale, low impact industrial use is one which takes place in an urban unincorporated community in a building or buildings not exceeding 60,000 square feet of floor space, or in any other type of unincorporated community in a building or buildings not exceeding 40,000 square feet of floor space.

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.040

Hist.: LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 2-2003(Temp) f. & cert. ef. 3-28-03 thru 9-23-03; LCDD 3-2003, f. 9-23-03, cert. ef. 9-24-03; LCDD 4-2003, f. & cert. ef. 9-26-03; LCDD 8-2005, f. & cert. ef. 12-13-05

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Landscape Architect Board Chapter 804

Adm. Order No.: LAB 3-2005

Filed with Sec. of State: 12-13-2005

Certified to be Effective: 12-13-05

Notice Publication Date: 11-1-05

Rules Amended: 804-020-0055

Subject: This rule change gives individuals the choice to become a Landscape Architect-in-Training. Those individuals may also submit an affidavit without a notary signature in their application packet as approved at the December 2, 2005 Board meeting.

Rules Coordinator: Susanna R. Knight—(503) 589-0093

804-020-0055

Completion of Exam

(1) A candidate who has successfully completed two or more sections of the LARE may register with the Board as a Landscape Architect in

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Training (LAIT). The LAIT shall continue to register annually until such time as the LAIT is eligible for registration as a Landscape Architect.

(2) Affidavit of Understanding — After the applicant has successfully completed the LARE, the applicant shall obtain and become familiar with the requirements of the Oregon Revised Statutes and the Oregon Administrative Rules governing the practice of landscape architecture prior to appearing before the board for an Oral Exam/Interview. The applicant shall provide the board with an affidavit stating that they have read and understand the Oregon Statutes and the Oregon Administrative Rules governing the practice of landscape architecture.

(3) Oral Exam/Interview — Prior to registration, each applicant for registration by examination shall appear before the board for an Oral Exam/Interview. The Oral Exam/Interview will be held after the applicant has successfully completed the LARE and has submitted the required application, fees, and affidavit. The Oral Exam/Interview is held before the board and may include questions on the Oregon Revised Statutes and the Oregon Administrative Rules.

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & cf. 6-24-82; LAB 1-1984, f. & cf. 1-5-84; LAB 1-1986, f. & cf. 1-3-86; LAB 3-1989, f. 6-23-89, cert. ef. 7-1-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2005, f. & cert. ef. 12-13-05

Oregon Department of Education Chapter 581

Adm. Order No.: ODE 11-2005(Temp)

Filed with Sec. of State: 12-15-2005

Certified to be Effective: 12-15-05 thru 5-15-06

Notice Publication Date:

Rules Adopted: 581-022-1360, 581-022-1361

Subject: School Districts will be required to provide the notice called for in the law early in 2006. The adoption of temporary rules will provide immediate direction to districts in complying with the requirement. The rules describe the content of the notice that school districts are required to provide regarding the expanded option program and establishes the credit cap as call for in the law.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-022-1360

Expanded Options Annual Notice

(1) Prior to February 1 of each year, beginning with the 2005-06 school year, each school district must notify all high school students and the students' parents or guardians of the Expanded Options Program. The notification process must:

(a) Ensure that all at-risk students and their parents are notified about the Expanded Options Program; and

(b) Identify high school students who have dropped out of school and provide those students with information about the Expanded Options Program by sending information about the program to the last known address of the family of the student.

(2) The notice must include, but is not limited to the following:

(a) Definitions of "eligible student," "eligible post-secondary institution," and "eligible post-secondary course;"

(b) Purposes of the Expanded Options Program;

(c) Financial arrangements for tuition, textbooks, equipment and materials;

(d) Available transportation services;

(e) Effects of enrolling in the Expanded Options Program on the eligible student's ability to complete the required high school graduation requirements;

(f) Consequences of not maintaining satisfactory academic progress as defined by the eligible post-secondary institution, such as by failing or not completing an eligible post-secondary course;

(g) Participation in the Expanded Options Program is contingent on acceptance by an eligible post-secondary institution;

(h) Eligible students may not enroll in eligible post-secondary courses for more than the equivalent of two academic years, and eligible students who first enroll in grade 12 may not enroll in eligible post-secondary courses for more than the equivalent of one academic year;

(i) A student who has graduated from high school may not participate in Expanded Options Program;

(j) An eligible student who has completed course requirements for graduation but has not received a diploma may participate;

(k) Notice(s) of any other program(s), agreements(s) or plan(s) in effect that provides access for public high school students to post-secondary courses;

(l) The district's responsibility for providing any required special education and related services to the student;

(m) The number of quarter credit hours that may be awarded each school year to eligible students by the resident high school;

(n) The district board's process for selecting eligible students to participate in the Expanded Options Program if the school district has not chosen to exceed the credit hour cap and has more eligible students who wish to participate than are allowed by the cap;

(o) Information about program participation priority for at-risk students;

(p) Exclusion of duplicate courses as determined by the resident school district;

(q) The process for a student to appeal the district's duplicate course determination to the Superintendent of Public Instruction or the Superintendent's designee;

(r) Exclusion of post-secondary courses in which a student is enrolled if the student is also enrolled full time in the resident secondary school; and

(s) Exclusion of foreign exchange students enrolled in a school under a cultural exchange program.

Stat. Auth.: Ch. 674 OL 2005
Stats. Implemented: Ch. 674 OL 2005
Hist.: ODE 11-2005(Temp), & cert. ef. 12-15-05 thru 5-15-06

581-022-1361

Expanded Options Program Annual Credit Hour Cap

(1) The number of quarter credit hours that may be awarded by a high school under the Expanded Options Program is limited to an amount equal to the number of students in grades 9 through 12 enrolled in the high school multiplied by a factor of 0.33. For example, the cap for a high school with 450 students in grades 9 through 12 would be 148.5 (450 X 0.33 = 148.5).

(2) For districts with more than one high school, the caps must be established separately for each high school.

(3) School districts may choose to exceed both the individual high school level cap(s) and the aggregate district level cap established under this rule.

(4) School districts choosing not to exceed the cap(s) established under this rule are required to establish a process for selecting eligible students for participation in the program. The process must give priority for participation to students who are "at risk" as defined in Chapter 674 Oregon Laws 2005. "At-risk student" means:

(a) A student who qualifies for a free or reduced price lunch program;

or

(b) An at-risk student as defined by rules adopted by the State Board of Education if the board has adopted rules to define an at-risk student.

Stat. Auth.: Ch. 674 OL 2005
Stats. Implemented: Ch. 674 OL 2005
Hist.: ODE 11-2005(Temp), & cert. ef. 12-15-05 thru 5-15-06

Oregon Liquor Control Commission Chapter 845

Adm. Order No.: OLCC 8-2005

Filed with Sec. of State: 11-21-2005

Certified to be Effective: 12-1-05

Notice Publication Date: 8-1-05

Rules Amended: 845-005-0306

Subject: This rule describes processes for which public notice of license application is required. The process described in section (4) of the rule is not longer required - the processes required for applicants to notify local governments are more fully and correctly described in another OLCC rule, 845-005-0304.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-005-0306

Procedures for Public Notice of License Applications

(1) The Commission will provide written notice to the public at least 14 calendar days before the Commission grants or denies:

(a) An initial annual license;

(b) A change of license privileges;

(c) The addition of alcoholic beverage sales or service to an outdoor area;

(d) A change of licensee where the Commission determines that the potential exists for problems with unlawful activities, noise or disturbances in or around the premises that are related to the sale or service of alcoholic beverages;

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(e) Any change for which OAR 845-006-0480 requires Commission approval where the Commission determines that the potential exists for problems with unlawful activities, noise or disturbances in or around the premises that are related to the sale or service of alcoholic beverages.

(2) The Commission will provide the written notice as follows:

(a) Conspicuous notice posted on the premises proposed to be licensed;

(b) Notice to licensed child care facilities, elementary or secondary schools, places of worship, hospitals, nursing facilities, convalescent homes, parks, children-oriented recreational facilities, and alcohol and other drug rehabilitation facilities within 500 feet of the premises in urban or suburban areas and 1,500 feet in rural areas; and

(c) Notice to the neighborhood organization(s) for the area in which the proposed premises are located if the organization is recognized by the appropriate city or county and registered with the Commission. If there is no recognized organization, the Commission will notify any organization registered with the Commission that represents at least 25 households in the area.

(3) The written notice will include:

(a) Name of applicant. If applicant is not an individual, the name(s) of the person(s) who will have primary responsibility for operating the business;

(b) Address of premises proposed to be licensed;

(c) Type of license;

(d) Legal hours of operation; and

(e) How to contact the Commission within 14 days for further information about:

(A) The application;

(B) Providing information to the Commission to help determine the applicant's eligibility for a license; and

(C) Participating in the Commission's licensing process.

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

Stats. Implements: ORS 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 8-2005, f. 11-21-05, cert. ef. 12-1-05

Adm. Order No.: OLCC 9-2005

Filed with Sec. of State: 11-21-2005

Certified to be Effective: 1-1-06

Notice Publication Date: 8-1-05

Rules Amended: 845-006-0335

Subject: This rule describes a variety of agency requirements regarding age verification and activities of minors on licensed premises. The rule will be amended to do two things:

1) Specify the type of entertainment for which the underlying statute (ORS 167.830) requires the permission of a juvenile court judge; and

2) Add language for a new process whereby the Commission will give approval for juvenile entertainers whose performances are not addressed by the juvenile court process requirements.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-006-0335

Age Verification; Minors on Licensed Premises

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages, or is in an area prohibited to minors, if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

(2) Sanctions for Failure to Verify Age:

(a) The Commission will sanction a licensee or permittee who does not verify the age of a person who appears to be under the age of 26 only if the person:

(A) Actually is a minor who buys, is served or drinks an alcoholic beverage at the licensed premises (Category III violation); or

(B) Actually is a minor who is in an area of the licensed premises prohibited to minors (Category IV violation).

(b) If the Commission sanctions a licensee or permittee for selling to or serving a minor, allowing a minor to drink or allowing a minor in an area prohibited to minors, the Commission will not also sanction the licensee or permittee for failure to verify age;

(c) Failure to verify age as ORS 471.130 requires or to reject obviously altered or false identification is a Category III violation.

(3) Minors on Premises: General Prohibitions. No licensee, permittee, or licensee's employee will permit a minor:

(a) To buy, be served or drink any alcoholic beverage on licensed premises;

(b) To be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482, and this rule. (The assigned minor posting(s) describes where on the premises minors are allowed or prohibited. See OAR 845-006-0340, Minor Postings.)

(4) Minor Employee and Service Permittee:

(a) A minor employee may be in a Number II, III-A after 9 p.m., IV or V posted

area only to restock supplies and do food service related activities such as setting and clearing tables and delivering food. In addition, a minor employee may be in a Number IV posted area to take orders for and serve food during the specified meal periods;

(b) A minor service permittee may do the duties described in subsection (a) of this section as well as the alcohol-related duties ORS 471.482 allow.

(5) Minor Vendor or Contractor. A minor, other than a licensee's employee, who has a legitimate business purpose, may be in the area of the licensed premises normally prohibited to minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area).

(6) Minor Entertainer:

(a) A minor entertainer may perform on licensed premises. If the minor entertainer stays on the premises when not performing, he/she must stay in an area where minors are permitted. If there is no break room, dressing room or patron area where minors are permitted, the licensee may, with prior Commission approval, designate space for minor entertainers in an area normally prohibited to them. At a minimum, the place must be within the bartender's sight but not at the bar, and there must be no alcoholic beverages in this place;

(b) If the minor is under 18 years old, and the licensee proposes to employ that minor to conduct or assist in conducting any public dance, including but not limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, the licensee and minor must make sure the minor has the written permission of the appropriate juvenile court judge as required by ORS 167.840(2).

(c) If the minor is under 18 years old, and the licensee proposes to employ that minor to perform or entertain on the licensed premises in a capacity other than described in (6)(b) of this rule, before allowing the minor to perform on the licensed premises the licensee must apply for and receive prior written permission from the Administrator of the Oregon Liquor Control Commission, or the Administrator's designee. Application must be made upon a form supplied by the Commission. The Administrator or designee shall grant such permission only if:

(A) The parents or legal guardians of the minor have consented to the child's participation in such activity; and

(B) The Administrator or designee has found that participation in such activity will not be inconsistent with the health, safety and morals of the minor.

(d) Minors under 14 years old must also get a work permit if one is required by the Oregon Bureau of Labor and Industries.

(7) Minor Patron: A minor patron may be in areas of licensed premises normally prohibited to minors in the following circumstances:

(a) If the licensee permits it, a minor may be in the immediate company of his/her spouse who is at least 21 years old, except as prohibited in OAR 845-006-0340(3). The minor must not buy, possess or drink alcoholic beverages;

(b) A minor may order and eat a meal in a Number IV posted area during the specified meal periods. This meal must at least meet the minimum food service requirements of OAR 845-006-0460.

(8) Sanctions: A violation of subsection (3)(a) of this rule is a Category III violation. A violation of subsection (3)(b) through section (7) of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including 471.030 & 471.730

Stats. Implemented: ORS 471.430

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03; OLCC 13-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 4-2004, f. & cert. ef. 4-9-04; OLCC 9-2005, f. 11-21-05, cert. ef. 1-1-06

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Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 22-2005

Filed with Sec. of State: 12-7-2005

Certified to be Effective: 12-7-05

Notice Publication Date: 9-1-05

Rules Amended: 459-007-0015

Subject: Enacted 2005 legislation SB 109 (OL 2005 Ch. 302) amends ORS 238.455 to authorize the PERS Board to establish by rule the interest rate applied to underpayments of estimated benefits that are \$10 or more. This rule modification establishes the average annualized interest rate, as defined in OAR 459-007-0001(3), as the rate to apply to underpayments for members who have effective dates of retirement on and after January 1, 2006.

Rules Coordinator: David K. Martin—(503) 603-7713

459-007-0015

Interest Rate Applied to Underpayment of Estimated Benefits

In accordance with ORS 238.455(5), earnings credited to an underpayment of either Tier One or Tier Two estimated benefits shall be simple interest, prorated from date of underpayment to date of distribution by PERS of the underpaid amount based on:

(1) the rate credited to the respective tier in the Fund for the prior calendar year for members who have effective dates of retirement prior to January 1, 2006;

(2) the average annualized interest rate, as defined in OAR 459-007-0001(3), in effect as of the date of distribution for members who have effective dates of retirement on and after January 1, 2006.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.455, OL 2005 Ch. 302

Hist.: PERS 6-1998, f. & cert. ef. 5-22-98; PERS 22-2005, f. & cert. ef. 12-7-05

Oregon State Lottery Chapter 177

Adm. Order No.: LOTT 14-2005(Temp)

Filed with Sec. of State: 11-23-2005

Certified to be Effective: 11-23-05 thru 5-1-06

Notice Publication Date:

Rules Amended: 177-040-0026

Subject: The temporary amendment clarifies the terms of the current retailer contract between the Lottery Commission and its video lottery retailers by setting forth the calculation method for paying compensation to video lottery retailers for the sale of video lottery game shares when net receipts exceed a tier threshold during a business week. The amendment specifies that when net receipts exceed the threshold of a tier applicable to a retailer, the video Lottery compensation rate remains unchanged for the remainder of the business week and is lowered at the start of the next business week.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0026

Retailer Compensation — Video Lottery Games

(1) General: The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net receipts during a business year. "Net receipts" means the amount of money that is received at a retailer's premises from the sale of video lottery game shares after the payment of prizes. The compensation rates for the sale of video lottery game shares for retailers that offer only video poker games is set forth in OAR 177-040-0027. The compensation rates for the sale of video lottery game shares for retailers that offer both video poker games and video line games is set forth in OAR 177-040-0028.

(2) Compensation When Net Receipts Exceed Tier Threshold: During the course of a business year, when a Video Lottery retailer's weekly net receipts exceed the threshold of a tier applicable to the retailer under OAR 177-040-0027 or 177-040-0028, the Video Lottery compensation rate shall remain unchanged for the remainder of the business week in which the threshold is exceeded. The compensation rate for that tier, as set forth in OAR 177-040-0027 and 177-040-0028, shall apply at the start of the next business week. For example, if a retailer has chosen option (a) under OAR 177-040-0028(2)(a) and on a Wednesday the net receipts reach \$175,001, the retailer is compensated at 29% of the net receipts received for the remainder of the business week. At 5:00 a.m. on the following Sunday

which is the start of the next business week, the compensation rate is reduced to 24% of net receipts.

Stat. Auth.: ORS 461, OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.300

Hist.: LOTT 4-2004(Temp), f. 4-6-04, cert. ef. 6-27-04 thru 12-23-04; LOTT 8-2004, f. 5-26-04, cert. ef. 5-27-04; LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05; LOTT 4-2005(Temp), f. & cert. ef. 5-10-05 thru 7-30-05; LOTT 6-2005(Temp), f. 7-27-05, cert. ef. 7-31-05 thru 8-1-05; Administrative correction 8-17-05; LOTT 14-2005(Temp), f. & cert. ef. 11-23-05 thru 5-1-06

Oregon State Treasury Chapter 170

Adm. Order No.: OST 3-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-15-05

Notice Publication Date: 10-1-05

Rules Adopted: 170-030-0055

Subject: Outlines procedures for Oregon State Treasury and affected Oregon public officials in the event an Oregon depository is closed by the Comptroller of the Currency or the Director of the Department of Consumer and Business Services.

Rules Coordinator: Sally Furze—(503) 378-4990

170-030-0055

Procedure in Case of Default of Depository Bank

Pursuant to ORS 295.105, Oregon State Treasury shall:

(1) Upon notice of closure of a depository by the Comptroller of the Currency or the Director of the Department of Consumer and Business Services, obtain from the depository's pool manager(s) the custodian's receipts for pledged collateral. Treasury will then obtain from the custodian(s) such collateral as is evidenced by the custodian's receipts.

(2) Obtain copies of all outstanding Certificates of Participation (COP) from the depository's pool manager(s).

(3) Notify all of the affected public officials in writing of the process and request appropriate substantiating documentation of the amount of each public official's deposits in the subject depository within thirty (30) days of closure of the depository.

(4) Determine the total amount of the claims payable out of the proceeds of the liquidated collateral of the depository, as described in ORS 295.105(3).

(5) Liquidate the securities, at public or private sale, in an amount and manner the Treasurer determines advisable.

(6) Distribute the net proceeds of the collateral among the entitled public officials in proportion to their respective claims.

(7) Remit to the depository any collateral or proceeds of collateral in excess of that necessary to satisfy the total claims.

Stat. Auth.: ORS 295.105

Stats. Implemented: ORS 295.105

Hist.: OST 3-2005, f. 12-14-05 cert. ef. 12-15-05

Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

Adm. Order No.: ODA 5-2005

Filed with Sec. of State: 12-1-2005

Certified to be Effective: 12-7-05

Notice Publication Date: 8-1-05

Rules Adopted: 583-030-0009, 583-030-0038

Rules Amended: 583-030-0005, 583-030-0010, 583-030-0015, 583-030-0016, 583-030-0020, 583-030-0025, 583-030-0030, 583-030-0035, 583-030-0036, 583-030-0041, 583-030-0042, 583-030-0043, 583-030-0044, 583-030-0045, 583-030-0046, 583-030-0049

Rules Repealed: 583-030-0021

Rules Ren. & Amended: 583-030-0022 to 583-030-0039, 583-030-0037 to 583-030-0011, 583-030-0040 to 583-030-0032

Subject: Replaces ODA degree program approval rules (using the same 030 principal section numbers as current rules) to conform to changes required by SB 1039 (2005 Laws 546) and to make other technical and substantive corrections and improvements. Principal changes relate to state regulation of religious degree-granting institutions. Other changes relate to definitions, requirements for different levels of degrees, oversight of schools, fees and related matters affecting the application and approval process.

Rules Coordinator: Peggy D. Cooksey—(541) 687-7443

ADMINISTRATIVE RULES

583-030-0005

Purpose and Scope

(1) This rule implements Oregon Revised Statutes (ORS) 348.594 to 348.615 and 348.992 insofar as each section therein relates to ORS 348.606, which provides that a school must meet state standards and be approved through the Office of Degree Authorization before it may confer or offer to confer any academic degree, or provide services purporting to lead to a degree, by establishing the standards and the procedures to implement the standards or to verify any exemption or exclusion.

(2) This rule applies to any school offering degrees and credits from within Oregon to recipients anywhere, and it applies to any person assisting such a school. The rule further applies to any school offering degrees and credits from outside of Oregon, in connection with learning or evaluation meant to occur within this state, if there is any person assisting the school from within this state in any way. Assisting the school includes, but is not limited to:

(a) Maintaining an office or mailing address in the state or

(b) Conducting any part of the instruction program or support activities from or in the state.

(3) Exclusions to the rule are described in OAR 583-030-0009.

(4) Complete and partial exemptions and modifications are described in OAR 583-030-0010 and 583-030-0011.

Stat. Auth.: ORS 348.594 & 348.606

Stats. Implemented: ORS 348.594, 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998 f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0009

Exclusions

(1) These rules do not apply to a school that offers degrees or credits from outside of Oregon and is unassisted within the state, so that any concomitant learning or evaluation occurring within Oregon is accomplished exclusively through interstate communication (e.g., internet, mail, telephone, fax) in which the student acts entirely alone within this state.

(2) A school in Oregon that does not offer degrees or credits viable toward a degree is under the jurisdiction of the Oregon Department of Education and not the Office of Degree Authorization.

Stat. Auth.: ORS 348.594 - 348.615, 2005 SB 1039 enrolled (2005 Laws 546)

Stats. Implemented: ORS 348.594 - 348.615

Hist.: ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0010

Exemptions

The standards and procedures in this rule shall not apply to a school that is exempt.

(1) A school in the public postsecondary educational system of the State of Oregon is exempt when offering degrees and credits exclusively in its own name and under its own control as the Oregon University System or constituent unit thereof, an Oregon community college, or the Oregon Health and Science University.

(2) A school is exempt on religious grounds if the school meets the requirements of ORS Chapter 546, 2005 Laws. No rules in 583-030 are applicable to a religious-exempt school except as permitted by ORS Chapter 346, 2005 Laws.

Stat. Auth.: ORS 348.594

Stats. Implemented: ORS 348.594

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; ECC 3-1981, f. & ef. 12-16-81; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0015

Definitions of Terms

The following definitions have particular application to one or more provisions of this rule.

(1) "Academic year" means approximately nine months, conventionally during fall, winter, and spring.

(2) "Accredited" means approved to offer degrees at a specified level by an agency or association recognized as an accreditor in the U.S. by the U.S. Secretary of Education or having candidacy status with an agency or association whose pre-accreditation category is recognized specifically by the U. S. Secretary of Education as an assurance of future accreditation. "Regionally accredited" means approved to offer degrees at a specified level by a regional institutional accreditor recognized for that purpose by the U.S. Secretary of Education.

(3) "At risk" means the school demonstrates one or more of the following conditions that the Office determines may cause potential serious

problems for the continued successful operation of the organization: Failure to meet the standards of financial responsibility; Misrepresentation; Frequent substantiated complaints filed with the Office; Significant decrease in enrollment from the previous reporting year; or Significant staff turnover from the previous reporting year.

(4) "Certificate" means a formal academic award that signifies, purports, or may generally be taken to signify completion of a course of instruction for which college or university-level academic credit is given but which is shorter or more limited than that leading to a degree. Certificate includes the term "diploma" if used to mean a similar award. A certificate may be at the undergraduate or graduate level.

(5) "Class hour" or "contact hour" means approximately one hour of direct communication between a teacher and one or more students, minus time for rest or change of classes. Conventionally this has been a fifty-minute period.

(6) "Confer a degree" means give, grant, award, bestow, or present orally or in writing any symbol or series of letters or words that would lead the recipient to believe a degree had been obtained.

(7) "Credit," when the full term is "postsecondary or college credit," means indication or certification by a school that a student has completed a unit of study, demonstrated achievement or proficiency, or manifested measured learning outside of school so as to have satisfied a portion of the requirements for a degree or for any other academic recognition offered by the school.

(8) "Credit hour" means one postsecondary credit resulting from one of the following intended to result from at least 2 hours of student work out of class (or in equivalent lab time) for each contact hour in class, totaling:

(a) Approximately 45 hours of student work in a semester;

(b) Approximately 30 hours of student work in a quarter;

(c) An equivalent amount of student work under an alternate term calendar schedule approved by ODA; or

(d) Equivalent student work demonstrated by student performance on a nationally recognized examination or evaluation acceptable to the Office.

(9) "Degree" means any academic or honorary title, rank, or status that may be used for any purpose, which is designated by a symbol or series of letters or words such as, but not limited to, associate, bachelor, master, or doctor, and forms or abbreviations thereof that signifies, purports, or may generally be taken to signify:

(a) Completion of a course of instruction at the college or university level; or

(b) Demonstration of achievement or proficiency comparable to such completion; or

(c) Recognition for nonacademic learning, public service, or any other reason of distinction comparable to such completion. "Degree" does not refer to a certificate or diploma signified by a series of letters or words unlikely to be confused with a degree, clearly intended not to be mistaken for a degree, and represented to students and the public in ways that prevent such confusion or error.

(10) "External degree" means a degree that can be earned mostly or entirely through correspondence, electronic recordings, or subscription telecommunications, rather than by resident instruction, except that some assistance may be provided for students face-to-face by school adjuncts in capacities such as advisor, mentor, tutor, clinic or practicum supervisor, topical speaker, occasional seminar leader, evaluator, or member of a thesis or study committee.

(11) "First-professional degree" means master's or doctor's degree conferred upon completion of a course of study for which admission into some schools may be gained with less than a baccalaureate, but for which pre-admission and professional study together invariably require more time than is required for a bachelor's degree alone, regardless of how many matriculants already have a bachelor's degree.

(12) "FTE" stands for "full-time-equivalent," which means the imaginary number of students, teachers, or other personnel, any member of which may be engaged full time or part time, who in combined time expended would be the equivalent of one full-time unit of the kind being described.

(13) "Full-time student" means a student who is engaged in academic study as the primary occupation, thus ordinarily requiring 35 to 45 hours per week divided between interaction with teachers and independent preparation.

(14) "Graduate degree" or "post-baccalaureate degree" means a master's or doctor's degree conferred upon completion of a course of study for which admission can be gained only through possession of a bachelor's degree satisfactory to the school offering the graduate instruction.

(15) "General Education" is a term that includes liberal education and other nonvocational courses outside a student's major field.

(16) "Liberal Arts and Sciences" courses means courses in the following subjects:

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(a) Humanities: Language, literature, philosophy, religious thought; fine arts (not emphasizing performance skills).

(b) Social studies or sciences: Anthropology, cultural geography, general history, religious history and culture, economics, political science, general psychology, sociology.

(c) Natural sciences: Biology, biological psychology, chemistry, physics, geology and physical geography, mathematics.

(17) "Limited resident instruction" means instruction by an accredited school consisting of less than 50 percent of a degree or certificate program offered to more than one student at a physical site in Oregon, when the providing school is not otherwise authorized to offer degrees in Oregon.

(18) "Lower-division instruction" means course content and teaching at a level appropriate for first- and second-year postsecondary students generally (including all community college and associate degree instruction), but available to more advanced students who have no prior experience in the subject.

(19) "Non-Oregon school" means any school controlled from outside the state.

(20) "Offer a degree" means announce, advertise, declare, or imply orally or in writing the willingness or intention to confer a degree directly or to cause a degree to be conferred by agreement or arrangement with any person or school.

(21) "Office" means the Office of Degree Authorization, as represented by the administrator or designated agent.

(22) "Oregon school" means any school or organized group of schools that has its principal executive offices in Oregon or is otherwise controlled effectively from within this state, regardless of the number of students served in various locations.

(23) "Person assisting a school" means any person or organization helping the school or its students or clients by acting as educator or intermediary or provider of communication technology or by acting in any other way that helps the school offer or effectuate its services in Oregon, regardless of whether the person assisting has a contract or compensation. "Person assisting a school" includes but is not limited to: advertiser, recruiter, admissions agent, course registerer, advisor, teacher, mentor, tutor, supervisor of an internship or practicum, occasional speaker, seminar leader, informal discussion leader, student host for group activity, evaluator, member of a thesis or study committee, publisher of educational materials, operator of a radio station, internet service provider or a cable or broadcast television station.

(24) "Practicum" means that portion of a degree program that involves a supervised field placement in a professional or workplace environment. For purposes of these rules, also includes "internship."

(25) "Professional and vocational courses" mean courses in the following subjects: agriculture and forestry (or wildlife management), architecture and design, business and public administration, broadcasting or journalism, computer technology, education, engineering and related technologies, health professions, home economics, law, library science, military science, parks and leisure studies, physical education and recreation, protective services, or religious services. Professional courses may also include artistic performance or physical activity courses, practical and general information courses such as personal health, career planning, human relations, public speaking, elementary writing, elementary mathematics, and computer fundamentals.

(26) "Quarter" means one third of an academic year, typically 9-12 weeks in length and divided among fall, winter and spring.

(27) "Religious degree" means a degree with a title in theology or religious occupation(s).

(28) "Residential degree" means a degree earned primarily through "resident instruction," which is face-to-face teaching and learning at a school's main campus or other major facility with a regularity designed to accommodate full-time students and others who need continuous access to teachers and related resources on site.

(29) "Restricted degree" means an external or semi-residential degree offered exclusively to employees or members of contracting organizations, which receive on their own premises services that may include direct or televised teaching by regular or adjunct faculty members of the school. The opposite of restricted is "open" to all members of the general public who are qualified for admission.

(30) "School" means any person or persons and any organization or group of organizations, whether incorporated or not, engaging or appearing to engage in the activities of an educational entity or institution of learning, whether or not naming itself a school, college, university, institute, academy, seminary, conservatory, or similar term. The activities attributable to a school include but are not limited to teaching, measurement of achievement or proficiency, or recognition of educational attainment or comparable public distinction.

(31) "Semester" means half an academic year, typically 15-16 weeks in length, conventionally including a fall semester from September through December and a spring semester from January through May.

(32) "Semi-residential degree" means a degree that can be earned through a combination of residential and external methods but requires a substantial portion of learning from structured face-to-face teaching at a school's main campus or other major facility, or at a temporary instructional site where students meet in groups.

(33) "State academic standards" for Oregon means the standards provided in OAR 583-030-0035.

(34) "Term" means a segment of an academic year, ordinarily a semester or quarter but sometimes less. Term is the preferred descriptor for degree program courses using a nontraditional calendar.

(35) "Upper-division instruction" means course content and teaching appropriate for third- and fourth-year students or others with a strong background in the subject. Upper-division instruction is not offered in associate degree programs or by community colleges.

Stat. Auth.: ORS 348.594 & 348.606

Stats. Implemented: ORS 348.594, 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0016

Exclusive Use of Term "University"

The term "university" refers exclusively to a school that is authorized to offer bachelor's degrees together with graduate or first professional degrees, or to an organization that constitutes a formal consortium of schools so authorized. Any entity that calls itself "university" without authorization but with serious intent will be referred to the Department of Justice for enforcement of the statute that defines such deceptive representations as unlawful trade practices.

Stat. Auth.: ORS 348.594 & 348.606

Stats. Implemented: ORS 348.594, 348.603 & 348.606

Hist.: EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0020

Exercise of Office Authority

(1) A school that intends to offer to anyone from within Oregon or offer to Oregon residents from outside the state any form of instruction, lecture, training, tutoring, seminar, workshop, examination, evaluation, or other service represented as contributing credit or otherwise leading toward a specified or unspecified degree or certificate that will or might be conferred anywhere shall notify the Office in advance and then promptly supply all information the Office requests. Failure to notify the Office in advance or to provide information as directed may result in permanent denial of approval for the school to offer any services in or from Oregon.

(2) Schools that offer no degrees in Oregon but want to offer a certificate are under the jurisdiction of the Private Career Schools office of the Oregon Department of Education and should contact that office for approval.

(3) Schools intending to apply for ODA authorization or exemption shall provide to the Office information about school ownership and structure, proposed programs, and relationships to other institutions, if any. On the basis of this preliminary information, the Office will determine whether the school:

(a) Must apply for state authorization to offer instruction or related services leading to one or more degrees under the standards in OAR 583-030-0035 or 583-030-0036;

(b) Is exempt for other than religious reasons under ORS 348.594(2);

(c) Is eligible for exemption under ORS Chapter 546, 2005 Laws, section 2 and therefore has a choice of standard state approval or religious exemption.

(4) A school that applies for degree authorization or exemption shall use forms and follow procedures determined by the Office. Failure to comply constitutes good reason to reject an application. Such school shall be open to inspection and may be inspected at any time to verify its statements and to examine facilities. Inspection of a school and evaluation of its application will be performed by state officials or consultants as the Office considers necessary, and findings will be utilized as the Office considers appropriate. Information from other examiners, such as accreditors or professional licensing agencies, may accompany materials submitted by the school and may be used by the Office at its discretion.

(5) Authorization to offer instruction or related services leading to a degree applies to specific curricula and services for specific periods:

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(a) Authorization is normally given for the state as a whole, but may be limited by the Office in order to ensure program quality or operational stability.

(b) The Office, on the basis of judgment about the relationship between a curriculum and a degree title, may require revision of title. Degree titles may not contain the name of organizations, companies or products.

(c) Authorization is given for a specific degree for a fixed period of not less than two nor more than four calendar years. The Office may vary the length of approval periods by up to one year subject to the four-year limit in order to consolidate applications or renewals for the convenience of the school or the Office.

(6) Authorization to offer instruction or related services leading to a degree expires at the end of the period for which it is given, without right or presumption of renewal, except that an authorized school having submitted a complete and timely application for renewal continues to be authorized until such time as a review or revocation procedure may determine otherwise. After discontinuing its offer of an authorized degree before the end of the period of authorization, a school shall not reinstate the degree without permission from the Office. A program shall be deemed discontinued if a period of two academic years passes without any students being enrolled in the program.

(7) Authorization to offer instruction or related services leading to a degree is subject at all times to supplemental review if the school appears to be at risk or to revocation for proper cause according to procedures described in OAR 583-030-0045 below.

(8) Approval of a degree by ODA does not constitute approval of the program as training for professional practice when the state licenses or otherwise regulates professional practice. Applicants must also seek approval from the appropriate state licensing entity.

Stat. Auth.: ORS 348.594 & 348.606

Stats. Implemented: ORS 348.594, 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0025

General Conditions Required for Residential or Semi-residential Degree Program Authorization

All applicant schools must meet the following conditions to apply for initial or renewed authorization to offer a residential or semi-residential degree to Oregon residents or to offer any degree from within Oregon to persons anywhere.

(1) A school must appoint a responsible administrator who resides and has a business address and telephone within the state, who may transact the essential business of application, and who in any case shall be made an informed party to all such business. If a non-Oregon-based school plans a small or narrowly specialized operation within this state, the Office may permit the applicant to use a non-Oregon administrator.

(2) All programs must be designed to allow all students to work toward a degree at a rate equivalent to at least half-time study.

(3) No school shall be eligible to apply for authorization to offer in or from Oregon any instruction or other services leading to a doctor's degree before it has obtained accreditation or pre-accreditation candidacy at or above the bachelor's degree level recognized by the U.S. Secretary of Education. However, offer of doctoral programs in another state by an unaccredited school will not automatically disqualify such school from authorization to offer degrees below the doctoral level in Oregon. The only exception to this provision is that a proposed school offering one or more doctoral programs leading to professional licensure in a field in which Oregon has such licensure may apply for ODA approval. In such cases, the school proposing to offer doctoral programs may apply for ODA approval only if the program is designed and intended to meet the standards for licensure required by the appropriate Oregon professional licensing board.

(4) A foreign (non-U.S.) school is eligible to apply for Oregon approval if it is approved to offer degrees by the appropriate agency in its home country and ODA finds that its home country has adequate oversight of academic programs. Foreign schools are not limited to offering in Oregon the same degrees for which they have approval in their home country, but may not offer degrees at a higher level in Oregon than those for which they have authorization in their home country.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2005, f. & cert. ef. 3-3-05; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0030

Application Procedure

(1) A school seeking initial degree authorization should allow three months to prepare its application and six additional months for review by the Office. Approval of exempt degrees and abbreviated reviews for certain external or semi-residential degrees or for limited or restricted residential instruction may require less time. To be considered timely, a complete application for renewal of an existing authorization must be submitted six months before that authorization expires, and a school seeking renewal is fully responsible for beginning the procedure.

(2) In order to be valid, application must be made by the method determined by the Office, including completion according to instruction of any forms provided for the purpose. Modification will be allowed by explicit permission only. The applicant school shall submit any information requested by the Office and may submit such supplemental information as it considers pertinent. The Office will provide advice.

(3) Program approval may be made conditional on approval of employees hired after the approval date.

(4) Application for authorization to offer a degree or to provide services leading to a degree in whole or in part must be accompanied by payment of the fee described in OAR 583-030-0046 or such reduced fee as is determined by the Office in special circumstances. Several curricula leading to the same degree may be submitted as part of a single application.

(5) If a school has limited financial resources, ODA may at its discretion allow payment of fees over a period of time not to exceed two years from the date of initial approval. In the event that an initial application is successful, payment in full must be received before application for renewal can be accepted. In the event that initial application is not successful, payment in full of the review fee must be completed within two years of the date of formal denial of the application. Any proposed payment plan must be evaluated and, if adequate, approved by the OSAC chief financial officer. ORS 348.606(3) prohibits fee refunds.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2004, f. & cert. ef. 1-14-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0032

Review Process for Degrees

(1) Review of an application to offer instruction or related services leading to a degree or certificate includes evaluation of the school and its proposed programs in relation to the state academic standards set forth in OAR 583-030-0035, or modified under OAR 583-030-0036 for a non-Oregon school that will offer limited resident instruction in Oregon.

(2) Pursuant to OAR 583-030-0036, the Office at its discretion may employ an abbreviated review procedure with adjusted fee for a non-Oregon school offering limited or restricted instruction in Oregon for an external degree.

(3) Review of free-standing certificate or diploma programs offered by degree-granting schools, or credit-bearing courses offered by schools that do not issue degrees in their own name will generally follow the model for associate degrees.

(4) In the course of evaluation, the Office will ordinarily inspect the facilities and records of an applicant school and interview officials, employees, or students of the school as necessary to obtain sufficient information. The Office may also interview employers of school graduates and representatives of organizations that appear closely related to the school.

(5) Where competency in a particular academic discipline is essential to an evaluation, the Office may seek expert advice in that discipline. However, adequacy of instruction in a discipline will ordinarily be judged by faculty credentials in relation to the standards, by curricular content in comparison with similar programs of established quality, and by educational resources and student performance. Where competency in a particular occupation or profession is needed for an evaluation, the Office will seek expert advice from the corresponding state licensing board.

(6) The state will not review sectarian content of curriculum for degrees with a religious title or significant religious content; the state's only concern will be to ensure that the curriculum has a reasonable structure related to credits awarded.

(7) The review culminates in preparation of findings, including explanation of any failure to satisfy a standard, which are provided to the applicant in a formal report. Approval is not granted until all standards are satisfied. If a standard cannot be satisfied in a reasonable length of time, approval will be denied.

(8) Refusal by the Office to authorize an applicant school to offer instruction or related services leading to a degree is subject to right of review as provided in ORS 348.615 by an action brought for trial without

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jury in the circuit court of the county in which the school is located. A school or putative school having no location in Oregon at which students are actually served must bring any such action in the circuit court of Marion County.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 26, f. & ef. 6-8-77; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; Renumbered from 583-030-0040, ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0035

Standards for Schools Offering Degree Residential or Semi-residential Programs In or From Oregon

In order to receive and hold authorization to offer in or from Oregon instruction or related services leading to one or more degrees, a school must remain open to inspection at all times and continuously satisfy each of the following standard requirements as written, except where the Office approves modification under OAR 583-030-0036 or substitution under 583-030-0011. Standards are applicable to all programs.

(1) Name. The school shall use for doing business publicly a name that is consistent with its purpose and educational programs.

(2) Control.

(a) All persons responsible for top management policy must be individually qualified by education, experience, and record of conduct to assure effective management, ethical practice, and the quality of degrees and services offered. Boards must collectively demonstrate financial, academic, managerial and any necessary specialized knowledge, but individual members need not have all of these characteristics. Any controlling organization or owner is subject to this standard.

(b) Administrators shall be paid by fixed salary and not by commission. Any portion of payment that is based on enrollment of students recruited by the administrator or the administrator's staff is considered payment by commission.

(c) Teachers shall be paid by fixed salary and not by commission. Any portion of payment that is based on enrollment of students recruited by the teacher is considered payment by commission.

(d) Nonprofit Schools:

(A) Persons who control a nonprofit school shall demonstrate a commitment to the school's best interest as a public trust.

(B) A nonprofit school shall have a published policy that is followed in practice against conflicts of interest at all organizational levels.

(e) For-profit Schools:

(A) A school operated for profit shall disclose fully to the Office, the specific financial interest of any organization or person, except that a large group of shareholders may be described generally. Any person or entity holding at least 5 percent of voting or common shares in a for-profit school must be named and the percentage of holdings disclosed. All business activities of interested organizations or persons are subject to disclosure.

(B) All board members, administrators, or owners of five percent or more of shares of an applicant school or parent corporation must disclose with explanation the following:

(i) Any prior felony convictions.

(ii) Any known violations of federal financial aid rules by a school of which the person was a board member or employee.

(iii) Any known violations of the policies of an accreditor by a school of which the person was a board member or employee.

(iv) Any previous or current ownership or administration of a school that closed or filed for bankruptcy.

(3) Organization.

(a) The school and any parent organization shall be organized so as to distribute responsibility clearly among positions in a logical structure that is consistent with services offered and qualifications needed to fulfill the duties of the positions. An individual may occupy more than one position.

(b) The school shall satisfy the Office that all top executive officers and other administrators are individually qualified by education, experience, and record of conduct to assure competent management, ethical practices, and effective educational service. Unless an exception is approved by the Office because of sufficient compensatory qualification, administrators above the entry level shall have experience related to their present duties, and all administrators with authority over academic programs shall possess appropriate degrees earned from schools that are regionally accredited or otherwise determined by the Office to be acceptable.

(c) The school shall make available to the Office an administrator generally responsible for school operations within the state and transaction of business with the Office. Unless an exception is approved by the Office because of sufficient compensatory qualification, that administrator shall possess a degree at least as high as any offered by the school in connection

with operations in Oregon, together with appropriate administrative experience.

(d) There shall be an academic officer for the entire school responsible for faculty and academic programs offered in or from Oregon. Unless an exception is approved by the Office because of sufficient compensatory qualification, that officer shall possess at least a master's degree and shall possess a doctor's degree if the school offers any graduate or non-baccalaureate professional degree. That officer shall have experience in teaching and academic administration, both experiences appropriate to the level, size, and complexity of the school.

(e) There shall be a business officer for the entire school responsible for accounting and managerial services. Unless an exception is approved by the Office because of unusual compensatory qualification, that officer shall possess at least a bachelor's degree in a business-related field, together with appropriate administrative experience.

(4) Teachers.

(a) The school must obtain and keep official transcripts for all teaching faculty.

(b) The school shall satisfy the Office that all teachers are individually qualified by education and experience to give expert instruction or evaluation in their specialties. Unless an exception is approved by the Office because of sufficient compensatory qualification, teachers shall be qualified for the various levels of instruction or evaluation as described below, with degrees earned from schools that are accredited by a federally recognized accreditor or otherwise determined by the Office to be acceptable.

(c) Teachers shall be numerous enough and so distributed as to give effective instructional and advisory attention to students in all programs offered by the school.

(d) A school having an undergraduate FTE student-faculty ratio of greater than 30-1 or a graduate FTE student-faculty ratio of greater than 20-1 for students taught in or from Oregon must demonstrate that students and faculty have adequate opportunities for one-to-one interaction.

(e) A school that does not have at least one full-time teacher resident in Oregon or directly teaching Oregon students in each specialty must demonstrate with specific examples the adequacy of faculty contribution to organizational integrity and continuity, to academic planning, and to resident student development.

(f) The school shall have a faculty development policy that continuously improves their knowledge and performance.

(g) The school must provide ODA with annual data regarding turnover of full-time teachers. ODA may limit use of part-time teachers upon finding that such turnover or use results in substandard education of students.

(h) The school shall demonstrate an effort when hiring teachers to avoid dependence on its own most recent graduates. No more than 20 percent of all applicant school teachers can hold their highest degree from the applicant school unless fewer than 10 schools in the United States offer the highest degree available in the field. Schools offering solely religious degrees are exempt from this requirement.

(i) A teacher of an academic or scientific discipline within an occupational or professional degree program (e.g., economics within a business program, psychology within education, anatomy within nursing) ordinarily shall possess the appropriate degree in the discipline rather than a non-disciplinary occupational or professional degree. Lower-division undergraduate courses may be taught by those with non-disciplinary degrees who have demonstrable and extensive acquaintance with the discipline.

(j) Standards applicable to specific degree levels.

(A) Standards applicable to associate degrees: A teacher on a faculty offering associate's degrees ordinarily shall possess a bachelor's degree appropriate to the subject taught or evaluated, except that compensatory nonacademic qualifications will be more readily accepted by the Office in programs leading to occupational degrees. Where the degree emphasizes transfer courses in the arts and sciences, the teacher ordinarily shall possess an appropriate master's degree.

(B) Standards applicable to bachelor's degree programs: A teacher on a faculty offering bachelor's degrees ordinarily shall possess an appropriate master's degree.

(C) Standards applicable to master's degree programs: A teacher on faculty offering master's degrees ordinarily shall possess an appropriate doctor's degree and some teaching experience, except that up to half of the teachers in an occupational or professional degree program may substitute for the doctorate a master's degree together with occupational or professional licensure or equivalent certification and related work experience. More substitutions may be permitted where the terminal degree for teachers in an occupational or professional field is not generally considered to be a doctorate.

(D) Standards applicable to doctoral programs: A teacher on a faculty offering doctor's degrees ordinarily shall possess an appropriate doctor's

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degree and substantial graduate or first-professional teaching experience, including experience overseeing advanced independent study or student practice, except that the doctor's degree alone may suffice for teaching courses at the master's level generally or at any level in the teacher's particular subspecialty.

(5) Credit. The school shall award credit toward degrees proportionate to work done by students and consequent upon the judgment of qualified teachers and examiners. Credits are generally expressed as either semester (SCH) or quarter credit hours (QCH). One semester credit represents approximately 45 hours of on-task student work in a semester (usually two study hours per faculty contact hour). A quarter credit hour represents approximately 30 hours of student work in a quarter. Credit hours earned through nontraditional learning schedules shall have proportionate value to credit hours based on customary term lengths.

(a) Instructional methods:

(A) Credit awarded by the school shall be based solely upon the judgment of teachers who have had extensive direct contact with the students who receive it, with the exception of methods listed in these rules if approved in advance by ODA

(B) At least one academic year of credit toward any degree, most of it near the end, shall represent teaching or direct evaluation by faculty members employed by the school, except that the Office may approve a lesser amount for an associate's degree.

(C) Credit may be awarded for distance learning if the school demonstrates that it has adequate methods in place to ensure that student work is sufficient both in quality and quantity to meet ODA requirements, courses are developed and taught by qualified faculty and there will be sufficient interaction between students and faculty and, if possible, among students. The Office may limit or disallow credit awarded for any type of distance learning if the school cannot demonstrate adequate oversight and quality control measures.

(D) Transfer credit integral to the school's approved degree curriculum may be awarded at the corresponding degree level for academic work documented by other schools that are regionally accredited, authorized to confer degrees in or from Oregon, or otherwise individually or categorically approved by the Office. Such credit must be converted as needed from semester, quarter or nontraditional calendar systems.

(b) Noninstructional Methods No more than one year of an academic program can be completed using any combination of the noninstructional methods set forth in (A), (B), and (C) below:

(A) Advanced Placement credit integral to the approved degree curriculum may be awarded in the lower-division up to a limit of one academic year for passing examinations constructed by testing organizations satisfactory to the Office.

(B) Challenge examination credit as an actual component of the approved degree curriculum may be awarded only at the undergraduate level for successful performance on a final course examination, or on a similar test covering all course content, given by the school in lieu of requiring class attendance. No more than 25 percent of an undergraduate degree program may be earned through challenge examinations.

(C) Noncollegiate learning integral to the approved degree curriculum may be awarded credit only at the undergraduate level for learning validated by a student "portfolio," a credit evaluation guide issued by the American Council on Education, or a similar criterion. Such learning must be formulated through sufficient contact between teacher and student, communicated competently in terms of ideas (e.g., concept, generalization, analysis, synthesis, proof) rather than mere description, and judged by faculty members or contracted experts demonstrably qualified to evaluate it. Upper-division credit of this type may be awarded only in academic fields in which the school employs its own faculty. No more than 25 percent of an undergraduate degree program may be earned through award of credit for noncollegiate work.

(6) Curriculum. The school shall assure the quality of all attendant teaching, learning, and faculty-student interaction. The curriculum shall have a structure that reflects faculty responsibility for what is to be learned overall, as well as in each course, and thus for the logical sequence and increasing difficulty of subjects and instructional levels. While requirements are sometimes listed in both semester and quarter credit hours, ODA usually states credit hours as semester credit hours. If quarter credits are not listed, colleges using the quarter system should multiply the stated credits by 1.5 to obtain the correct requirement in quarter credit hours (QCH) under quarter systems. These are the basic requirements for different kinds of degrees available in Oregon. ODA may approve minor variations from these curriculum standards in order to allow programs to operate efficiently.

(a) Undergraduate Programs All associate and bachelor's degrees require one year (at least 6 semester (SCH) or 9 quarter credit hours (QCH) or equivalent alternate term credit hours) of English composition or equivalent ODA-approved writing courses. Students may meet this requirement

by achieving a score on a nationally normed test that would permit a waiver of English composition requirements or the award of academic credit in English composition at an accredited college or university.

(b) Associate Degrees An associate's degree requires at least two academic years (60 semester credit hours or 90 quarter credit hours) in FTE postsecondary study. The degree requires at least 15 SCH or 22 QCH in general education courses, including the undergraduate English composition requirement

(A) Associate of Arts. A full-transfer degree, the A.A. requires two academic years applicable to B.A. or B.S. study fulfilling baccalaureate liberal arts requirements. A major is optional. Thus, the A.A. requires 24 SCH (36 QCH) in the liberal arts and sciences, with at least 6 hours (9 QCH) each in the humanities, sciences, and social sciences.

(B) Associate of Science. A limited-transfer degree, the A.S. requires a major and two academic years applicable to professional or technical baccalaureate study. The A.S. degree requires 24 SCH (36 QCH) in the humanities, sciences and social sciences, or in non-vocational courses closely related to them.

(C) Associate, Professional or Technical. A terminal degree, the professional or technical associate's degree requires a major (Degree title examples: Associate of Applied Arts, Associate of Applied Science, Associate of Technology, Associate of Occupational Studies, Associate of Business, Associate of Religion). In addition to the major requirements, this degree requires the basic 15 SCH or 22 QCH in general education courses, including the English composition requirement.

(c) Bachelor's Degrees A bachelor's degree, or baccalaureate, requires at least four academic years (120 SCH or 180 QCH) in FTE postsecondary study. At least 40 semester credit hours (60 QCH) shall be in upper-division courses, and no more than two academic years of instruction (no more than 50 percent of credit hours used for the degree) shall be from schools that do not offer baccalaureate degrees.

(A) General Education: The degree requires one academic year (at least 30 SCH or 45 QCH) of general education, which includes the one-year undergraduate English composition requirement.

(B) Major Field: The degree requires distinct specialization, i.e., a "major," which entails approximately one academic year of work (30 SCH or 45 QCH) in the main subject, with 20 SCH (30 QCH) in the upper division and 15 SCH (22 or 23 QCH) of upper-division hours taught by the resident faculty. A dual major simply doubles these numbers.

(C) An interdisciplinary major is also permitted. It requires two academic years (60 SCH) in either three or four disciplines, with at least 15 hours in each discipline and at least 9 upper-division hours in each. A school may offer a major or an interdisciplinary option in any field in which it has more than one fully qualified teacher if at least one teaches full time.

(D) Degrees. The following bachelor's degree names, levels and types are available in Oregon:

(i) Bachelor of Arts. An arts degree, the B.A. requires competency in a foreign language and one academic year in the humanities, i.e., 30 SCH, of which 12 can be in foreign languages. The language competency requirement is equivalent to the 12 hours, the second-year level, and ESL students can satisfy it with 12 hours of English language and literature. As general education outside the major, the B.A. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three areas: humanities, social sciences, and natural sciences.

(ii) Bachelor of Science. A science degree, the B.S. requires one academic year in the social or natural sciences, i.e., 30 SCH, of which 12 can be in mathematics and state-approved computer courses. As general education outside the major, the B.S. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three areas: humanities, social sciences, and natural sciences.

(iii) Bachelor, Professional. As general education outside the major, the professional bachelor's degree requires 24 SCH hours in the liberal arts and sciences, with at least 6 hours in each of the three liberal arts and sciences areas: humanities, social sciences, and natural sciences.

(iv) Bachelor, Technical. As general education outside the major, the technical bachelor's degree requires 24 SCH in the liberal arts and sciences, or in non-vocational courses closely related to them, with at least 3 semester hours in each of the three areas: humanities, social studies, and natural sciences, and a total of at least 9 in the two areas most unrelated to the major.

(d) Graduate Degrees A graduate curriculum shall reflect a concept of the graduate school as a group of scholars, the faculty members of which have had extensive collegiate teaching experience and are engaged in the advancement of knowledge. A graduate degree must involve teaching by such qualified faculty and cannot be earned solely by testing and/or portfolio review.

(A) A master's degree shall require at least one full academic year in FTE post-baccalaureate study, except that a first-professional master's

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degree may be authorized for study beyond fulfillment of undergraduate requirements approved by the Office if the total period of study is at least five academic years. The curriculum shall specialize in a single discipline or single occupational or professional area and culminate in a demonstration of mastery such as a research thesis, a work of art, or the solution of a practical professional problem.

(B) A doctor's degree shall require at least three academic years in specialized post-baccalaureate FTE study, except that a first-professional doctor's degree may be authorized for four academic years of study beyond fulfillment of undergraduate requirements approved by the Office. Study for a closely related master's degree may be counted toward doctoral requirements. The doctor's degree shall represent a student's ability to perform independently basic or applied research at the level of the professional scholar or to perform independently the work of a profession that involves the highest levels of knowledge and expertise. Requirements for the degree shall include demonstration of mastery of a significant body of knowledge through comprehensive examination, unless a graduate must pass a similar examination in order to be admitted to professional practice in Oregon. The curricular program of a research degree shall be appropriately broad and shall manifest full understanding of the level and range of doctoral scholarship, the function of a dissertation and its defense, the nature of comprehensive examination, and the distinction between matriculation and degree candidacy.

(7) Learning. The school shall require each student to complete academic assignments and demonstrate learning appropriate to the curriculum undertaken.

(a) Teachers or evaluators shall inform students clearly using a syllabus or similar instrument of what should be learned in each course and how it will be measured.

(b)(A) Expectations of student performance shall be increased with each ascending step in degree level. Higher degrees must represent an increase in the difficulty of work and expectations of students, not simply a cumulation or increase in quantity of student work.

(B) Evidence of expectation (e.g., syllabi and sample exams) and performance (e.g., student grades) shall be retained for all academic courses for at least one year.

(c) The school shall require students to make continuous progress toward a degree while they are enrolled and liable for tuition and shall suspend or dismiss those who do not make such progress, except that a period of probation with guidance may be instituted in order to obviate separation of a student who can be expected to improve immediately. Continuous progress for students receiving Title IV aid shall be defined according to federal Title IV standards. Students not receiving Title IV aid shall meet the school's own published standards for satisfactory progress.

(d) Grading and appeal procedures shall be fair and administered equitably, and criteria of student progress shall be validated by research if not obviously valid.

(8) Recruitment:

(a) The school is responsible for insuring that its recruitment agents are knowledgeable about the school's:

(A) History and accreditation;

(B) Programs of study;

(C) Admission and assessment requirements;

(D) Ability to assist in providing housing and/or job placement;

(E) Financial policies and procedures, including the point at which students can expect to receive financial aid disbursements;

(F) Refund policy;

(G) Graduation requirements and rates;

(H) Rules and regulations;

(I) Placement rates if they are used in recruiting.

(b) The school is responsible for insuring that its recruitment agents are providing accurate, realistic information about the school, its policies and achievements, and its ability to assist students.

(c) A prospective student shall receive a complete description of the school and its policies, including an estimate of annual or program costs, before being enrolled. This estimate is not binding on the institution but must give prospective students a reasonable idea of their financial commitment.

(d) Where a degree implies preparation for a specific occupation, the school shall explain clearly the true relationship between its curriculum and subsequent student qualification for occupational practice, including employment rates in the field and graduates' success rates in passing licensure examinations if applicable. Employment rates in the field shall treat graduates as employed in the field only if the position in which the graduate is employed is at least half-time and requires or is usually filled by a person with a college degree.

(e) The school shall take precautions to avoid unrealistic expectation of housing availability and cost when the school does not provide housing

and job placement, including part-time employment and practica during the student's enrollment.

(f) A claim made to attract students shall be documented by evidence available to any person on request. The school shall make no attempt to attract anyone who does not appear likely to benefit from enrollment, and no attempt to attract students on any basis other than instruction and campus life appropriate to an educational institution.

(g) Outside the regular student financial aid process, there shall be no discounting of tuition as an incentive to enroll.

(9) Admission. The school shall offer admission only on receipt of evidence that the applying student can reasonably expect to complete a degree and to benefit from the education obtained.

(a) A student admitted to undergraduate degree study for the first time shall have either a high school diploma or an equivalent credential. Home-schooled students without a traditional credential may be admitted provided that they can demonstrate the ability to perform college-level academic work.

(b) A student admitted to undergraduate degree study with undergraduate experience shall have a record of successful performance therein or else a record of responsibility and achievement following unsuccessful collegiate performance.

(c) A student admitted to graduate degree study shall have a baccalaureate degree from a school that is accredited, authorized to confer degrees in Oregon, or otherwise approved by the Office either individually or by category.

(d) A student admitted to first-professional degree study shall have at least three academic years of accredited or ODA-approved undergraduate credit, graded average or better, including pre-professional courses specified by the school and approved by the Office.

(10) Guidance. The school shall help students to understand the curriculum and to make the best use of it.

(a) There shall be a program of general orientation for new students.

(b) Each student shall be assigned a qualified academic advisor to assist individually in planning, course selection, learning methods, and general adjustment.

(c) The school shall provide career guidance to the extent that curriculum is related to a specific prospective occupation or profession.

(11) Student Affairs. Through both services and supervision the school shall demonstrate commitment to the success of individual students and to maintenance of an atmosphere conducive to learning.

(a) Rules of student conduct shall be reasonable, sufficiently specific, fully communicated, systematically and equitably enforced, and accompanied by policy and practice of disciplinary due process, including notice and hearing and related rights.

(b) Health, counseling or psychological services provided to students must meet requirements for professional practice in Oregon.

(c) Housing where provided or endorsed by the school shall be conducive to study and adequately supervised.

(d) Financial aid services shall be provided by qualified administrators.

(e) Placement services where provided shall be described clearly to students, and the school shall take precautions to avoid unrealistic expectation of placement.

(f) Records documenting relationships between the school and a student shall be open to that student, who may request changes or enter dissenting comments, and the content of records shall be objective and fair. The private notes of a counselor are not to be considered educational records and shall not be transmitted as such, either inside or outside the school. All medical records are confidential and shall not be released without permission of the patient.

(g) There shall be available to undergraduate students and responsible for student affairs an official who possesses knowledge, skill, and managerial experience particularly appropriate to the function, unless the Office waives this requirement. In general, waivers are granted only for small startup schools in their first approval cycle and for schools that mainly teach people who are of nontraditional age (23 or older) or already in the workforce.

(h) Every school shall distribute a student handbook or similar publication describing services and regulations, unless such descriptions are complete in the school's main catalog.

(12) Information. The school shall be scrupulously ethical in all communication with the public and with prospective students. School publications, advertisements, and statements shall be wholly accurate and in no way misleading. Reference to state approval shall be limited to that described in OAR 583-030-0041. Reference to accreditation shall be limited to that defined in OAR 583-030-0015(2)

(a) The school shall publish at least every two years a catalog or general bulletin. The catalog shall contain a table of contents and adequate

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information concerning period covered, school name and address, telephone numbers, state approval, purpose, relationship to occupational qualification, faculty and administrators (listing position or teaching specialization together with all earned degrees and their sources, omitting unearned degrees and not confusing professional licenses with degrees), degree requirements and curricula, academic calendar, credit policy in accordance with OAR 583-030-0035(5), transferability of credit to other schools, admission requirements and procedures, academic advising and career planning, academic policies and grading, rules of conduct and disciplinary procedure, student services (counseling, health, placement, housing, food, bookstore, activities, organizations), student records, library, facilities, fees and refunds, estimated total expenses, financial aid, and job opportunities for current students. Electronic publication meets this standard provided that a paper version of the catalog is provided to ODA, is available to students upon request and is maintained as the "official" version in order to avoid confusion if electronic versions are changed.

(b) A school without regional accreditation shall print in a separate section of its catalog titled "transfer of credit to other schools" a statement warning students verbatim that "transfer of credit is always at the discretion of the receiving school, generally depends on comparability of curricula, and may depend on comparability of accreditation." Other comments may follow concerning the school's documented experience in credit transferability, but it must be clear that a student should make no assumptions about credit transfer.

(13) Credentials. The school shall provide accurate and appropriate credit transcripts for students who enroll and diplomas for students who graduate.

(a) The school shall maintain for every past and present student, and shall issue at the request of any student who is not delinquent in fee payment, a current transcript of credits and degrees earned. The transcript shall identify the school fully and explain the academic calendar, length of term, credit structure, and grading system. It shall identify the student and show all prior degrees earned, details of any credit transferred or otherwise awarded at entry, and periods of enrollment. It shall include for each period of enrollment every completed course or module with an understandable title, number of credits earned, and grade received. The transcript shall note with or without explanation if the student is not immediately eligible to continue enrollment, e.g., for reasons of academic probation or suspension.

(b) Upon satisfaction of degree requirements and payment of all fees owed, the school shall provide the graduating student with a diploma in a form approved by the Office, appropriately documenting conferral of the degree.

(14) Records. The school shall keep accurate and safe all records affecting students. There shall be at all times complete duplicate transcript information kept in a location away from the original transcripts, such that duplicates and originals are not exposed to risk of simultaneous damage. In addition to transcripts, which may never be destroyed, the school shall maintain detailed records documenting the significant parts of its formal relationship with each student: financial transactions and accounts, admission qualifications, validation of advanced standing, instructor course records as posted to transcripts, and status changes due to unsatisfactory performance or conduct. Such supporting records shall be kept safe for a period of at least three years after a student has discontinued enrollment. Instructor course records other than those posted to transcripts shall be kept for at least one year.

(15) Library. The school shall provide or arrange for its faculty and students direct or electronic access to verbal and sensory materials sufficient in all subjects of the curriculum to support instruction and to stimulate research or independent study.

(a) The school may arrange for comprehensive privileges from libraries of other organizations, provided it can prove convenient access and extensive use, but the school shall retain full responsibility for adequacy of resources available to students.

(b) Library services shall be under the direction of a person educated professionally in library and information studies, except that the Office may waive this requirement where the range of academic fields represented is narrow.

(c) Library resources shall be current, well distributed among fields in which the institution offers instruction, cataloged, logically organized, and readily located.

(d) The school should conform to the following guidelines for library services unless it can justify a deviation on the basis of unusual educational requirements.

(A) With the exception of those in specialized associate's degree programs, students should receive direct, contracted or electronic access to a minimal basic collection equivalent to that held by accredited schools offering similar programs. The applicant school must demonstrate this comparability.

(B) Staff should include a professional librarian for each 1,000 students, with clerical support adequate to relieve librarians of all non-professional duties.

(C) Students should have full access to all resources for at least 40 hours per week, and all services should be available for 20 hours per week. The facility, whether provided by the college directly or by contract, should seat no less than 10 percent of the students enrolled unless the program is primarily intended to train practitioners in technical or fine arts fields, in which case a lower percentage may be requested. If the school meets the library standard largely by electronic means, electronic services must be available to a comparable portion of the student body for a comparable period.

(16) Facilities. The school shall have buildings and equipment sufficient for the achievement of all educational objectives.

(a) Buildings in general, including student or faculty housing units, shall be uncrowded, safe, clean, well furnished, and in good repair; and they shall be well lighted, heated, ventilated, and protected from noise. School grounds where provided shall be appropriately used and adequately maintained.

(b) Instructional facilities shall be adequate and conducive to learning. There shall be no less than 15 square feet per student station in classrooms, with at least one station for every two FTE students enrolled. Total classroom and study area, including library space for reading, shall be no less than 10 square feet per FTE student.

(c) Laboratory space and instructional equipment shall be inventoried, its use explained on the resulting report, and its adequacy defended on criteria obtained from experts and documented by the school. A laboratory ordinarily shall have no less than 30 square feet per student station.

(d) Clinical facilities and other public service areas shall be appropriate for instruction of students as well as for service to patients or clients.

(e) Faculty offices shall be sufficient to prevent crowding and to allow private conversations with students.

(17) Finance. The school shall have financial resources sufficient to ensure successful continuing operation and to guarantee full refund of any unearned tuition. There shall be competent financial planning using complete and accurate records. The school shall demonstrate satisfaction of this standard upon application, and thereafter annually, by submitting independently audited financial statements with opinion by a certified public accountant.

(a) Financial reports shall be prepared in a format acceptable to the Office, clearly delineating assets and liabilities and informatively classifying revenues by source and expenditures by function. In some cases, the Office at its discretion may accept an audited balance sheet with opinion, together with annual operating statements that have been reviewed by the auditor. A school that is a subsidiary shall submit financial statements of the parent corporation on request. In unusual circumstances, the Office may require a special investigative audit and report.

(b) Current assets shall be entirely tangible and such that the school is not dependent for solvency on substantial increases in receivables collection rate, gifts, tuition rates, or enrollment. Prospective tuition for which a student is not legally liable is not an asset and shall not be shown as a receivable or other balance sheet asset. Tuition collected but still subject to refund shall be shown as a "prepaid" or "unearned" tuition liability.

(c) A school unable to demonstrate financial strength may be permitted at the discretion of the Office to submit a surety bond in amount equal to the largest amount of prepaid tuition held at any time. The bond would be subject to claims for tuition refund only.

(d) The school shall carry casualty and general liability insurance sufficient to guarantee continuity in case of accident or negligence, and it shall provide or else require by policy professional liability insurance for all of its officers and employees.

(18) Fees and Refunds. The school shall maintain fee and refund policies that are fair, uniformly administered, and clearly explained in the school catalog as well as in any contract made with students. A student shall not be enrolled without having received the explanatory material. The school shall not change its tuition or fees more than once during a calendar year.

(a) Tuition shall be charged by the credit hour or by fixed rate for instruction during an academic semester, quarter, or shorter term. No student is obligated for tuition charged for a term that had not commenced when the student withdrew or a term that was truncated by cessation of school services.

(b) Except as noted below in this section, fees not included in tuition shall not exceed five percent of full-time tuition for any term in which separate fees are charged. One-time application or admission fees may exceed 5 percent of first-term tuition but shall not exceed \$200. Lab or equipment fees related to the actual necessary operational costs of specific courses may exceed 5 percent of tuition provided that the fees are made known to

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students prior to enrollment in the course. Nominal fees for late payments, course withdrawals and the like are acceptable.

(c) After classes begin for a term, a student who withdraws from a course is eligible for a partial refund through the middle week of the term. Refunds shall be based on unused instructional time and shall be prorated on a weekly basis for schools using a semester, quarter or nontraditional calendar. Without specific Office approval, refund rates shall not be differentiated on the criteria of a student's source of income or loan repayment obligations except as otherwise required by law.

(d) Any fees for credit transferred, for credit attempted or earned by examination or portfolio must be based on the cost of service actually provided, ordinarily less than the cost of regular instruction. The mere award of credit does not justify a fee.

(e) Academic policies shall not artificially prolong the enrollment of a failing student with the effect of increasing financial obligation.

(f) Separation from the school for reason of discipline or other administrative action shall not cause forfeiture of ordinary refund amounts.

(19) Evaluation. The school shall, in order to improve programs, evaluate its own educational effectiveness continually in relation to purpose and planning, including in all aspects the opinions of students. There shall be evaluation of present curriculum and instruction, of attrition and reasons for student withdrawal, and of performance by students after their graduation. In addition to the comments of graduates, employer opinions and licensing examination records should be used in the post-graduation study.

(20) Fair Practice. Notwithstanding the absence of a specific standard or prohibition in this rule, no school authorized to offer degrees or seeking to qualify for such authorization shall engage in any practice that is fraudulent, dishonest, unethical, unsafe, exploitive, irresponsible, deceptive, or inequitable and thus harmful or unfair to persons with whom it deals.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; ECC 3-1981, f. & ef. 12-16-81; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2002, f. & cert. ef. 2-19-02; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0036

Schools With Limited Resident Instruction in Oregon

(1) Accredited schools offering limited resident instruction in Oregon are reviewed using modified standards and procedures under the following conditions:

(a) Courses are highly specialized or offered for a period of less than three years;

(b) Information from the school is clear;

(c) Advice and assistance are accessible for students;

(d) Tuition refund policies meet Office requirements;

(e) Program evaluation is done systematically by the school;

(f) Curricula for Oregon residents are identical to those at a main campus;

(g) Instruction relayed either live or on recordings is received in Oregon just as it was presented during resident instruction;

(h) Academic assignments and testing and grading policies for Oregon students are identical to those for students on a main campus;

(i) All members of the faculty teaching from Oregon or teaching Oregon resident students hold degrees meeting Oregon standards.

(2) If limited or restricted residential instruction is authorized, the client organization must ensure full library services, employ persons qualified by a higher degree and experience to judge the quality of the degree program, and appoint a site coordinator who will assist with any inspections and provide information to the Office.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0038

Nondegree Certificates and Diplomas Granted by Degree-Granting Schools

(1) A school that is authorized to grant a degree may also grant certificates in the same field without an independent review of the certificate, provided that the certificate is granted for completion of a specified set of courses approved in a degree curriculum as part of degree authorization.

(2) A school that is authorized to grant a degree and wants to offer a certificate in a field in which the school is not authorized to grant a degree must apply for approval for the certificate. The process will be shorter and less elaborate than for a degree authorization.

(3) An education provider that does not have the legal authority to offer degrees anywhere and wants to offer college-level courses for credit

without applying for authority to issue degrees may apply for approval to do so under the same standards as a degree applicant. Any such approval is limited to three years unless the provider establishes a transfer agreement with at least one accredited school.

Stat. Auth.: ORS 348.594 & 348.606

Stats. Implemented: ORS 348.594, 348.603 & 348.606

Hist.: ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0039

Honorary Degrees

A school authorized under this rule to offer academic degrees at or above the baccalaureate level may obtain permission from the Office, or be permitted by the standards of an accreditor under OAR 583-030-0037, to confer an honorary degree with a title clearly differentiated from the titles of earned degrees authorized or likely to be authorized in the state. The basis for a proposed honorary degree must be consistent with generally accepted practice among long established colleges and universities, thus reflecting great scholarly achievement, professional distinction, or humanitarian service. An honorary degree must be represented so as to be clearly not earned through collegiate study. No school shall otherwise offer or confer an honorary degree in or from Oregon. An honorary degree is honorific only and is not a public credential valid for academic and professional purposes.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & ORS 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; Renumbered from 583-030-0022, ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0041

Authorization Statement in School Catalog

(1) Upon receipt of authorization to offer instruction or related services leading to one or more degrees, and until such time as that authorization has expired or been revoked, an Oregon school shall print the following statement prominently on the inside front cover, facing page, or other page approved by the Office of its catalog and any general bulletin, shall include the statement with any internet web site announcement, and may publish the statement in other school announcements. Choose one descriptive term from each parenthetical pair.

This school (is) (is a unit of) a (business) (nonprofit) corporation authorized by the State of Oregon to offer and confer the academic (degree) (degrees) described herein, following a determination that state academic standards will be satisfied under OAR 583-030. Inquiries concerning the standards or school compliance may be directed to the Office of Degree Authorization, 1500 Valley River Drive, Suite 100, Eugene, Oregon 97401.

(2) A non-Oregon school shall print or affix the above statement on the inside front or back cover (preferred) or on an appropriate page approved by ODA of every catalog distributed in Oregon.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 2-2000, f. 7-7-00, cert. ef. 7-20-00; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0042

Reporting Requirements

(1) A school authorized to offer instruction or related services leading to one or more degrees under the standards in OAR 583-030-0035 shall submit to the Office annually, with a form provided by the Office, a brief report of activities and planning in the academic or fiscal year just ended. In its report, the school shall describe any important changes in academic or administrative policies, facilities or locations of instruction, and organization or personnel. The school shall also supply data such as teacher turnover and student enrollment, completion, and placement as requested on state forms provided by the Office, together with current catalogs and the latest independent financial audit not previously submitted. Between annual reports, the school shall send to the Office promptly qualification forms of new owners, governing board members, officers, administrators, or teachers serving Oregon students, and shall send immediately the details of any possible or anticipated change of ownership or governance or any other matter having extensive effect on the school.

(2) A school authorized to offer instruction or related services leading to one or more degrees under OAR 583-030-0011 shall report as described in the preceding paragraph, except that reporting of new governing board members, officers, administrators, or teachers is not required. The reporting of any possible or anticipated change of ownership or governance or other major change should be immediate.

(3) A non-Oregon school authorized to offer instruction or related services leading to one or more degrees but without resident instruction or with limited resident instruction in Oregon under OAR 583-030-0036, shall submit to the Office annually, with a form provided in the fall, a brief report

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of activities and planning in the academic or fiscal year just ended insofar as Oregon students would be affected. In its report, the school shall describe as they might affect Oregon residents any important changes in academic or administrative policies, facilities or locations of instruction, and organization or personnel. The school shall also supply Oregon enrollment and degrees-granted data on a state form provided by the Office, together with current catalogs and the latest independent financial audit not previously submitted. Between annual reports, the school shall send to the Office immediately details of any possible or anticipated change of ownership, governance, curriculum, Oregon site coordinator, teachers or other matter having potential importance to Oregon students.

(4) A school that offers exempt religious degrees is subject to the annual self-certification requirements set forth in Chapter 546, Section 2, 2005 Laws.

(5) An authorized degree-granting school shall continue during the period of its authorization to respond promptly to Office requests for general or particular information and shall supply the information as directed. Monthly reporting may be required for a school determined to be at risk.

(6) A school that ceases to offer any authorized or exempted degree or the instruction related thereto, other than during regular academic recesses, shall notify the Office immediately and not reinstate the degree program without permission.

Stat. Auth.: ORS 348.594 & 348.606
Stats. Implemented: ORS 348.594, 348.603 & 348.606
Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0043

Duty to Notify Employees and Students of Change in Status

Any school for which degree authorization has expired or been revoked or suspended shall immediately in writing notify all employees and students of its change in status. The school shall not lead students or employees to conclude that restoration of degree granting is assured.

Stat. Auth.: ORS 348.606
Stats. Implemented: ORS 348.603 & 348.606
Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0044

State Responsibility for Student Records

(1) The state is ultimate custodian of records documenting in transcript form the admission, academic degree credits, and performance ratings of students enrolled in Oregon schools that have been authorized by the Office to offer instruction or related services in or from Oregon leading to degrees that are valid as public credentials. Whenever such transcripts appear to be at risk of damage, loss, or misappropriation, the Office may direct a school to change its practices in order to safeguard the records, and the school shall comply immediately.

(2) If such an authorized Oregon school plans to discontinue operations or is warned by the Office specifically because of failure to safeguard student records, the school shall promptly furnish to the Office legible paper copies of fully current transcripts.

(3) If such an authorized Oregon school discontinues operation or has degree authorization revoked or suspended, it may seek Office permission to place original transcripts in the custody of a related or similar school that will continue to issue them on behalf of former students. The Office will approve another school as custodian or else seek possession of the original transcripts, if necessary by court order.

(4) The Office on request may take possession of transcripts from a closing Oregon unit of a non-Oregon degree granting school, if that appears to be the only way to protect Oregon residents who were enrolled at the Oregon unit.

(5) Upon taking possession of student academic transcripts, the Office will issue a transcript copy at the request of any student who is not delinquent in fee payment, except that the Office will not issue such transcript copies while any unit of the school of origin or the assigned custodial school can administer their issuance. Individual student records are confidential and not Office records open to the public.

Stat. Auth.: ORS 348.606
Stats. Implemented: ORS 348.603 & 348.606
Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0045

Revocation of Authorization

(1) The Oregon Student Assistance Commission on recommendation by the Office, after a hearing before a hearing officer appointed by the

Commission, may under ORS 348.612 revoke or suspend authorization given to a school to confer or offer to confer degrees in or from Oregon, or to offer instruction or related services in or from Oregon purporting to lead to a degree in whole or in part. Revocations resulting from a change in state or federal law or judicial ruling do not require the use of a hearing officer.

(2) A hearing to consider a proposed revocation or suspension shall be held only after the affected school has been given written notice of the time and place of such hearing 20 days in advance.

(3) Revocation or suspension of degree authorization applies to a school as a whole, inasmuch as failure to satisfy any state requirement for offer of any degree constitutes failure to satisfy all requirements applicable to the school. Refusal by a school to discontinue any substandard offer or practice, regardless of the quality of any other offer or practice, will lead ODA to propose revocation or suspension of approval and/or civil or criminal action.

(4) A school whose degree authorization is revoked shall be considered for reinstatement only after one year and only when the Office is satisfied that causes of the revocation have been entirely removed. Application for reinstatement from a school in revoked status shall comply with all requirements for a new applicant.

(5) A school whose degree authorization is suspended shall be considered for reinstatement only when the Office is satisfied that causes of the suspension have been entirely removed. Application for reinstatement from a school in suspended status shall comply with all requirements for a renewing applicant.

(6) Grounds for revoking or suspending the degree authorization of a school include changes in state or federal law or judicial rulings affecting the status of a school or its failure to provide services it has guaranteed to students in writing; failure to supply records and other information to the Office as directed; falsification of any information supplied to the Office, students, or the public; failure to comply with all requirements of OAR 583-030-0011, 583-030-0016, 583-030-0020, 583-030-0025, 583-030-0030, 583-030-0032, 583-030-0035, 583-030-0036, 583-030-0038, 583-030-0039, 583-030-0041, 583-030-0042, 583-030-0043, 583-030-0044, and 583-030-0046; and failure to prove to the satisfaction of the Office on request compliance with any such requirement with respect to which the school's current performance is questioned specifically by the Office as a result of routine monitoring or individual complaint.

(7) Revocation or suspension requires a school immediately to cease and desist from offering in or from Oregon any degree, instruction, or related services purporting to lead to a degree in whole or in part, except that the Commission at its discretion may permit a revoked or suspended school to complete an academic term already in progress on the date of the action. During such period of completion the school may not enroll new students, and it may not offer to those already enrolled any instruction or services purporting to lead to a degree that would be earned and conferred later than the immediate end of the term in progress. Completion of such term with good faith and fair dealing toward currently enrolled students or reasons for failure to so complete the term shall be factors in any subsequent consideration of a revoked or suspended school for reinstatement.

(8) A separate revocation process for schools exempted on religious grounds is listed in Chapter 546, 2005 Laws.

Stat. Auth.: ORS 348.606
Stats. Implemented: ORS 348.603, 348.606 & 348.612
Hist.: ECC 22, f. & cert. ef. 12-22-75; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 2-2000, f. 7-7-00, cert. ef. 7-20-00; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 1-2004, f. & cert. ef. 1-14-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0046

Fees and Expenses

(1) Each application from a school seeking new or renewed authorization to confer or offer to confer a degree, or through instruction or related services to provide academic credit applicable to a degree, shall be accompanied by payment of a fee to the "State of Oregon ODA." There is no entitlement to refund of a paid fee under any circumstances. The fee is intended to recover the expenses of carrying out a review and providing services to a school during its period of authorization.

(2) The fees reflect proportionately, though not in sum, the usual demands of adequate review plus subsequent service.

Basic fee schedule for ODA reviews
Doctoral degrees — \$5,500
Masters degrees — \$4,150
Bachelors degrees — \$4,150
Associate degrees — \$2,750
Limited instruction or program — \$250 minimum, \$1000 maximum

(a) The base fee for an external program with limited instruction or a free-standing certificate is \$250, with a higher fee not to exceed a total of \$1000 possible if the application appears likely to pose complex questions requiring additional staff time or professional consultation.

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(b) Certificates. No fee is charged when an institution with an approved degree wants to add a certificate in the same field.

(c) Fee discounts.

(A) In reviewing simultaneous application for two or more degrees, the Office at its discretion may reduce the fee for review of a degree that is closely related in type and content to one on the same level for which the full fee is paid. Such a reduction ordinarily depends on the provision of instruction by a single faculty for both degrees. Degrees on the same level using at least 50 percent of the same courses, taught by at least 50 percent of the same faculty, will be treated as one degree application for review and fee purposes.

(B) The Office at its discretion may also reduce the fee when institution size, low faculty and administrative turnover, stability of ownership or board membership or other factors substantially reduce staff time required for evaluation and subsequent oversight and service. Such reductions are limited to 20 percent below the basic fee.

(C) The fee for religious-exempt schools may not exceed the lesser of the actual cost to the commission of determining the school's compliance with the requirements for an exemption or fifty percent of the standard fee for approval to offer a non-exempt bachelor's degree.

(3) Application from a school for authorization to offer instruction or related services providing academic credit applicable to a degree offered only by another school or schools shall be accompanied by fees proportionate to those established in the paragraph immediately above. However, such fees may be discounted at the discretion of the Office to reflect a program of reduced dimension if and only when the necessary review analysis is concomitantly reduced.

(4) When the Office finds it necessary to pay an expert outside consultant for assistance in reviewing an application, or when it incurs other unusual expenses in the course of review, all costs thus incurred may be charged to the applicant school in addition to the basic fee.

Stat. Auth.: ORS 183 & 348

Stats. Implemented: ORS 348

Hist.: ECC 1-1982(Temp), f. & cf. 3-12-82; ECC 2-1982, f. & cf. 9-8-82; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2000, f. & cert. ef. 2-29-00; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04; Administrative correction 8-19-04; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

583-030-0049

Criminal and Civil Penalties

(1) Without authorization from the Office as provided in this rule, any offer of a degree or of services purporting to lead to a degree in whole or in part is a Class B misdemeanor under ORS 348.992. Complaints may be brought to a prosecutor against any person acting individually or in concert with others, including any person assisting a school as defined in OAR 583-030-0015(23).

(2) Without authorization from the Office as provided in this rule, any offer of a degree or of services purporting to lead to a degree in whole or in part may be a violation of ORS 646.608, the Unlawful Trade Practices Act (UTPA). ODA may in addition request injunctive relief or a civil penalty against violators. Complaints may be brought to the Department of Justice against any person acting individually or in concert with others, including any person assisting a school as defined in OAR 583-030-0015(23).

Stat. Auth.: ORS 348.606 & 348.992

Stats. Implemented: ORS 348.603 & 348.606

Hist.: EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 5-2005, f. 12-1-05, cert. ef. 12-7-05

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

Adm. Order No.: PSU 3-2005

Filed with Sec. of State: 12-13-2005

Certified to be Effective: 12-13-05

Notice Publication Date: 8-1-05

Rules Amended: 577-060-0020

Subject: The proposed amendment establishes additional fees, charges, fines and deposits for General Services for the 2005-2006 fiscal year.

Rules Coordinator: Jeremy Randall Dalton—(503) 725-3443

577-060-0020

Schedule of Fees for General Services and Other Charges

The Schedule of Fees for General Services and Other Charges for the 2005–2006 Fiscal Year are hereby adopted by reference by Portland State University.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented: ORS 352.360

Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert. ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & cert. ef. 8-20-04; PSU 1-2005(Temp), f. & cert. ef. 7-15-05 thru 12-28-05; PSU 3-2005, f. & cert. ef. 12-13-05

Adm. Order No.: PSU 4-2005

Filed with Sec. of State: 12-15-2005

Certified to be Effective: 12-15-05

Notice Publication Date: 11-1-05

Rules Amended: 577-001-0100, 577-001-0105, 577-001-0110, 577-001-0115, 577-001-0120

Subject: This rule permanently amends the Portland State University Rules of Procedure for Contested Cases to conform to the requirements of the Federal and State Constitutions and statutes, specifically ORS 351.088.

Rules Coordinator: Jeremy Randall Dalton—(503) 725-3443

577-001-0100

Contested Case Rule

OAR 577-001-0105 through 577-001-0120 may be referred to as the Portland State University rules of procedure for contested cases. They carry out the requirement of ORS 183.341(2) with respect to contested case proceedings and are to be interpreted consistently with the Oregon Administrative Procedure Act (ORS Chapter 183). Any situation not provided for in these rules shall be governed by the Act.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.088

Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05; PSU 4-2005, f. & cert. ef. 12-15-05

577-001-0105

Applicability

These rules apply where the University:

(1) Is required by statute or constitution to determine the legal rights, duties, or privileges of a party by means of a contested case hearing; or

(2) Provides in any matter for a contested case hearing.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.088

Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05; PSU 4-2005, f. & cert. ef. 12-15-05

577-001-0110

Hearing Board

(1) Definition. As used in these rules, "hearing board" means any person or body of persons authorized by the University to hear a contested case.

(2) Powers of Hearing Board. When a contested case is referred to it by the proper authority, the hearing board shall be empowered to do the following with respect to that case:

(a) Give notice of and hold hearings;

(b) Issue subpoenas and order the taking of depositions;

(c) Examine witnesses;

(d) Hold conferences with all parties, before or during the hearing, to settle or simplify the issues;

(e) Make proposed findings of fact and recommendations for disposition of the case.

(3) Hearing Board Chairperson. One member of each hearing board shall be designated to chair the board and to preside at any hearings held. The chairperson, on behalf of the board, shall regulate the conduct of the hearing, shall administer oaths or affirmations to witnesses and may eject from a hearing any person who interferes with its orderly procedure.

ADMINISTRATIVE RULES

Subject to the board's approval, the chairperson shall rule upon admissibility of evidence and offers of proof.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.088
Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05; PSU 4-2005, f. & cert. ef. 12-15-05

577-001-0115

Preparation and Hearing of Contested Case

(1) Notice. After referral of a contested case to it, the hearing board shall serve on each party, personally or by registered or certified mail, a notice containing the following:

- (a) A statement of the time and place of the hearing;
 - (b) A statement of the authority and jurisdiction under which the hearing is to be held;
 - (c) Reference to the statutes or rules involved;
 - (d) A short and plain statement of the matters asserted or charged.
- (2) Postponement. Upon motion of any party, for good cause shown, the hearing board may grant a postponement of the hearing.
- (3) Counsel. Any party may elect to be represented by counsel, at the party's expense. The hearing board may be assisted by counsel on matters of law and procedure.

(4) Verbatim Record. A verbatim record shall be made of any motions, rulings, and testimony at the hearing, but such record need not be transcribed unless requested by a party. The University may charge the cost of transcription to the party requesting a transcript.

(5) Evidence. Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All testimony shall be upon oath or affirmation.

(6) Presentation by Parties. Every party shall have the right to present his or her case by oral, documentary, or other satisfactory evidence, and to conduct such cross examination as may be required, to the end that a full and complete disclosure of the facts may be made.

(7) Order of Hearing. At the discretion of the chairperson of the hearing board, the hearing shall be conducted in the following order:

- (a) Statement and evidence of complaining party (e.g. the University in disciplinary matters; the complainant in grievance proceedings);
- (b) Statement and evidence of responding party;
- (c) Rebuttal evidence of complaining party;
- (d) Closing arguments of complaining and responding parties.

(8) Burden of Proof. The complaining party shall be required to prove, by a preponderance of the evidence, any charges or allegations made by such party.

(9) Failure of Party to Appear at Hearing. Any party failing to appear at a hearing shall be deemed to have waived the right to a hearing. If one or more parties fail to appear, the remaining party or parties may present their cases to the hearing board.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.088
Hist.: PSU 15, f. & ef. 6-9-77; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05; PSU 4-2005, f. & cert. ef. 12-15-05

577-001-0120

Posthearing Procedure

(1) Duties of Hearing Board. After the hearing is closed, the Hearing Board shall prepare the following:

- (a) All pleadings, motions, and other documents submitted by the parties;
- (b) A summary of testimony heard;
- (c) The verbatim record, whether or not transcribed;
- (d) All other evidence received at the hearing;
- (e) A statement of stipulations of the parties and of matters officially noticed;
- (f) Proposed findings of fact and recommendations for disposition of the case.

(2) The documents listed above shall be transmitted to the President.

(3) Review by President. The President shall review so much of the material transmitted by the Hearing Board as he deems necessary. If the president is unable to reach a decision on the evidence and findings presented, the matter may be referred to the Hearing Board for further proceedings or deliberations.

(4) Proposed Order. If the decision reached by the President concerning disposition of the case is adverse to any party other than the University, the President shall serve upon all parties a proposed order, including findings of fact and conclusions of law, and shall afford to each party adversely affected an opportunity to file exemptions and present argument to the President.

(5) Final Order. After exceptions and argument, if any, on the proposed order have been received and considered, the President shall prepare a writ-

ten final order, accompanied by findings of fact and conclusions of law which may, in the President's discretion, be in the form of a narrative opinion. Copies of the final order and accompanying findings and conclusions shall be mailed to each party or, if applicable, to each attorney of record.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.088
Hist.: PSU 15, f. & ef. 6-9-77; PSU 1-1988(Temp), f. & cert. ef. 3-15-88; PSU 3-1988, f. & cert. ef. 6-16-88; PSU 2-2005(Temp), f. & cert. ef. 7-7-05 thru 12-28-05; PSU 4-2005, f. & cert. ef. 12-15-05

Oregon Wine Board Chapter 619

Adm. Order No.: OWB 1-2005

Filed with Sec. of State: 12-5-2005

Certified to be Effective: 12-15-05

Notice Publication Date: 10-1-05

Rules Adopted: 619-001-0010, 619-001-0020, 619-001-0030, 619-001-0040, 619-001-0050, 619-001-0060

Subject: The adopted rules describe the procedural requirements for creating additional rules, drafting an annual budget, and drafting an annual plan.

Rules Coordinator: Tara Anderson—(503) 228-8336, ext. 21

619-001-0010

Notice of Proposed Rule

Prior to adoption, amendment or repeal of any permanent rule, the Oregon Wine Board will give notice of the proposed adoption, amendment or repeal:

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

(2) By mailing a copy of the notice, at least 28 days prior to the effective date of the rule, to persons on the Oregon Wine Board's Oregon winery and vineyard mailing list and to persons who have requested such notice in accordance with ORS 183.335(8);

(3) By posting notice on the Oregon Wine Board website at least 28 days prior to the effective date of the rule; and

(4) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 576.766(1)
Stats. Implemented: ORS 576.768(2)(b)
Hist.: OWB 1-2005, f. 12-5-05, cert. ef. 12-15-05

619-001-0020

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, in effect on January 1, 2005, are adopted as the rules of procedure for the Oregon Wine Board and shall be followed in all matters except where a different procedure is prescribed by statute or in OAR chapter 619.

Stat. Auth.: ORS 576.766(1)
Stats. Implemented: ORS 576.768(2)(b)
Hist.: OWB 1-2005, f. 12-5-05, cert. ef. 12-15-05

619-001-0030

Definitions

For purposes of these rules, the following definitions apply.

(1) "Board" means the Oregon Wine Board established pursuant to ORS 576.753.

(2) "Director" means the director of the Oregon Economic & Community Development Department.

Stat. Auth.: ORS 576.766(1)
Stats. Implemented: ORS 576.768(2)(b)
Hist.: OWB 1-2005, f. 12-5-05, cert. ef. 12-15-05

619-001-0040

Development of Draft Annual Plans

(1) Each fiscal year, the Oregon Wine Board will prepare draft annual plans for promotion and research during the next fiscal year.

(2) The draft annual plan for promotion will include, but are not limited to, the following elements:

(a) A description of how the Board will support the promotion of Oregon's wine grape growing and winemaking industries; and

(b) Any other elements the Board considers appropriate to include in the draft plan for promotion.

(3) The draft annual plan for research will include, but are not limited to, the following elements:

(a) A description of how the Board will support enological and viticultural research;

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(b) A description of how the Board will support economic research to develop sustainable business practices for wine grape growing and wine-making in Oregon; and

(c) Any other elements the Board considers appropriate to include in the draft plan for research.

Stat. Auth.: ORS 576.766(1)

Stats. Implemented: ORS 576.768(2)(b)

Hist.: OWB 1-2005, f. 12-5-05, cert. ef. 12-15-05

619-001-0050

Development of a Draft Annual Budget

(1) Each fiscal year, the Oregon Wine Board will prepare a draft annual budget for the next fiscal year.

(2) The draft annual budget will itemize the anticipated expenditures for each element of the corresponding draft annual plans, as described above in 619-001-0040, and will use classifications of expenditures and revenues required by ORS 291.206(1).

Stat. Auth.: ORS 576.766(1)

Stats. Implemented: ORS 576.768(2)(b)

Hist.: OWB 1-2005, f. 12-5-05, cert. ef. 12-15-05

619-001-0060

Adoption of Annual Plans and Budget

(1) By February 1 of each year, the Board will make the draft annual budget and annual plans for promotion and research, developed pursuant to 619-001-0040 and 0050 above, available for public review by:

(a) Mailing copies to persons requesting copies; and

(b) Posting the draft annual budget and annual plans on the Oregon Wine Board's website.

(2) By April 1 of each year, the Board will consider the draft annual budget and annual plans, for recommendation to the Director, at a public meeting of the Board held in compliance with the provisions of ORS 192.610 to 192.690.

(3) If the Board votes to recommend the draft annual budget and annual plans to the Director, the Board will submit the draft annual budget and annual plans to the Director no later than April 2, for the Director's review and approval in accordance with ORS 576.768(2)(c).

(4) If the Director approves the draft annual budget and annual plans recommended by the Board, the approved draft annual budget and annual plans shall become the Board's adopted annual budget and annual plans without further action.

(5) If the Director does not approve the draft annual budget and annual plans, the Board shall revise, reconsider and resubmit the draft annual budget and annual plans, substantially in accordance with the procedural requirements of this division of administrative rules, until the Director approves an annual budget and annual plans for the Board, at which time the approved annual budget and annual plans shall become the Board's adopted annual budget and annual plans without further action.

Stat. Auth.: ORS 576.766(1)

Stats. Implemented: ORS 576.768(2)(b)

Hist.: OWB 1-2005, f. 12-5-05, cert. ef. 12-15-05

Oregon Youth Authority Chapter 416

Adm. Order No.: OYA 27-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 11-22-05

Notice Publication Date: 8-1-05

Rules Adopted: 416-425-0000, 416-425-0010, 416-425-0020

Subject: The Oregon Youth Authority adopts rules to implement HB2141 (2005) relating to the assignment and transfer of OYA offenders, including offenders in the legal custody of the Department of Corrections (DOC) or other agencies who are placed in OYA physical custody, to a state mental hospital listed in ORS 426.010 or a facility designated by the Department of Human Services (DHS) for evaluation and treatment.

Rules Coordinator: Mike Riggan—(503) 378-6834

416-425-0000

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 420A.025

Stats. Implemented: ORS 179.471, 179.473, 179.478, 420.500, 520.505 & 420.525

Hist.: OYA 16-2005(Temp), f. & cert. ef. 7-14-05 thru 1-7-06; OYA 27-2005, f. & cert. ef. 11-22-05

416-425-0010

Definitions

For purposes of these rules:

(1) Close custody facility: 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): 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: An independent decision maker designated to conduct an administrative commitment hearing for an offender.

(4) Mentally ill offender: 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;

(c) An offender, who unless treated, will continue to a reasonable medical probability, to physically or mentally deteriorate so that the offender will become a person described under either or both subparagraph (a) or (b) above.

(5) Offender: A person placed in an 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 420A.025

Stats. Implemented: ORS 179.471, 179.473, 179.478, 420.500, 520.505 & 420.525

Hist.: OYA 16-2005(Temp), f. & cert. ef. 7-14-05 thru 1-7-06; OYA 27-2005, f. & cert. ef. 11-22-05

416-425-0020

Procedures for Transfer

(1) 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 subsection, 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 subsection.

(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 begin 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.

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(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.

(e) 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 420A.025

Stats. Implemented: ORS 179.471, 179.473, 179.478, 420.500, 520.505 & 420.525

Hist.: OYA 16-2005(Temp), f. & cert. ef. 7-14-05 thru 1-7-06; OYA 27-2005, f. & cert. ef. 11-22-05

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Public Utility Commission Chapter 860

Adm. Order No.: PUC 6-2005

Filed with Sec. of State: 11-28-2005

Certified to be Effective: 11-28-05

Notice Publication Date: 10-1-05

Rules Adopted: 860-011-0036

Subject: The Commission has statutory authority to contract for experts and for technical or other professional services as it may require for the discharge of its duties. The Public Contracting Code implemented March 1, 2005, requires that agencies with statutory authority must adopt either the Department of Administrative Services (DAS) Purchasing Rules or the Attorney General Model Rules. The Commission has been operating under and following the DAS procedures. This rule specifies that the Commission adopts DAS Purchasing Rules with two exceptions. The exceptions allow the Commission to revise the DAS contract forms and to approve contracts as they relate to personal services.

Rules Coordinator: Diane Davis—(503) 378-4372

860-011-0036

Personal Services Contracts

(1) The Commission may enter into personal services contracts as required or appropriate for the discharge of its duties.

(2) The model rules adopted by the Attorney General do not apply to the Commission.

(3) Department of Administrative Services Public Contracting Rules for Personal Services Contracts OAR chapter 125, divisions 246, 247 and 248 apply to all personal services contracts, except as specified in section (4) of this rule.

(4) The following public contracting rules do not apply to personal services contracts used by the Commission: OARs 125-246-0345(2), 125-246-0350, 125-246-0351, and 125-246-0352.

Stat. Auth.: ORS 756.036

Stats. Implemented: ORS 756.036 & 279A.050

Hist.: PUC 6-2005, f. & cert. ef. 11-28-05

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Adm. Order No.: PUC 7-2005

Filed with Sec. of State: 11-30-2005

Certified to be Effective: 11-30-05

Notice Publication Date: 9-1-05

Rules Adopted: 860-022-0075

Rules Amended: 860-011-0080, 860-012-0040, 860-021-0008, 860-021-0010, 860-021-0033, 860-021-0045, 860-021-0205, 860-021-0326, 860-021-0335, 860-021-0405, 860-021-0410, 860-021-0414, 860-021-0415, 860-021-0420, 860-022-0001, 860-022-0017, 860-022-0040, 860-022-0046, 860-023-0001, 860-023-0005, 860-023-0020, 860-023-0080, 860-023-0090, 860-023-0100, 860-023-0110, 860-023-0120, 860-023-0130, 860-023-0140, 860-023-0150, 860-023-0160, 860-025-0001, 860-026-0005, 860-027-0001, 860-027-0045, 860-027-0120, 860-027-0300, 860-030-0005, 860-030-0010, 860-030-0015, 860-030-0018, 860-038-0005, 860-038-0300, 860-038-0400, 860-038-0410

Subject: The rule related to non-energy attributes of renewable energy (green tags) clarifies the ownership of the green tags in cases where the utility purchases energy under a net metering or other small power production tariff. The rule changes related to Electricity Service Suppliers clarify the criteria for granting certification and specify the review procedures for such applications. The house-keeping changes align use of the terms "electric utility" and "electric company" (and related terms) in the rules with the statutory definitions of such terms.

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: \$25.

(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

860-012-0040

Public Meetings

Except in cases of emergency, for all votes of the Public Utility Commission of Oregon at a public meeting that approve a major rate change for an electric company or natural gas utility under ORS 757.205, a quorum is the full commission. For purposes of this rule, a major rate change is an increase of two percent or more for any customer class.

Stat. Auth.: ORS 183, 192, 756 & 757

Stats. Implemented: ORS 192.610 et seq. & 757.205

Hist.: PUC 6-2003, f. & cert. ef. 4-28-03; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0008

Definitions for Regulation of Utility Services

(1) "Applicant" means a person who:

(a) Applies for service with an energy or large telecommunications utility;

(b) Reapplies for service at a new or existing location after service has been discontinued; or

(c) Has not satisfied the requirements of OAR 860-021-0205 or 860-021-0335(2) within the required time period, if either rule is applicable.

(2) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for utility service payments on an account with the energy or large telecommunications utility. If only one co-customer discontinues service in his/her name, the remaining co-customer shall only retain customer status if s/he reapplies for service in

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his/her own name within 20 days of such discontinuance, provided the energy or large telecommunications utility contacts the remaining co-customer or mails the remaining co-customer a written request for an application within one business day of the discontinuance.

(3) "Customer" means a person who has applied for, been accepted, and is currently receiving service. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and later requests service with the same utility at a new or existing location within 20 days after disconnection retains customer status.

(4) "Energy utility" has the meaning given to a public utility in ORS 757.005, except water and wastewater. An energy utility can be an "electric company," "gas utility," or "steam heat utility."

(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) "OTAP" has the meaning given to "Oregon Telephone Assistance Program" in OAR chapter 860, division 033.

(8) "Registered dispute" means an unresolved issue between a customer or applicant and an energy or large telecommunications utility that is under investigation by the Commission's Consumer Services Division but is not the subject of a formal complaint.

(9) "Regulated charges" means charges for services delivered in Oregon and subject to the jurisdiction and approval of the Commission.

(10) "Utility" means all large telecommunications and energy utilities, as defined in sections (4) and (5) of this rule, except when a more limited scope is explicitly stated.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.010, 757.005 & 759.005

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0010

Information for Utility Customers and Applicants

(1) Each energy utility and large telecommunications utility shall, upon request, furnish each customer and applicant with such information as is reasonable to permit him/her to secure efficient service and select appliances properly adapted to their service needs. Gas utilities shall, upon request, inspect and adjust customer-owned appliances and facilities for safe and efficient operation.

(2) Each energy utility or large telecommunications utility providing metered service shall, upon request, inform its customers and applicants how to read meters, either in writing or by explanation at the utility's offices.

(3) Each energy utility or large telecommunications utility shall keep on file and open for public inspection at its offices, complete rate schedules, contract forms, rules and regulations of the utility, and a copy of the Commission's rules and regulations.

(4) Each energy utility or large telecommunications utility shall supply, upon request, a copy of the tariffs applicable to the type or types of service furnished to the customer by the utility.

(5) Upon application for new service, or upon later request, the energy or large telecommunications utility shall assist the customer or applicant in selecting the most advantageous rate to meet individual service requirements. The customer or applicant shall be responsible for making the final selection of a rate schedule.

(6) When service is initiated and not less than once each year thereafter, every energy or large telecommunications utility shall give its residential customers a written summary of their rights and responsibilities, as they relate to the utility providing service. If service is initiated without a personal visit between the energy or large telecommunications utility and the customer, the utility shall mail the summary to the customer no later than when the first bill statement is mailed. Large telecommunications utilities satisfy the annual notification requirement by prominent publication of the information in a telephone directory distributed to their customers annually. The summary shall include the text of a summary reviewed and approved by the Commission's Consumer Services Division and describe:

(a) The customer's option to designate a third party to receive bills and notices and the availability of notices in languages other than English;

(b) Applicable financial assistance programs, such as the Energy Assistance Fund for gas utilities and electric companies and Link-Up America for telecommunications utilities;

(c) The availability of medical certificates;

(d) Special payment options such as equal-payment plans. Late-payment charges, if any, shall be explained, along with the availability of any preferred billing date option;

(e) Procedures for conflict resolution, including how to register a dispute with the energy or large telecommunications utility and with the Commission and the toll-free number of the Commission's Consumer Services Division;

(f) Listings of consumer organizations that participate in Commission proceedings, including addresses and telephone numbers, may be requested from the Commission's Consumer Services Division; and

(g) The Commission's telephone solicitation rules (telecommunications utilities only) as defined in OAR 860-021-0610(1)(a).

(7) When service is initiated, the energy or large telecommunications utility shall inquire whether the customer would like to receive notices in a language other than English and will inform the customer of the type of notices and translations currently available. If the language chosen is not available, the energy or large telecommunications utility will tell the customer the translated version does not yet exist but the customer's interest will be recorded for the Commission. Each energy or large telecommunications utility shall report to the Commission the number of requests for notices and summaries in non-English languages. The reports shall specify the number of requests for each language.

(8) Each energy or large telecommunications utility shall post notices approved by the Commission in a conspicuous place in each utility office where credit matters are transacted, setting forth the rights and responsibilities of customers under these rules. The notices shall be printed in large boldface type and shall be written in language that is easy to understand.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0033

Annual Fees Payable to the Commission by an Electric Utility

(1) By September 1, 1998, the Commission must determine the following for each electric company:

(a) The gross revenue fees per kilowatt-hour delivered to retail electric customers paid by the electric company in 1997 relative to the gross revenue fees per kilowatt-hour paid by all electric companies; and

(b) The average gross revenue for each retail customer class designation, calculated using 1997 loads and revenues and expressed on a per kilowatt-hour basis.

(2) By February 1 of each year, each electric company must provide the Commission with the amount of kilowatt-hours delivered during the prior calendar year to each retail customer class designation.

(3) By March 1 of each year, the Commission must determine the average rate per kilowatt-hour to be charged each electric company. The determination must maintain the same approximate fee relationships established in section (1)(a) of this rule between each electric company. The average annual fee paid by each electric company must not exceed eight-hundredths of one mill per kilowatt-hour applied to kilowatt-hours delivered to retail electric customers in the preceding calendar year.

(4) On statement forms prescribed by the Commission, each electric company provide the requested information for the subject year.

(5) Each electric company must pay to the Commission an annual fee determined by orders entered on or after March 1 of each year. Each electric company must pay the annual fee on or before the date specified in a notice, which date must be at least 15 days after the mailing of the notice.

(6) Each electric company must pay to the Commission:

(a) A minimum annual fee of \$10. The annual fee is due on or before April 1 of the year after the calendar year on which the annual fee is based.

(b) A late statement fee in accordance with OAR 860-011-0080, if the Commission has not received the electric company's statement form, completed in compliance with section (4) of this rule, on or before 5 p.m. Pacific Time on the fifth business day following the due date.

(c) A penalty fee for failure to pay the full amount when due, as required under ORS 756.350.

(d) A service fee in accordance with OAR 860-011-0080 for each payment returned for non-sufficient funds.

(e) All costs incurred by the Commission to collect a past-due annual fee from the electric company.

(7) The annual fee payment must be received by the Commission no later than 5 p.m. Pacific Time on the due date. A payment may be by cash, money order, bank draft, sight draft, cashier's check, certified, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

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(8) For any year in which an electric company's statement form was due, the Commission may audit the electric company as the Commission deems necessary and practicable:

(a) The Commission's audit must begin no later than three (3) years after the statement form's due date.

(b) If the Commission determines that the electric company has underreported its subject kilowatt hours delivered, the Commission may assess an additional annual fee, along with a penalty fee for failure to pay under ORS 756.350.

(c) If the Commission determines that the electric company has overpaid its annual fee, the Commission may, at its discretion, recompense the electric company with a refund or a credit against annual fees subsequently due.

(9) Rate filings made by an electric company pursuant to ORS 757.210 must allocate the company's total annual fees so that fees collected among different retail customer classes bear the same approximate relationship as the information developed by the Commission pursuant to section (1)(b) of this rule.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.310, 756.320 & 756.350

Hist.: PUC 14-1998, f. & cert. ef. 7-15-98; PUC 11-1999, f. & cert. ef. 11-18-99; PUC 15-2003, f. & cert. ef. 7-24-03; Renumbered from 860-011-0022, PUC 18-2004, f. & cert. ef. 12-30-04; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0045

Installation of Electric Service

(1) For the connection of its distribution system to the customer's premises, an electric company shall, with the exceptions provided under its extension rules, furnish service connections to the customer's service entrance.

(2) The electric company shall furnish, own, operate, maintain, and replace the service connections with the exceptions as may be listed in these rules or its tariff for line extensions.

(3) The service entrance on a customer's premises shall be so located as to make the meter and service easily accessible from the electric company's distribution lines and convenient for the installation, operation, and maintenance of the company's meters and equipment.

(4) The electric company will not be required to install or maintain more than one service connection directly from its distribution lines to the premises of any customer. Each customer may be required to install and maintain, at his/her own expense, all wiring and equipment needed to be installed on his/her premises to enable the company to furnish and meter, at a single point on the customer's premises, all service to be used by the customer. If conditions make it advisable for the company to use a single connection from its distribution line to furnish service to two or more customers on the same or different premises, the service connection shall be of adequate capacity for the purpose, and the service furnished to each customer shall be metered and billed separately.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0205

Deposit Payment Arrangements for Residential Energy Utility Service

(1) When an energy utility requires a deposit, the customer or applicant may pay the deposit in full or in three installments. The first installment is due immediately; the remaining installments are due 30 days and 60 days after the first installment payment. Except for the last payment, installments shall be the greater of \$30 or one-third of the deposit.

(2) When an installment payment or a deposit is made with a payment for energy utility service, the amount paid shall first be applied toward payment of the amount due for deposit.

(3) When the energy utility requires the customer or applicant to pay an additional deposit, the customer shall pay one-third of the total deposit, or at least \$30, whichever is greater, within five days. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer or applicant enters into an installment agreement for payment of a deposit under section (1) of this rule, the energy utility shall provide written notice explaining its deposit requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the customer or applicant that utility service will be disconnected if the energy utility does not receive the payment when due. The notice shall also set forth the name and telephone number of the appropriate unit within the Department of Human Services or other agencies which may be able to help the customer obtain financial aid.

(5) If a customer fails to abide by the terms of a deposit installment agreement, the energy utility may disconnect service after a five-day notice. The notice shall contain the information set forth in OAR 860-021-0405(2)(a), (b), (c), (e), (f), and (g) and shall be served as required by OAR 860-021-0405(5).

(6) When good cause exists, the Commission or the energy utility may provide more liberal arrangements for payment of deposits than those set forth in this rule. The energy utility shall keep a written record of the reasons for such action.

(7) If disconnection for nonpayment of a deposit occurs, the customer disconnected shall pay the full amount of the deposit, any applicable reconnection fee, late-payment fee, and one-half the past due amount before service is restored. The customer shall pay the balance of the past-due amount within 30 days of the date service is restored. A customer may continue with an existing time-payment agreement by paying all past-due installments, the full deposit, and other applicable fees.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040 & Ch. 290, OL 1987

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284), PUC 12-1983 f. & ef. 10-7-83 (Order No. 83-623); PUC 5-1987, f. & ef. 7-2-87 (Order No. 87-723); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0326

Disconnection of Gas or Electric Service to Tenants

(1) When an energy utility's records show that a residential billing address is different from the service address, the utility must provide a duplicate of the five-day disconnect notice required under OAR 860-021-0405(6) for gas and electric service to the occupants of the premises in the manner described in OAR 860-021-0405(6) unless the utility has reason to believe that the service address is occupied by the customer. This requirement is satisfied by serving a notice addressed to "Tenants" in the same manner provided for in OAR 860-021-0405. The notice to occupants need not include the dollar amount owing.

(2) When an energy utility's records show that a residence is a master-metered multi-family dwelling (including rooming houses), the utility must notify the Commission's Consumer Services Division at least five business days before disconnecting the service. The utility will use reasonable efforts to notify occupants of the impending disconnection and alternatives available to them.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.760 & Ch. 290, OL 1987

Hist.: PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 11-1998, f. & cert. ef. 5-7-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0335

Refusal of Utility Service

(1) Except as provided in section (2) of this rule, an energy utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to an Oregon prior account.

(2) Except for a residential customer or applicant who was disconnected for theft of service, an energy utility shall provide service to a residential customer or applicant upon receiving payment equal to at least one-half of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, except deposits which must be paid in full, provided the customer or applicant has made reasonable partial payment on the account during the time service has been discontinued. The customer shall pay the balance of the amount owed to the energy utility within 30 days of the date service is initiated. Upon failure to pay, the energy utility may disconnect service after providing a five-day notice to the customer. The notice shall contain the information set forth in OAR 860-021-0405(2)(a),(b), (c), (f), and (g) and shall be served as required by OAR 860-021-0405(5). If a customer or applicant whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(3) If electric or gas service is disconnected for a residential customer's failure to comply with the payment terms in section (2) of this rule, the utility may refuse to restore service until the utility receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(4) Refusal of service by a large telecommunications utility:

(a) A large telecommunications utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except for telecommunications service applicants who are eligible for OTAP.

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(b) A large telecommunications utility may refuse to provide service to a residential customer or applicant who is eligible for OTAP until the utility receives full payment of any overdue amount relating to a prior account for tariffed local exchange and price-listed services, excluding any toll charges.

(5) An energy or large telecommunications utility may refuse to provide service until the utility receives payment when all the following circumstances exist:

(a) An overdue balance has been incurred by a residential customer or applicant at a service address;

(b) A residential applicant for service resided at the service address described in subsection (5)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer or applicant described in subsection (5)(a) of this rule will reside at the location to be served under the new application.

(6) Any energy or large telecommunications utility shall refuse to provide service if a customer or applicant has not complied with state and city codes and regulations governing service and with the utility's rules and regulations.

(7) An energy or large telecommunications utility shall reject an application for service or materially change service to a customer or applicant if, in the best judgment of the utility, the utility lacks adequate facilities to render the service applied for or if the desired service is likely to unfavorably affect service to other customers.

(8) An energy or large telecommunications utility shall refuse to serve a customer or applicant, if, in the best judgment of the utility, the facilities of the customer or applicant cannot provide safe and satisfactory service.

(9) When an energy or large telecommunications utility refuses to provide service, the utility shall notify the customer or applicant of the reasons for refusal and of the Commission's complaint process.

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.035, 757.225 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0060 and 860-021-0100; PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 22-2002, f. & cert. ef. 12-9-02; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0405

Notice of Pending Disconnection of Residential Electric or Gas Utility Service

(1) When a written notice is given under these rules:

(a) The notice shall conform to the requirements of OAR 860-021-0010 concerning multilingual requirements and service on any designated representative; and

(b) The notice shall conform to the requirements of OAR 860-021-0326 if the energy utility's records show the billing address is different than the service address or the residence is a master-metered multi-family dwelling. The notice may be addressed to "tenant" or "occupant." The envelope shall bear a bold notice stating, "Important notice regarding disconnection of utility service," or words to that effect.

(2) The notice shall be printed in boldface type and shall state in easy to understand language:

(a) The reason for the proposed disconnection;

(b) The amount to be paid to avoid disconnection;

(c) The earliest date for disconnection;

(d) An explanation of the time-payment agreement provisions of OAR 860-021-0415;

(e) An explanation of the medical certificate provisions of OAR 860-021-0410;

(f) The name and telephone number of the appropriate unit of the Department of Human Services or other agencies which may be able to provide financial aid; and

(g) An explanation of the Commission's complaint process and toll-free number.

(3) At least 15 days before an energy utility may disconnect a residential customer for nonpayment for services rendered, the energy utility must provide written notice to the customer. A 15-day notice is not required when disconnection is for failure to establish credit or theft of service.

(4) The energy utility may not send a notice of disconnection before the due date for payment of a bill.

(5) The energy utility may serve the 15-day notice of disconnection in person or send it by first-class mail to the customer's last known address. Service is complete on the date of personal delivery or, if the notice is delivered by U S Mail, service is complete on the day after the date of the U S Postal Service postmark or on the day after the date of postage metering.

(6) At least five business days before the proposed disconnection date, the energy utility must mail or deliver a written disconnection notice to the customer. Service is complete on the date of personal delivery or, if the notice is delivered by U S Mail, service is complete on the day after the date of the U S Postal Service postmark or on the day after the date of postage metering.

(a) The disconnection notice shall inform the customer that service will be disconnected on or after a specific date and shall explain the alternatives and assistance that might be available as required in section (2) of this rule; or

(b) If notification is delivered to the residence, the energy utility shall attempt personal contact. If personal contact cannot be made with the customer or an adult resident, the energy utility shall leave the notice in a conspicuous place at the residence.

(7) On the day the energy utility expects to disconnect service and before disconnection, the utility must make a good-faith effort to personally contact the customer or an adult at the residence to be disconnected:

(a) If the contact is made, the energy utility shall advise the customer of the proposed disconnection; or

(b) If contact is not made, the energy utility must leave a notice in a conspicuous place at the residence informing the customer that service has been, or is about to be, disconnected.

(8) When an energy utility makes personal contact under this rule, and the circumstances are such that a reasonable person would conclude the customer does not understand the consequences of disconnection, the utility must:

(a) Notify the Department of Human Services and the Commission; and

(b) Delay the proposed disconnection date for five additional business days.

(9) When the energy utility makes personal contact under this rule, the utility's representative making contact shall be empowered to accept reasonable partial payment of the overdue balance under the time-payment provisions of OAR 860-021-0415.

(10) An energy utility must document its efforts to provide notice under this rule and shall make that documentation available to the customer and the Commission upon request.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.760

Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0085; PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 4-1999, f. & cert. ef. 8-12-99; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0410

Emergency Medical Certificate for Residential Electric and Gas Service

(1) An energy utility shall not disconnect residential service if the customer submits certification from a qualified medical professional stating that disconnection would significantly endanger the physical health of the customer or a member of the customer's household. "Qualified medical professional" means a licensed physician, nurse-practitioner, or physician's assistant authorized to diagnose and treat the medical condition described without direct supervision by a physician.

(2) The oral certification to the utility must be confirmed in writing within 14 days by the qualified medical professional prescribing medical care. Written certifications must include:

(a) The name of the person to whom the certificate applies and relationship to the customer;

(b) A complete description of the health conditions;

(c) An explanation of how the person's health will be significantly endangered by terminating the service;

(d) A statement indicating how long the health condition is expected to last;

(e) A statement specifying the particular type of utility service required (for example, electricity for respirator); and

(f) The signature of the qualified medical professional prescribing medical care.

(3) If a medical certificate is not submitted in compliance with sections (1) and (2) of this rule, the energy utility may disconnect service after providing a five-day notice to the customer. The notice shall comply with the requirements of OAR 860-021-0405, except subsection (1)(b), subsection (2)(e), and section (4) of this rule shall not be applicable.

(4) An emergency medical certificate shall be valid only for the length of time the health endangerment is certified to exist, but no longer than six months without renewal for certificates not specifying chronic illnesses and no longer than twelve months for certificates specifying illnesses identified as chronic by a "Qualified Medical Professional" as defined in this rule. At least 15 days before the certificate's expiration date, an energy utility will

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give the customer written notice of the date the certificate expires unless it is renewed with the utility before that day arrives.

(5) A customer submitting a medical certificate is not excused from paying for electric or gas service:

(a) Customers are required to enter into a written time-payment agreement with the energy utility when an overdue balance exists. Terms of the time-payment agreement shall be those in OAR 860-021-0415 or such other terms as the parties agree upon in writing;

(b) When financial hardship can be shown, a customer with a medical certificate may renegotiate the terms of a time-payment agreement with the energy utility; and

(c) Time-payment arrangements in effect when a medical certificate terminates remain in effect for the balance then owing. If a customer fails to pay charges incurred after the certificate terminates, the provisions of OAR 860-021-0415 (standard time-payment provisions) shall apply to payment of the arrearage incurred after the medical certificate expires. The terms of the medical certificate time-payment plan continue to apply to the arrearage accrued during the disability.

(6) If a medical certificate customer fails to enter into a written time-payment agreement within 20 days of filing the certificate, or to abide by its terms, the energy utility shall notify the Commission's Consumer Services Division of its intent to disconnect service and the reason for the disconnection. The energy utility may disconnect service after providing a notice 15 days in advance of disconnection for nonpayment, or five days before disconnection for failure to enter into a written time-payment agreement. The notice shall comply with the requirements of OAR 860-021-0405, except subsection (2)(e) shall not be applicable. A hearing may thereafter be held to determine whether the energy utility should be permitted to disconnect service to the customer.

(7) An energy utility may verify the accuracy of a medical certificate. If the energy utility believes a customer does not qualify, or no longer qualifies for a medical certificate, the utility may apply to the Commission to terminate the service of the customer.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.750, 757.755 & 757.760

Hist.: PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0095; PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1995, f. & cert. ef. 11-27-95 (Order No. 95-1217); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0414

Equal-Payment Plans for Residential Electric and Gas Service

Electric companies and gas utilities will make equal-payment plans available to residential customers. A customer with no outstanding balance who agrees to remain on an equal-payment plan for 12 months may enter into equal-payment agreement at any time during the year. The plan will provide for an annual adjustment between the estimated charge and the actual charges. If a customer changes residences during the term of the agreement, the payments may be adjusted to reflect the anticipated change in usage. Nothing in this rule is intended to restrict a utility's right to adopt additional payment options.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: ORS 756.040, 757.750 & 757.760

Hist.: PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0415

Time-Payment Agreements for Residential Electric and Gas Service (Nonmedical Certificate Customers)

(1) An energy utility may not disconnect residential service for nonpayment if a customer enters into a written time-payment plan. An energy utility will offer customers a choice of payment agreements. At a minimum, the customer may choose between a leveled payment plan and an equal-pay arrearage plan.

(2) A customer who selects a leveled payment plan will pay a down payment equal to the average annual bill including the account balance, divided by 12, and a like payment each month for 11 months thereafter:

(a) The energy utility shall review the monthly installment plan periodically. If needed due to changing rates or variations in the amount of service used by the customer, the installment amount may be adjusted to bring the account into balance within the time specified in the original agreement;

(b) If a customer changes service address at any time during the period of a time-payment agreement, provided that payments are then current and the customer pays other tariff charges associated with the change in residence, the energy utility shall recalculate the customer's deposit and/or monthly installment. The recalculated amount shall reflect the balance of the account at the previous service address and the average annual bill at

the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a customer shall pay all past-due installments and any other applicable charges before service is provided at the new residence.

(3) A customer who selects an equal-pay arrearage plan will pay a down payment equal to one-twelfth the amount owed for past electric or gas service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the customer) each month, for the next 11 months, an amount equal to the down payment will be added to, and payable with, the current charges due for utility service. If a customer changes service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the customer must pay any past-due charges and all other applicable charges before the energy utility provides service at the new address.

(4) The energy utility and customer may agree in writing to alternate payment arrangement, provided the utility first informs the customer of the availability of the payment terms in sections (2) and (3) of this rule.

(5) If a customer fails to abide by the time-payment agreement, the energy utility may disconnect service after serving 15 days' notice. The notice shall comply with OAR 860-021-0405, except subsection (2)(d) of this rule shall not be applicable. If a medical certificate is in effect, OAR 860-021-0410(6) shall apply.

Stat. Auth.: ORS 183, 756, 757 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, 757.750 & 757.760

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 3-1989, f. 2-6-89, cert. ef. 2-8-89 (Order No. 89-038); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-021-0420

Field Visit Charge

A Commission approved fee may be charged whenever an energy utility visits a residential service address intending to reconnect or disconnect service, but due to customer action, the energy utility is unable to complete the reconnection or disconnection at the time of the visit.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.225

Hist.: PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 11-1998, f. & cert. ef. 5-7-98; PUC 16-2003, f. & cert. ef. 10-1-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 7-2005, f. & cert. ef. 11-30-05

860-022-0001

Definitions for Utility Rates

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Consumer-owned utility" has the meaning given to the term under ORS 757.270(2).

(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 company," "gas utility," or "steam heat utility."

(3) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005 that is not partially exempt from regulation under ORS 759.040.

(4) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.

(5) "Utility" means all energy utilities and large telecommunications utilities, as defined in sections (2) and (3) of this rule.

Stat. Auth.: ORS 183, 756 & 757

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 4-2001, f. & cert. ef. 1-24-01; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-022-0017

Announcement of Utility Tariff Changes

(1) Within 15 days of filing with the Commission new or revised tariff schedules which constitute a general rate revision, an energy or large telecommunications utility shall inform its customers of the filing. A "general rate revision" is a filing by an energy or large telecommunications utility which affects all or most of a utility's rate schedules. "General rate revision" excludes changes in an automatic adjustment clause under ORS 757.210(1), changes in the credit reflected on certain electric company rate schedules relating to Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980, or similar changes in one rate schedule, such as for an amortization, that affects other rate schedules.

(2) The energy or large telecommunications utility shall inform its customers by:

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(a) Inserting a display announcement, not less than a three column standard advertising unit (SAU) by ten-inch advertisement, at least once in a newspaper of general circulation in the communities served by the energy or large telecommunications utility;

(b) Inserting an announcement in the energy or large telecommunications utility's regular billing to its customers; or

(c) Mailing an announcement to each customer.

(3) The energy or large telecommunications utility's announcement shall include:

(a) The approximate annualized amount of the proposed total change, expressed both in dollar and in percentage terms; and the approximate amount of the proposed change for an average residential customer's monthly bill, expressed in dollar terms;

(b) A brief statement of the reasons why the energy or large telecommunications utility seeks the change;

(c) A statement that copies of the energy or large telecommunications utility's testimony and exhibits are available for inspection at its main and district offices;

(d) The mailing address and telephone number of the energy or large telecommunications utility's office that customers may contact for additional information about the filing;

(e) The mailing address and toll-free telephone number of the Commission to which requests to receive notice of the time and place of any hearing on the matter may be directed; and

(f) A statement that the purpose of the announcement is to provide the energy or large telecommunications utility's customers with general information about the utility's proposals and their effects on its customers, but that the calculations and statements contained in the announcement are not binding on the Commission.

(4) Within 20 days of issuing the announcement, the energy or large telecommunications utility shall file an affidavit that notice has been given and a copy of the notice.

(5) An energy or large telecommunications utility may submit to the Commission, and request approval of, a list of the newspapers of general circulation in the communities served by the utility. The utility may revise the list by written request to the Commission.

(6) The Commission may waive the requirements of this rule upon a showing by the energy or large telecommunications utility that the notice required by this rule has been given with respect to a particular general rate revision, and upon a further showing that additional notice with respect to that rate revision would be duplicative, confusing to customers, and burdensome to the utility.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.205 - 757.220 & 759.175 - 759.190

Hist.: PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 11-1990(Temp), f. & cert. ef. 6-21-90 (Order No. 90-968); PUC 22-1990, f. & cert. ef. 12-31-90 (Order No. 90-1917); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); 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

860-022-0040

Relating to City Fees, Taxes, and Other Assessments Imposed Upon Electric Companies, Gas Utilities, and Steam Heat Utilities

(1) The aggregate amount of all business or occupation taxes, license, franchise or operating permit fees, or other similar exactions or costs, excepting volumetric-based fees in section (3) of this rule, imposed upon energy utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, which does not exceed 3 percent for gas utilities or 3.5 percent for electric companies and steam heat utilities, applied to gross revenues as defined herein, shall be allowed as operating expenses of such utilities for rate-making purposes and shall not be itemized or billed separately. All other costs not allowed as operating expenses shall be itemized or billed separately.

(2) Except as otherwise provided herein, "gross revenues" means revenues received from utility operations within the city less related net uncollectibles. Gross revenues of an energy utility shall include revenues from the use, rental, or lease of the utility's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

(3) Each electric company subject to volumetric-based privilege taxes or fees shall determine for each city imposing such volumetric charges a base volumetric rate for each customer class calculated as 3.5 percent of the class 1999 gross operating revenues within the city divided by the amount of electric energy in kilowatt-hours delivered to the class in 1999. In cases where 1999 data is not available for a particular city and/or class, the utility's total 1999 Oregon revenues and kilowatt-hour deliveries for the customer class shall be used to calculate the base volumetric rate. An amount

equal to the base volumetric rates multiplied by the corresponding amount of electric energy in kilowatt hours delivered in the 12-month period used to determine the electric company's revenue requirement shall be allowed as operating expenses and shall not be itemized or billed separately. The privilege tax shall be allocated across an electric company's customer classes in the same proportional amounts as levied by cities against the electric company.

(4) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers, and the value of any utility services or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels set forth in sections (1) and (3) of this rule. Any such services may be continued within the same category or type of use. The value of any additional category of utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(5) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of service rendered by an energy utility under such franchises shall not be itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(6) Except as provided in section (5) of this rule, to the extent any city tax, fee, or other exaction referred to in sections (1) and (3) of this rule exceeds the percentage levels allowable as operating expenses in sections (1) and (3) of this rule, such excess amount shall be charged pro rata to energy customers within said city and shall be separately stated on the regular billings to such customers.

(7) The percentage levels in sections (1) and (3) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

(8) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the energy utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 3-1990, f. & cert. ef. 4-6-90 (Order No. 90-417); PUC 14-1990, f. & cert. ef. 7-11-90 (Order No. 90-1031); PUC 7-1998, f. & cert. ef. 4-8-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 17-2000, f. & cert. ef. 9-29-00; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 15-2002, f. & cert. ef. 6-14-02; PUC 14-2003, f. & cert. ef. 7-24-03; PUC 7-2005, f. & cert. ef. 11-30-05

860-022-0046

Forced Conversion of Electric and Communication Facilities

(1) As used in this rule:

(a) "Convert," "converting," or "conversion" means the removal of overhead electric or communication facilities and the replacement of those facilities with underground electric or communication facilities at the same or different locations;

(b) "Conversion cost" means the difference in cost between constructing an underground system and retaining the existing overhead system. This difference is generally equal to the cost of all necessary excavating, road crossings, trenching, backfilling, raceways, ducts, vaults, transformer pads, other devices peculiar to underground service, and "overhead retirement costs." However, if the conversion is required in conjunction with a public project which would necessitate the relocation of the electric company's or large telecommunications utility's facilities at the utility's expense, "conversion costs" shall not include any "overhead retirement costs;"

(c) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, cross-arms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of electric or communication services. However:

(A) "Electric facilities" excludes any facilities used or intended to be used for the transmission of electric energy at nominal voltage in excess of 35,000 volts;

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(B) "Communication facilities" excludes facilities used or intended to be used for the transmission of intelligence by microwave or radio apparatus cabinets or outdoor public telephones;

(C) "Electric or communication facilities" excludes any electric or communication facilities owned or used by or provided for a railroad or pipeline and located upon or above the right-of-way of the railroad or pipeline.

(d) "Local government" includes cities; counties; authorities and agencies created pursuant to ORS Chapters 456 and 457; special districts of the type described in ORS 198.010, 198.180; and all other political subdivisions of Oregon;

(e) "Overhead electric or communication facilities" means electric or communication facilities located above the surface of the ground;

(f) "Overhead retirement cost" means the original cost, less depreciation, less salvage value, plus removal costs, of existing overhead distribution facilities no longer used or useful by reason of the conversion;

(g) "Underground electric or communication facilities" means electric or communication facilities located below the surface of the ground exclusive of those facilities such as substations, transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets, and similar facilities which normally are above the surface in areas where electric company or large telecommunications utility facilities are underground in accordance with standard underground practices.

(2) This rule does not apply if the total conversion cost incurred by the electric company or large telecommunications utility during one calendar year does not exceed five-one hundredths of 1 percent (.05 percent) of the utility's annual revenues derived from customers residing within the boundaries of the local government.

(3) When a local government requires an energy or large telecommunications utility to convert electric or telecommunications facilities at the utility's expense, the utility shall collect the conversion costs from customers located within the boundaries of the local government.

(4) The local government may direct the electric company or large telecommunications utility to collect conversion costs from only a portion of the customers located within the boundaries of the local government.

(5) Conversion costs incurred by the electric company or large telecommunications utility shall be accumulated in a separate account in the electric company or large telecommunications utility's books. Interest shall accrue from the date the electric company or large telecommunications utility incurs the cost. The rate of such interest shall be equal to the effective cost of the senior security issue which most recently preceded the incurrence of the cost.

(6) The electric company or large telecommunications utility shall collect the conversion costs and interest over a reasonable period of time subject to the Commission's approval. However, the pay-back period shall not exceed the depreciable life of the facilities. Collection shall begin as soon as practical after the end of the year in which the conversion costs are incurred.

(7) The conversion cost to be recovered from each customer shall be calculated by applying a uniform percentage to each customer's total monthly bill for service rendered within the boundaries of the local government. The amount collected shall be separately stated and identified on each bill.

(8) This rule applies to conversions upon which construction began on or after August 13, 1984.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: PUC 17-1984, f. & ef. 8-14-84 (Order No. 84-615); PUC 20-1984, f. & ef. 9-19-84 (Order No. 84-737); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); 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

860-022-0075

Ownership of Non-Energy Attributes of Generation from Renewable Energy Facilities

(1) This rule applies to non-energy attributes associated with energy generated and sold under an applicable contract, as identified in section (2) of this rule, that is executed on or after the effective date of this rule.

(2) Unless otherwise agreed to by separate contract, the owner of the renewable energy facility retains ownership of the non-energy attributes associated with electricity the facility generates and sells to an electric company pursuant to:

(a) The provisions of a net metering tariff;

(b) An Oregon contract with the electric company entered into pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978; or

(c) Another retail power production tariff.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.205, 757.210

Hist.: PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0001

Definitions for Service Standards

For purposes of this Division, except when a different scope is explicitly stated:

(1) "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 company," "gas utility," or "steam heat utility."

(2) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(3) "Local exchange service" has the meaning given to "local exchange telecommunications service" in ORS 759.005(1)(c).

(4) "Telecommunications carrier" has the meaning provided in ORS 759.400.

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

860-023-0005

Maintenance of Plant and Equipment by Energy Utilities and Large Telecommunications Utilities

Each energy and large telecommunications utility shall have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each energy and large telecommunications utility shall 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 their condition and adequacy at all times. Each energy utility and large telecommunications utility shall 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

860-023-0020

Quality of Electric Service

(1) Every electric company shall adopt a set of normal standard voltages at the point of delivery for the different classes of service in its service areas. The nominal standard voltages applicable to residential and commercial customers shall be specified in the tariffs filed by the electric company. Except as may be caused by the customer's operation of apparatus in violation of the electric company's rules, or by conditions beyond the electric company's control, every electric company shall maintain the adopted standard secondary voltages so the same shall not normally vary more than plus or minus 5 percent of the standard at the service entrance.

(2) Each electric company shall make a sufficient number of voltage surveys to indicate the service furnished is in compliance with the standard as indicated under section (1) of this rule.

(3) Each electric company shall keep a complete record of each test of voltage and service conditions, as made under these rules, and this record shall be accessible to the Commission or its authorized representatives. Each record of tests of voltage or service conditions so kept shall contain complete information concerning the test, including such items as the Commission may from time to time require.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.020

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order 74-307); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0080

Definitions for Electric Service Reliability

The following terms apply to OAR 860-023-0090 through 860-023-0160:

(1) "Electric company" means a public utility, as defined in ORS 757.005, that supplies electricity.

(2) "Interruption duration" means the period (measured in seconds, minutes, or hours) from the initiation of an interruption to a metering point until service has been restored to that metering point.

(3) "Interruption, momentary" means a single interruption with a duration limited to five minutes.

(4) "Interruption event, momentary" means:

(a) A momentary interruption; or

(b) A series of momentary interruptions that is restored by an automatic interruption device, is limited to a single relay sequence, and does not exceed five minutes, such as when an auto-reclose breaker operates two or more times in a single relay sequence and then holds.

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(5) "Interruption, sustained" means an interruption with a duration greater than five minutes.

(6) "Interruption" means the loss of service to one or more metering points.

(7) "Loss of service" means a complete loss of voltage to one or more metering points, but does not include power quality issues such as transients, sags, swells, flickers, harmonics, and other waveform distortions.

(8) "MAIFE" means momentary average interruption event frequency index. This index is the number of times that a metering point experiences momentary interruption events during a year. It is determined by dividing the total annual number of metering point momentary interruption events by the total number of metering points. Note that this index does not include the events immediately preceding a sustained interruption.

(9) "Major event" means a catastrophic event that:

(a) Exceeds the design limits of the electric power system;

(b) Causes extensive damage to the electric power system; and

(c) Results in a simultaneous sustained interruption to more than 10 percent of the metering points in an operating area.

(10) "Metering point" means an electric point of service to a customer where there is a meter and for which an electric company renders a bill.

(11) "Metering points, total number of" means the number of metering points as of the last day of the calendar year.

(12) "Operating area" means a geographic subdivision of an electric company's Oregon service territory that functions under the direction of an electric company office and as a separate entity used for reliability reporting. These areas may also be referred to as regions, divisions, or districts.

(13) "Reliability" means the degree that electric service is supplied without interruptions.

(14) "SAIDI" means system average interruption duration index. This is the sustained interruption duration time (in hours) that an average metering point experiences during the year. It is determined by dividing the annual sum of all metering point sustained interruption durations by the total number of metering points.

(15) "SAIFI" means system average sustained interruption frequency index. This index is the number of times that an average metering point receives sustained interruptions during a year. It is determined by dividing the total annual number of sustained interruptions by the total number of metering points.

(16) "System-wide" means pertaining to and limited to the electric company's metering points in Oregon.

(17) "Threshold" means a performance level, excluding major events, that requires appropriate electric company action.

(18) "Underperforming circuit" means a circuit characterized by substandard performance. A circuit has this designation if it has a SAIDI, SAIFI, or MAIFIE index that exceeds its designated threshold level.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0090

Electric Service Continuity

(1) An electric company shall use reasonable means in design, operations, and maintenance to ensure reliable service to each customer. Such means shall include, but not be limited to, programs to prevent service interruptions.

(2) An electric company shall have a program with written standards and written schedules to maintain appropriate reliability levels.

(3) When interruptions occur, each electric company shall reestablish service with the shortest possible delay consistent with the safety of its employees, customers, and the general public.

(4) An electric company shall have a program for analyzing, and where appropriate, for correcting underperforming circuits.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0100

Electric Interruption Records

(1) Except as provided in section (3) of this rule, an electric company shall keep an accurate record of each interruption of service that affects one or more customers. Each record shall contain at least the following information:

(a) The operating area where the interruption occurred;

(b) The name of the substation involved;

(c) The name of the circuit involved;

(d) The date and time the interruption occurred (if the exact time is unknown, the beginning of an interruption is recorded as the earlier of an automatic alarm or the reported initiation time);

(e) The date and time service was restored;

(f) The duration of the interruption;

(g) The number of metering points affected by the interruption;

(h) The cause of the interruption;

(i) The weather conditions at the time of the interruption;

(j) Whether the interruption was planned or unplanned;

(k) The protective device that made the interruption; and

(l) The component involved (e.g., transmission line, substation, overhead primary main, underground primary main, transformer, etc.).

(2) For interruptions where customers are not simultaneously restored, an electric company shall keep records that document the step-restoration operations.

(3) For major events where an electric company cannot obtain accurate data, the electric company shall make reasonable estimates.

(4) An electric company shall retain for ten years the records associated with sections (1) and (2) of this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0110

Electric Reliability Calculations

(1) Except as provided in section (3) of this rule, an electric company at year-end shall calculate SAIDI, SAIFI, and MAIFIE indices, with and without major events:

(a) On a system-wide basis;

(b) For each operating area; and

(c) For each circuit.

(2) Data included in the above calculations shall include all interruptions associated with or related to high voltage components (above 600 volts).

(3) For each circuit an electric company shall be required to calculate only indices with major events excluded.

(4) If an electric company estimates MAIFIE, it shall specify the method that it used for making the estimate.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0120

Electric Threshold Levels

(1) An electric company shall establish threshold levels for SAIDI, SAIFI, and MAIFIE for system-wide operations, each operating area, and each circuit. The Commission recommends that the following factors be used to guide the setting of the levels:

(a) Past reliability information;

(b) Demographic, geographic, and electrical characteristics; and

(c) The relative performance of the circuits to each other.

(2) An electric company shall file with the Commission its threshold values and any revision to the values.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0130

Customer Inquiries about Electric Reliability

(1) A customer may request a report from an electric company about the service reliability of the circuit supplying the customer's own meter. Within 20 working days, the electric company shall supply the report to the customer at no cost. However, if a customer requests an additional reliability report for the same meter within one year of the date of the first request, the electric company may require a deposit from the customer to recover the cost of the report. The electric company shall return the deposit if the additional report indicates that the circuit has become an underperforming circuit, with major events excluded.

(2) The report shall include:

(a) The name of the customer;

(b) The date of the request;

(c) The address where the meter is installed;

(d) The meter number involved;

(e) The circuit involved; and

(f) A chronological listing, covering at least 36 months up to the date of the request, of all interruption data as required by OAR 860-023-0100 affecting the customer's meter, stating the beginning time, date, duration, and cause for each interruption.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

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860-023-0140

Public Inquiries about Electric Reliability

Any person may request from an electric company a report about the service reliability for any circuit. The report shall be supplied to the person within 20 working days. A reasonable fee may be charged for each report.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0150

Annual Report on Electric Reliability

(1) On or before May 1 of each year, an electric company shall file with the Commission a report that includes reliability information pertaining to the previous calendar year. The electric company shall make copies available to the public upon request.

(2) In accordance with sections (3) and (4) of this rule, the report shall contain:

(a) SAIDI, SAIFI, and MAIFIE indices and thresholds compared to the most recent four years, both with and without major events:

(A) On a system-wide basis; and

(B) For each operating area.

(b) SAIDI, SAIFI, and MAIFIE indices and thresholds for each circuit, with major events excluded.

(c) A summary of the system-wide interruption causes compared to the previous four-year performance. Categories to be evaluated shall include:

(A) Adverse environment;

(B) Adverse weather;

(C) Customer equipment;

(D) Equipment failure;

(E) Foreign interference;

(F) Human element;

(G) Lightning;

(H) Loss of supply;

(I) Major events;

(J) Scheduled outages;

(K) Tree contacts;

(L) Unknown; and

(M) Other (if used, the electric company shall be specific as to the cause involved).

(d) A listing of the major events to impact the electric company along with the major event filings to the Commission as required in OAR 860-023-0160.

(3) An electric company shall present the SAIDI, SAIFI, and MAIFIE indices and thresholds in both a tabular and a graphical format. For the graphical format for circuits, an electric company shall compare the SAIDI, SAIFI, and MAIFIE indices for each circuit with other circuits in descending order of performance:

(a) On a system-wide basis; and

(b) On an operating-area basis.

(4) For historical information prior to January 1, 1998, the electric company shall provide the best information available.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-023-0160

Major Event Filing by Electric Utilities

Within 20 working days after a major event, an electric company shall submit a report to the Commission that includes:

(1) A description of the event;

(2) A discussion of why the electric company considers it to be a major event;

(3) The total number of metering points affected, the number of metering points without service at periodic intervals, and the longest service interruption;

(4) The number of crews assigned to restore service at periodic intervals;

(5) The estimated SAIDI and SAIFI impact to metering points on a system-wide and an operating-area basis;

(6) The damage cost estimates to the electric company's facilities;

(7) The reason timely restoration was beyond the electric company's control; and

(8) A listing of circuits that were affected with sustained interruptions lasting more than four hours.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 757.020

Hist.: PUC 16-1997, f. 12-11-97, cert. ef. 1-1-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-025-0001

Definitions for Territory Allocated to Electric Utilities, Gas Utilities, and Large Telecommunications Utilities

For purposes of this Division, except when a different scope is explicitly stated:

(1) "Electric utility" means an electric utility as defined in ORS 757.600(13).

(2) "Gas utility" means a public utility as defined in ORS 757.005 that supplies natural gas.

(3) "Large telecommunications utility" means any telecommunications utility as defined in ORS 759.005 that is not partially exempt from regulation under ORS 759.040.

(4) "Utility service" means utility service as defined for electric and gas utilities in ORS 758.400(3) and telecommunications utility service as defined in ORS 759.500(3).

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.005, 758.400, 759.005 & 759.500

Hist.: PUC 2-1996, f. & cert. ef. 4-18-96 (Order No. 96-102); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 13-2002, f. & cert. ef. 3-26-02; PUC 7-2005, f. & cert. ef. 11-30-05

860-026-0005

Definitions for Utility Sales Promotion

As used in OAR 860-026-0005 through 860-026-0045, unless the context requires otherwise:

(1) "Affiliate" means "affiliated interest," as defined in ORS 757.015 and ORS 759.010.

(2) "Appliance or equipment" includes any device which consumes electric and/or gas energy and any ancillary device required for its operation.

(3) "Consideration" includes any cash, donation, gift, allowance, rebate, bonus, merchandise (new or used), property (real or personal), labor, service, conveyance, commitment, right, or other thing of more than token value.

(4) "Energy efficiency" means any installation or action intended to reduce the amount of energy required to achieve a given purpose or to shift the timing of the use of energy to achieve greater efficiency in the use of a public utility system.

(5) "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 company," "gas utility," or "steam heat utility."

(6) "Financing" includes acquisition of equity or debt interests, loans, advances, sale and repurchase agreements, sale and leaseback agreements, sales on open account, conditional or installment sales contracts, or other investments or extensions of credit.

(7) "Large telecommunications utility" means a telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(8) "Person" includes any individual, group, firm, partnership, corporation, association, organization, or public or private entity.

(9) "Utility" means all energy and large telecommunications utilities, as defined in sections (5) and (7) of this rule.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.005 & 757.015

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 9-1995, f. & cert. ef. 8-30-95 (Order No. 95-861); 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

860-027-0001

Definitions for Utility Budgets, Finance, Accounting, and Annual Reports

For purposes of this Division, except when a different scope is explicitly stated:

(1) "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 company," "gas utility," or "steam heat utility."

(2) "Large telecommunications utility" means any telecommunications utility, as defined in ORS 759.005, that is not partially exempt from regulation under ORS 759.040.

(3) "Utility" means all energy utilities and telecommunications utilities, as defined in sections (1) and (2) of this rule.

Stat. Auth.: ORS 183, 756, 757 & 759

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

860-027-0045

Uniform System of Accounts for Electric Utilities — Major and Nonmajor

(1) The Uniform System of Accounts prescribed for Public Utilities and Licensees, Part 101, Chapter 1, 18 Code of Federal Regulations (April

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1, 2001, edition) is hereby adopted and prescribed by the Commission for each electric company.

(2) Each electric company having multistate operations shall maintain records in such detail that the cost of property located in and business done in Oregon in accordance with geographic boundaries can be readily ascertained.

(3) Each electric company having multistate operations shall file annually with the Commission, on or before April 1 of the ensuing year, its Oregon allocated results of operations for the calendar year reported, on the basis of allocation methods acceptable to the Commission.

[Publications: Publications referenced are available from the Commission.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.105, 757.120, 757.125 & 757.135

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 5-1985, f. & ef. 4-24-85 (Order No. 85-355); PUC 3-1992, f. & cert. ef. 2-14-92 (Order No. 92-246); PUC 9-2001, f. & cert. ef. 3-21-01; PUC 19-2001, f. & cert. ef. 6-21-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-027-0120

Preservation and Destruction of Records

(1) Electric Companies. Preservation of Records of Public Utilities and Licensees, Part 125, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each electric company with the following exception: Corporate and General, Organizational documents — An electric company shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(2) Gas Utilities. The Preservation of Records of Public Utilities and Licensees, Part 225, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each gas utility with the following exception: Corporate and General, Organizational documents — A gas utility shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(3) Steam Heat Utilities. The Preservation of Records of Public Utilities and Licensees, Part 125, Chapter 1, 18 Code of Federal Regulations (April 1, 2001, edition) is hereby adopted and prescribed by the Commission for each steam heat utility with the following exception: Corporate and General, Organizational documents — A steam heat utility shall retain minute books of stockholders', directors', and directors' committee meetings for twenty-five years.

(4) Large telecommunications Utilities. The Regulations to Govern the Preservation of Records of Communication Common Carriers, Part 42, 47 Code of Federal Regulations Chapter 1 (October 1, 2003, edition) is hereby adopted and prescribed by the Commission for each large telecommunications utility.

[Publications: Publications referenced are available from the Commission.]

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.105

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 12-1985, f. & ef. 8-20-85 (Order No. 85-751); PUC 15-1986, f. & ef. 11-10-86 (Order No. 86-1144); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 1-1998, f. & cert. ef. 1-12-98; PUC 8-2000, f. & cert. ef. 5-26-00; PUC 19-2001, f. & cert. ef. 6-21-01; Renumbered from 860-028-0010; PUC 15-2004, f. & cert. ef. 10-28-04; PUC 7-2005, f. & cert. ef. 11-30-05

860-027-0300

Use of Deferred Accounting by Energy and Large Telecommunications Utilities

(1) As used in this rule:

(a) "Amortization" means the inclusion in rates of an amount which has been deferred under ORS 757.259 or 759.200 and which is designed to eliminate, over time, the balance in an authorized deferred account. Amortization does not include the normal positive and negative fluctuations in a balancing account;

(b) "Deferred Accounting" means recording the following in a balance sheet account, with Commission authorization for later reflection in rates:

(A) Electric companies, gas utilities, and steam heat utilities: a current expense or revenue associated with current service, as allowed by ORS 757.259; or

(B) Large telecommunications utilities: an amount allowed by ORS 759.200.

(2) Expiration: Any authorization to use a deferred account shall expire 12 months from the date the deferral is authorized to begin. If a deferral under ORS 757.259 or 759.200 is reauthorized, the reauthorization shall expire 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting, by an energy or large telecommunications utility or a customer, shall include:

(a) A description of the utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 or 759.200 under which deferral may be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period subsequent to the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: Application for reauthorization to use a deferred account shall be made not more than 60 days prior to the expiration of the previous authorization for the deferral. Application for reauthorization shall include the requirements set forth in subsections (3)(a) through (3)(e) of this rule and, in addition, the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 757.259 or 759.200 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts which have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant shall serve a notice of application upon all persons who were parties in the energy or large telecommunications utility's last general rate case. If the applicant is other than an energy or large telecommunications utility, the applicant shall serve a copy of the application upon the affected utility. A notice of application shall include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting; or for an order requiring that deferred accounting be used by an energy or large telecommunications utility;

(b) A description of the utility expense or revenue for which deferred accounting is requested;

(c) The manner in which an interested person can obtain a copy of the application;

(d) A statement that any person may submit to the Commission written comment on the application by the date set forth in the notice, which date may be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application will not authorize a change in rates, but will permit the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission's public meetings.

(8) Reply Comments: Within ten days of the due date for comments on the application from interested persons, the applicant, and the energy or large telecommunications utility if the utility is not the applicant, may file reply comments with the Commission, and shall serve those comments on persons who have filed the initial comments on the application.

(9) Amortization: Amortization in rates of a deferred amount shall only be allowed in a proceeding, whether initiated by the energy or large telecommunications utility or another party. The Commission may authorize amortization of such amounts only for utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the energy or large telecommunications utility shall provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review will encompass all or part of the period during which the deferral took place or must be reasonably representative of the deferral period. Unless authorized by the Commission to do otherwise:

(a) An energy utility shall request that amortizations of deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the energy utility shall request amortization at least annually, unless amortization of the balancing account is then in effect; or

(c) A large telecommunications utility shall request amortization of deferred accounts as soon as practical after the deferrals cease but no later than in its next rate proceeding.

(10) An electric company customer may prepay under ORS 757.259(11) all or a portion of its obligation of deferred power supply expense. The obligation must be calculated as the customer's pro rata share

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of the utility's total energy usage within the state of Oregon during 2001, multiplied by the unrecovered deferral balance at the time of prepayment. When such customer has prepaid its obligation in full, the customer may no longer be charged the power supply adjustment related to the deferral.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.105, 757.259 & 759.200

Hist.: PUC 11-1988, f. & cert. ef. 6-9-88 (Order No. 88-597); PUC 2-1990, f. & cert. ef. 3-2-90 (Order No. 90-235); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 4-1998, f. & cert. ef. 2-24-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 6-2004(Temp), f. & cert. ef. 3-24-04 thru 9-20-04; PUC 14-2004, f. & cert. ef. 9-7-04; PUC 7-2005, f. & cert. ef. 11-30-05

860-030-0005

Energy Information and Audit Services

(1) As used in division 030, the terms "cash payment," "commercial lending institution," "Commission," "cost-effective," "director," "dwelling," "dwelling owner," "energy audit," "energy conservation measure," "investor-owned utility," "residential customer," "space heating," and "tenant" shall have the meanings set forth in ORS 469.631.

(2) Investor-owned energy utilities shall notify their customers annually of the availability of energy audits without direct charge to the customers. Such notification shall be made:

- (a) In a bill insert or other direct mailing; and
- (b) Stating the types of assistance and technical advice available.

(3) Energy audits:

(a) Except as provided in section (5) of this rule, each energy utility shall provide energy audits to eligible customers upon request. The audit shall be performed in accordance with the provisions of ORS 469.631(8) and 469.633(2). The energy utility may set a schedule of reasonable charges for residential energy audits performed beyond the first energy audit for an individual customer in a particular residence;

(b) If an energy utility's records do not contain sufficient data to establish a normal consumption for the customer in the dwelling (for example, a newly-established residence or a residence using a supplemental fuel, maintained at approximately 70 degrees F.), the energy utility shall make a reasonable estimate of such consumption for the purpose of completing the audit; and

(c) If the dwelling requested to be audited is a rental unit, the audit shall include a heating cost estimate using average temperatures and typical lifestyles. A statement shall be included to the effect that a household's energy bill will contain charges for uses in addition to space heating. Such heating cost estimate and statement shall be displayed on the audit or a separate document suitable for conspicuous posting.

(4) An eligible customer is any customer of the energy utility receiving residential electric or natural gas service.

(5) Primary responsibility for furnishing an energy audit lies with the energy utility providing the primary source of home heating energy, and an energy utility, not a primary supplier, may discharge its energy audit obligation by arranging for the primary supplier of space heating to perform the energy audit.

(6) Any residential customer using a space-heating fuel other than electricity or natural gas who receives service from an electric company shall be eligible for an energy audit from that utility if no other audit is obtainable. The electric company may set a schedule of reasonable charges for these audits which shall be separate from the periodic utility bill.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 14-1985, f. & ef. 9-27-85 (Order No. 85-891); PUC 15-1985, f. & ef. 10-1-85 (Order No. 85-896); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-030-0010

Cost Effectiveness

(1) "Cost-effective," as defined in ORS 469.631(4), relates an energy conservation measure's cost, life cycle, and the cost of alternative energy facilities. An energy utility's cost-effectiveness calculations should be consistent with the utility's most recently acknowledged least-cost plan pursuant to Order No. 89-507.

(2) Unless otherwise demonstrated in an acknowledged energy utility least-cost plan, the following energy conservation measures are deemed to be in all installations:

- (a) Caulking;
- (b) Weather stripping;
- (c) Timed (set-back) thermostats (except when used with heat pumps); and
- (d) Water heater, steam pipe, and hot and cold water pipe wraps.

(3) Unless otherwise demonstrated in an acknowledged energy utility least-cost plan, the following energy conservation measures are deemed to be cost-effective when installed along with certain other energy conservation measures, as indicated:

(a) Ground cover, when installed in conjunction with under-floor insulation;

(b) Vapor barrier materials, when installed in conjunction with wall, ceiling, or under-floor insulation;

(c) Dehumidifiers, when installed in conjunction with storm windows and doors, and caulking and weather stripping of all openings allowing infiltration; and

(d) Attic ventilation, excluding power ventilators, when installed in conjunction with ceiling or attic insulation.

(4) The following energy conservation measures shall be deemed to have the indicated life cycles:

(a) Attic, ceiling, wall and under-floor insulation — 30 years.

(b) Insulation of walls in heated basements — 30 years.

(c) Insulation of heating system supply and return air ducts — 30 years.

(d) Thermal doors — 30 years.

(e) Storm windows — 15 years.

(f) Windows meeting the requirements of Chapter 53 of the Oregon Residential Energy Code, and window replacements — 25 years.

(g) Storm doors — 7 years.

(h) Electronic furnace ignition (gas) — 10 years.

(5) Within 30 days after approval of an energy utility's avoided-cost filing submitted in compliance with OAR 860-029-0040 or 860-030-0007, such utility shall submit for the Commission's approval the computations used to determine the cost effectiveness of weatherization measures. The computations shall include present worth of energy and capacity saved per unit for different life cycles, recognizing, where appropriate, line losses, administrative costs of conservation programs, and revenues from additional wholesale sales made possible by the conservation activity. At the same time, such utility shall file tariffs relating to payments for weatherization measures using the new cost-effectiveness computations, to become effective 30 days after submission.

(6) Energy and capacity savings due to conservation shall be considered firm for purposes of the calculations in OAR 860-030-0010(5). The calculated costs as specified in section (5) of this rule shall be multiplied by 1.1 to determine the cost effectiveness of the conservation alternative.

[Publications: Publications referenced are available from the Commission.]

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 11A-1985(Temp), f. & ef. 7-16-85 (Order No. 85-639); PUC 14-1985, f. & ef. 9-27-85 (Order No. 85-891); PUC 15-1985, f. & ef. 10-1-85 (Order No. 85-896); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 93-035); PUC 3-1993, f. & cert. ef. 1-8-93 (Order No. 92-1792); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-030-0015

Residential Energy Conservation Financing

(1) An eligible dwelling owner may obtain a loan or a cash payment from or through the energy utility for energy conservation measures.

(2) Financing:

(a) The loan shall be made in accordance with the following terms, conditions, and limitations:

(A) A principal amount of up to \$5,000;

(B) On a loan from or through an electric company, an interest rate that does not exceed 6.5 percent annually;

(C) On a loan from or through a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property improvement loans (24 Code of Federal Regulations (CFR), subsection 201.4(a)) on the date of the loan application, but not lower than 6.5 percent or higher than 12 percent;

(D) A repayment period of not more than ten years;

(E) Unless waived by the energy utility, a minimum monthly payment of not less than \$15; and

(F) To eligible dwelling owners with approved credit.

(b) The cash payment shall be in the amount of:

(A) Twenty-five percent of the cost-effective portion of the energy conservation measures recommended under subsection (2)(c) of this rule, including installation (but not including the dwelling owner's own labor), not to exceed the cost of the measure; or

(B) \$350, whichever is less.

(c) Any dwelling owner is eligible for financing under this rule, provided:

(A) A valid energy audit preceded the work and established the cost-effective portion of the recommended measures;

(B) The measures installed are those recommended by the energy utility; and

(C) The dwelling has a space-heating system, installed and operational, which is designed to heat the living space of the customer's

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dwelling, and which draws its energy for operation from the energy utility from which financing is sought.

(d) A dwelling owner who acquires a dwelling for which a previous loan was obtained under this rule may obtain a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when there remain cost-effective energy conservation measures to be undertaken with regard to the dwelling.

(3) An energy utility shall not make a loan or a cash payment for the installation of urea-formaldehyde wall insulation.

[Publications: Publications referenced are available from the Commission.]

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 11-1981(Temp), f. & ef. 10-30-81 (Order No. 81-778); PUC 2-1982, f. & ef. 2-26-82 (Order No. 82-130); PUC 10-1985, f. & ef. 7-5-85 (Order No. 85-619); PUC 11A-1985(Temp), f. & ef. 7-16-85 (Order No. 85-639); PUC 11B-1985(Temp), f. 7-16-85, ef. 9-20-85 (Order No. 85-639); PUC 28-1985, f. & ef. 12-20-85 (Order No. 85-1212); PUC 15-1989, f. & cert. ef. 11-3-89 (Order No. 89-1465); PUC 11-1992(Temp), f. & cert. ef. 6-15-92 (Order No. 92-856); PUC 2-1993, f. & cert. ef. 1-8-93 (Order No. 92-1793 & 93-035); PUC 3-1993, f. & cert. ef. 1-8-93 (Order No. 92-1792); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-030-0018

Rental Unit Additional Financing

(1) After December 31, 1985, energy utilities, upon request of final certification from the Department of Energy, under ORS chapter 469, shall offer additional financing as described in section (3) of this rule for energy conservation measures installed by a dwelling owner who rents the dwelling to a tenant whose dwelling unit receives energy for space heating from an energy utility.

(2) Upon being notified by the Department of Energy that it has committed all available tax credits for rental unit additional financing for a given calendar year, an energy utility shall stop offering additional financing until it is notified that tax credits are available.

(3) The dwelling owner may select one of the following types of financing:

(a) The dwelling owner may select a low-interest loan pursuant to OAR 860-030-0015(2)(a). In such case, the dwelling owner shall be liable to repay to the energy utility the loan minus the present value to the utility of the tax credit received, as established pursuant to ORS 469.185 to 469.225;

(b) The dwelling owner may select a cash payment pursuant to OAR 860-030-0015(2)(b). In such case, the cash payment shall be supplemented by an amount equal to the present value to the energy utility of the tax credit received, as established pursuant to ORS 469.185 to 469.225.

(4) Investor-owned energy utilities shall notify their customers annually of the availability of the financing options with regard to the tax credit established pursuant to ORS 469.185 to 469.225 and of the option to apply directly to the State of Oregon for a tax credit.

Stat. Auth.: ORS 183, 469, 756 & 757

Stats. Implemented: ORS 756.040 & 469.631 - 469.645

Hist.: PUC 28-1985, f. & ef. 12-20-85 (Order No. 85-1212); PUC 1-1998, f. & cert. ef. 1-12-98; PUC 7-2005, f. & cert. ef. 11-30-05

860-038-0005

Definitions for Direct Access Regulation

As used in this Division:

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead, and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source, with the same term of contract.

(2) "Portfolio Options Committee" means a group appointed by the Commission, consisting of representatives from Commission Staff, the Department of Energy, and the following:

- (a) Local governments;
- (b) Electric companies;
- (c) Residential consumers;
- (d) Public or regional interest groups; and
- (e) Small nonresidential consumers.

(3) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.

(4) "Aggregate" means combining retail electricity consumers into a buying group for the purchase of electricity and related services. "Aggregator" means an entity that aggregates.

(5) "Ancillary services" means those services necessary or incidental to the transmission and delivery of electricity from resources to retail electricity consumers, including but not limited to scheduling, frequency regu-

lation, load shaping, load following, spinning reserves, supplemental reserves, reactive power, voltage control and energy balancing services.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Common costs" means costs that cannot be directly assigned to a particular function.

(8) "Competitive operation" means any activities related to the provision of electricity services conducted by the electric company's nonregulated operation or the electric company's affiliate.

(9) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(10) "Cost-of-service consumer" means a retail electricity consumer who is eligible for a cost-of-service rate under ORS 757.603.

(11) "Default supplier" means an electric company that has a legal obligation to provide electricity services to a consumer, as determined by the Commission.

(12) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services directly from an entity other than the distribution utility.

(13) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(14) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(15) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(16) "Divestiture" means the sale of all or a portion of an electric company's ownership share of a generation asset to a third party.

(17) "Economic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation or conservation, that were prudent at the time the obligations were assumed but the full benefits of which are no longer available to consumers as a direct result of ORS 757.600 to 757.667, absent transition credits. "Economic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance, and does not include fines or penalties authorized and imposed under state or federal law.

(18) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(19) "Electric company operational information" means information relating to the interconnection of customers to an electric company's transmission or distribution systems, trade secrets, competitive information relating to internal processes, market analysis reports, market forecasts, and information about an electric company's transmission or distribution system, operations, or plans or strategies for expansion.

(20) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(21) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(22) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity, measured in kilowatts, or both.

(23) "Electricity services" means electricity distribution, transmission, generation, or generation-related services.

(24) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(25) "Emergency default service" means a service option provided by an electric company to a nonresidential consumer that requires less than five business days' notice by the consumer or its electricity service supplier.

(26) "Fully distributed cost" means the cost of an electric company good or service calculated in accordance with the procedures set forth in OAR 860-038-0200.

(27) "Functional separation" means separating the costs of the electric company's business functions and recording the results within its accounting records, including allocation of common costs.

(28) "Joint marketing" means the offering (including marketing, promotion, and/or advertising) of retail electric services by an electric company in conjunction with its competitive operation to consumers either through contact initiated by the electric company, its affiliate, or through contact initiated by the consumer.

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(29) "Large nonresidential consumer" means a nonresidential consumer whose kW demand at any point of delivery is greater than 30 kW during any two months within a prior 13-month period.

(30) "Load" means the amount of electricity delivered to or required by a retail electricity consumer at a specific point of delivery.

(31) "Local energy conservation" means conservation measures, projects, or programs that are installed or implemented within the service territory of an electric company.

(32) "Low-income weatherization" means repairs, weatherization and installation of energy efficient appliances and fixtures for low-income residences for the purpose of enhancing energy efficiency.

(33) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(34) "Multi-state electric company" means an electric company that provided regulated retail electric service in a state in addition to Oregon prior to January 1, 2000.

(35) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(36) "Net system power mix" means the mix of all power generation within the state or other region less all specific purchases from generation facilities in the state or region, as determined by the Department of Energy.

(37) "New" as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company.

(38) "New renewable energy resource" means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation on or before July 23, 1999. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before July 23, 1999.

(39) "Non-energy attributes" means the environmental, economic, and social benefits of generation from renewable energy facilities. These attributes are normally transacted in the form of Tradable Renewable Certificates.

(40) "Nonresidential consumer" means a retail electricity consumer who is not a residential consumer.

(41) "Department of Energy" means the Oregon Department of Energy created under ORS 469.030.

(42) "Ongoing valuation" means the process of determining transition costs or benefits for a generation asset by comparing the value of the asset output at projected market prices for a defined period to an estimate of the revenue requirement of the asset for the same time period.

(43) "One-time administrative valuation" means the process of determining the market value of a generation asset over the life of the asset, or a period as established by the Commission, using a process other than divestiture.

(44) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

(45) "Oregon share" means, for a multi-state electric company, an interstate allocation based upon a fixed allocation or method of allocation established in a Resource Plan or, in the case of an electric company that is not a multi-state electric company, 100 percent.

(46) "People's utility district" has the meaning given that term in ORS 261.010.

(47) "Portfolio" means a set of product and pricing options for electricity.

(48) "Proprietary consumer information" means any information compiled by an electric company on a consumer in the normal course of providing electric service that makes possible the identification of any individual consumer by matching such information with the consumer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the consumer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the consumer to whom the information relates does not constitute proprietary consumer information.

(49) "Qualifying expenditures" means those expenditures for energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources, provided that the Department of Energy may establish by rule a limit on the maximum above-market cost for renewable energy that is allowed as a credit.

(50) "Registered dispute" means an unresolved issue affecting a retail electricity consumer, an ESS, or an electric company that is under investi-

gation by the Commission's Consumer Services Division but is not the subject of a formal complaint.

(51) "Regulated charges" means charges for services subject to the jurisdiction of the Commission.

(52) "Regulatory assets" means assets that result from rate actions of regulatory agencies.

(53) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; and

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(54) "Residential consumer" means a retail electricity consumer that resides at a dwelling primarily used for residential purposes. "Residential consumer" does not include retail electricity consumers in a dwelling typically used for residency periods of less than 30 days, including hotels, motels, camps, lodges, and clubs. As used in this section, "dwelling" includes but is not limited to single-family dwellings, separately metered apartments, adult foster homes, manufactured dwellings, recreational vehicles, and floating homes.

(55) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting, or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after July 23, 1999, whether or not each end user purchases the electricity from the electric utility. For purposes of this definition, a new retail electricity consumer means a retail electricity consumer that is unaffiliated with the retail electricity consumer previously served after March 1, 2002, at the site.

(56) "Self-directing consumer" means a retail electricity consumer that has used more than one average megawatt of electricity at any one site in the prior calendar year or an aluminum plant that averages more than 100 average megawatts of electricity use in the prior calendar year, that has received final certification from the Department of Energy for expenditures for new energy conservation or new renewable energy resources and that has notified the electric company that it will pay the public purpose charge, net of credits, directly to the electric company in accordance with the terms of the electric company's tariff regarding public purpose credits.

(57) "Serious injury to person" has the meaning given in OAR 860-024-0050.

(58) "Serious injury to property" has the meaning given in OAR 860-024-0050.

(59) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) A single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Buildings and structures in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings and structures; and

(C) Land shall be considered to be contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(60) "Small nonresidential consumer" means a nonresidential consumer that is not a large nonresidential consumer.

(61) "Special contract" means a rate agreement that is justified primarily by price competition or service alternatives available to a retail electricity consumer, as authorized by the Commission under ORS 757.230.

(62) "Structural separation" means separating the electric company's assets by transferring assets to an affiliated interest of the electric company.

(63) "Total transition amount" means the sum of an electric company's transition costs and transition benefits.

(64) "Traditional allocation methods" means, in respect to a multi-state electric company, inter-jurisdictional cost and revenue allocation methods relied upon in such electric company's last Oregon rate proceeding completed prior to December 31, 2000.

(65) "Transition benefits" means the value of the below-market costs of an economic utility investment.

(66) "Transition charge" means a charge or fee that recovers all or a portion of an uneconomic utility investment.

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(67) "Transition costs" means the value of the above-market costs of an uneconomic utility investment.

(68) "Transition credit" means a credit that returns to consumers all or a portion of the benefits from an economic utility investment.

(69) "Transmission grid" means the interconnected electrical system that transmits energy from generating sources to distribution systems and direct service industries.

(70) "Unbundling" means the process of assigning and allocating a utility's costs into functional categories.

(71) "Uneconomic utility investment" means all Oregon allocated investments made by an electric company that offers direct access under ORS 757.600 to 757.667, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and work-force commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of ORS 757.600 to 757.667, absent transition charges. "Uneconomic utility investment" does not include costs or expenses disallowed by the Commission in a prudence review or other proceeding, to the extent of such disallowance and does not include fines or penalties as authorized by state or federal law.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 23-2001, f. & cert. ef. 10-1-01; PUC 5-2002, f. & cert. ef. 2-8-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 18-2002, f. & cert. ef. 10-17-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2005, f. & cert. ef. 11-30-05

860-038-0300

Electric Company and Electricity Service Suppliers Labeling Requirements

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.

(2) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers at least quarterly. The information must be based on the available service options. The information must be supplied using a format prescribed by the Commission. An electric company must also include on every bill a URL address, if available, for a world-wide web site where this information is displayed. The electric company must report price information for each service or product for residential consumers as the average monthly bill and price per kilowatt-hour for monthly usage levels of 250, 500, 1,000 and 2,000 kilowatt-hours, for the available service options.

(3) An electric company and an electricity service supplier must provide price, power source and environmental impact information on or with bills to nonresidential consumers using a format prescribed by the Commission. The electric company or electricity service supplier must provide a URL address, if available, for a world-wide web site that displays the power source and environmental impact information for the products sold to consumers. An electric company and an electricity service supplier must report price information for nonresidential consumers on each bill as follows:

(a) The price and amount due for each service or product that a non-residential consumer is purchasing;

(b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;

(c) The amount of any public purpose charge; and

(d) The amount of any transition charge or credit.

(4) For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the net system power mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the net system power mix. The electric company must report power source and environmental impact information for standard offer sales based on the net system power mix.

(5) For purposes of power source and environmental impact reporting, an ESS should use the net system power mix for the current calendar year unless the ESS is able to demonstrate a different power source and environmental impact. An ESS demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar

year. Power source must be reported as the percentages of the total product supply including the following:

(a) Coal;

(b) Hydroelectricity;

(c) Natural gas;

(d) Nuclear; and

(e) Other fuels including but not limited to new renewable resources, if over 1.5 percent of the total fuel mix.

(6) Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:

(a) Carbon dioxide, measured in lbs./kWh of CO₂ emissions;

(b) Sulfur dioxide, measured in lbs./kWh of SO₂ emissions;

(c) Nitrogen oxides, measured in lbs./kWh of NO_x emissions; and

(d) Spent nuclear fuel measured in mg/kWh of spent fuel.

(7) Every bill to a direct access consumer must contain the ESS's and the electric company's toll-free number for inquiries and instructions as to those services and safety issues for which the consumer should directly contact the electric company.

(8) The ESS must provide price, power source, and environmental impact in all contracts and marketing information.

(9) The electric company must provide price, power source, and environmental impact in all standard offer marketing information.

(10) Beginning April 1, 2003, and on April 1st thereafter for the prior calendar year, each electric company, and each ESS making any claim other than net system power mix, must file a reconciliation report on forms prescribed by the Commission. The report must provide a comparison of the fuel mix and emissions of all of the seller's certificates, purchase or generation with the claimed fuel mix and emissions of all of the seller's products and sales.

(11) Each ESS and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 7-2005, f. & cert. ef. 11-30-05

860-038-0400

Electricity Service Supplier Certification Requirements

(1) An electricity service supplier (ESS) must be certified by the Commission to sell electricity services to consumers.

(2) An ESS must be certified as either scheduling or nonscheduling as prescribed in OAR 860-038-0410.

(3) The initial certification fee is \$400.

(4) The annual renewal fee is \$200.

(5) An ESS applicant must file an application that contains the following information:

(a) Name of applicant, including owners, directors, partners, and officers, with a description of the work experience of key personnel in the sale, procurement, and billing of energy services or similar products;

(b) Name, address, and phone number of the ESS applicant's regulatory contact;

(c) Proof of authorization to do business in the state of Oregon;

(d) Dun and Bradstreet number, if available;

(e) Confirmation that the applicant (including owners, directors, partners, and officers) has not violated consumer protection laws or rules in the past three years;

(f) Audited financial statements of the ESS applicant (and its guarantor, if applicable) and credit reports consisting of:

(A) A balance sheet, income statement, and statement of cash flow for each of the three years preceding the filing and for the interim quarters between the end of the last audited year and the filing date; or

(B) For an applicant that has been in operation for less than three years, the audited balance sheets, income statements, and statements of cash flow for each of the years the company was in operation and for the interim quarters between the end of the last audited year and the filing date; or

(C) For an applicant that has been in operation for less than 12 months on the date the application is filed, such financial statements as are kept in the regular course of the applicant's business operations and pro-forma financial statements for a period of not less than 36 months.

(D) If audited financial statements are unavailable, the applicant may submit unaudited financial statements for each of the three years preceding the filing and for the interim quarters between the end of the last unaudited year and the filing date. The applicant must also submit a statement explaining why audited statements are not available.

(g) A showing of creditworthiness through documentation of tangible assets in excess of liabilities (i.e., tangible net worth) of at least \$1,000,000

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on its most recent balance sheet and demonstration of either its own investment grade credit rating pursuant to (A) or fulfillment of bond/guaranty requirements pursuant to (B):

(A) Investment grade rating means a suitable rating on the long term, senior unsecured debt, or if this rating is unavailable, the corporate rating, of a major credit rating agency.

(B) An applicant may use any of the financial instruments listed below, in an amount commensurate with the services and products it intends to offer, to satisfy the credit requirements established by this rule.

(i) Cash or cash equivalent (i.e., cashier's check);

(ii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 18 months;

(iii) A bond in a form acceptable to the Commission, irrevocable for a period of at least 18 months; or

(iv) A guaranty in a form acceptable to the Commission issued by a principal of the applicant or a corporation holding controlling interest in the applicant, which is irrevocable for at least 18 months. To the extent the applicant relies on a guaranty, the applicant must provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the cash or cash equivalent needed to fund the guaranty.

(h) A showing of technical competence in energy procurement and delivery, information systems, billing & collection, and if subject to the requirements of section 16 of this rule, safety & engineering;

(i) A showing that its financial and technical competence is consistent with the services and products it intends to offer, and the targeted customer class(es) and geographical areas; and

(j) A statement as to whether the ESS is applying for certification as a scheduling or nonscheduling ESS and information documenting an ability to comply to the requirements of OAR 860-038-0410; and

(k) The authorized representative of the applicant must state that all information provided is true and correct and sign the application.

(6) At a minimum, an applicant must attest that it will:

(a) Furnish to consumers a toll-free number or local number that is staffed during normal business hours to enable a consumer to resolve complaints or billing disputes and a statement of the ESS's terms and conditions that detail the customer's rights and responsibilities;

(b) Comply with all applicable laws, rules, Commission orders, and electric company tariffs;

(c) Maintain insurance coverage, security bond, or other financial assurance commensurate with the types and numbers of consumers and loads being served, meet any other credit requirements contained in the electric company's tariffs, and cover creditors for a minimum of 90 days from the date of cancellation; and

(d) Adequately respond to Commission information requests within 10 business days.

(7) As conditions for certification, an ESS must agree to:

(a) Enter into an agreement or agreements with each respective electric company to assign to the electric companies any federal system benefits available from the Bonneville Power Administration to the residential and small-farm customers who receive distribution from an electric company and are served by the ESS; and

(b) Not enter into a Residential Sale and Purchase Agreement with the Bonneville Power Administration pursuant to Section 5(c) of the Pacific Northwest Power Act concerning federal system benefits available to residential and small farm customers receiving distribution from an electric company.

(8) Staff will notify interested persons of the application, allow 14 days from the date of notification for the filing of protests to the application (through submission of an email or letter to the staff), review the application, and make a recommendation to the Commission whether the application should be approved or denied.

(9) An applicant or a protesting party may request a hearing within seven calendar days of the date of the staff recommendation. Upon determining the appropriateness of the request, the Commission will conduct a hearing as provided for in division 014 of the Commission's rules.

(10) The Commission may issue an Order granting the applicant's request for certification upon a finding that:

(a) The applicant paid the initial certification PUC fee, as required by OAR 860-038-0400(3);

(b) The applicant filed an application containing accurate, complete and satisfactory information that demonstrates it meets the requirements to be certified as an ESS.

(11) If the Commission grants the application, the Commission may include any conditions it deems reasonable and necessary. Further, upon granting the application, the Commission will certify the ESS for a period of one year from the date of the order.

(12) An ESS must take all reasonable steps, including corrective actions, to ensure that persons or agents hired by the ESS adhere at all times

to the terms of all laws, rules, Commission orders, and electric company tariffs applicable to the ESS.

(13) An ESS must notify the Commission that it will not be renewing its certification or it must renew its certification each year as follows:

(a) An ESS must submit its application for renewal 30 days prior to the expiration date of its current certificate;

(b) In its application for renewal the ESS must include the renewal fee, update the information specified in subsections (5)(a), (b), (i), and (j) of this rule, and state whether it violated or is currently being investigated for violation of any attestation made under the current certificate. The ESS must state that it continues to attest that it will meet the requirements of sections (6) and (7) of this rule. The authorized representative of the ESS must state that all information provided is true and correct and sign the renewal application;

(c) If the Commission takes no action on the renewal application, the renewal is granted for a period of one year from the expiration date of the prior certificate;

(d) If a written complaint is filed, or if on the Commission's own motion, the Commission has reason to believe the renewal should not be granted, the Commission will conduct a revocation proceeding per section (14) of this rule. The renewal applicant will be considered temporarily certified during the pending revocation proceeding.

(14) Upon review of a written complaint or on its own motion the Commission may, after reasonable notice and opportunity for hearing, revoke the certification of an ESS for reasons including, but not limited to, the following:

(a) Material misrepresentations in its application for certification or in any report of material changes in the facts upon which the certification was based;

(b) Material misrepresentations in customer solicitations, agreements, or in the administration of customer contracts;

(c) Dishonesty, fraud, or deceit that benefits the ESS or disadvantages customers;

(d) Demonstrated lack of financial, or operational capability; or

(e) Violation of agreements stated in sections (6) and (7) of this rule.

(15) An ESS must promptly report to the Commission any circumstances or events that materially alter information provided to the Commission in the certification or renewal process or otherwise materially impacts their ability to reasonably serve electricity consumers in Oregon.

(16) Each ESS that owns, operates, or controls electrical supply lines and facilities subject to ORS 757.035 must have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service. Each such ESS must inspect its lines and facilities in such a manner and with such frequency as may be needed to ensure a reasonably complete knowledge about their condition and adequacy at all times. Such record must be kept of the conditions found as the ESS considers necessary to properly maintain its system, unless in special cases the Commission specifies a more complete record. The ESS must have written plans describing its inspection, operation, and maintenance programs necessary to ensure the safety and reliability of the facilities. The written plans and records required herein must be made available to the Commission upon request. The ESS must report serious injuries to persons or property in accordance with ORS 860-024-0050.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 23-2001, f. & cert. ef. 10-11-01; PUC 7-2005, f. & cert. ef. 11-30-05

860-038-0410

Scheduling

(1) Each ESS shall be certified as either scheduling or nonscheduling.

(2) Each scheduling ESS shall schedule the resources to serve the direct access loads for which it has scheduling responsibility with the appropriate control area operators. Scheduling shall be in accordance with all generally accepted regional and Western Electricity Coordinating Council rules and guidelines.

(a) Only a single scheduling ESS may schedule all the resources and other services for any single direct access consumer. Multiple ESSs may provide services to any individual direct access consumer, but only through a single scheduling ESS;

(b) Each scheduling ESS shall be responsible for ensuring that all necessary point-to-point transmission services have been acquired across the facilities of third parties, above and beyond the network integration transmission service provided on the facilities of the electric company to serve the direct access loads for which it has scheduling responsibility;

(c) Each scheduling ESS shall be responsible for forecasting the requirements for serving the direct access loads for which it has scheduling responsibility and arranging for resources;

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(d) Each scheduling ESS shall be responsible for settling imbalances with electric companies for the total resources and direct access loads for which it has scheduling responsibility.

(3) A nonscheduling ESS must contract with a scheduling ESS or control area operator for all scheduling services.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600 - 757.667
Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 7-2005, f. & cert. ef. 11-30-05

**Secretary of State,
Corporation Division
Chapter 160**

Adm. Order No.: CORP 4-2005
Filed with Sec. of State: 12-1-2005
Certified to be Effective: 12-1-05
Notice Publication Date: 11-1-05
Rules Repealed: 160-100-0300

Subject: This rule is being deleted because the Corporation Division has discontinued the practice it outlines. The rule was not effective in addressing the problem.

Rules Coordinator: Kristine T. Hume—(503) 986-2356

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

Adm. Order No.: ELECT 7-2005
Filed with Sec. of State: 12-14-2005
Certified to be Effective: 12-14-05
Notice Publication Date: 11-1-05
Rules Amended: 165-001-0000

Subject: The proposed amendment of this rule updates language to reflect changes that were made to law during the 2005 Legislative session that allow notice of administrative rules to be distributed via electronic mail.

Rules Coordinator: Brenda Bayes—(503) 986-1518

**165-001-0000
Notice of Proposed Rule**

Before adopting, amending or repealing any permanent rule, the Secretary of State, Elections Division will 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 of the rule;

(2) By mailing, or transmitting by electronic mail a copy of the Statement of Need and Fiscal Impact and the Notice of Proposed Rulemaking, or the Notice of Proposed Rulemaking Hearing, at least 28 days prior to the effective date of the rule, to each person who has requested to be included on the Elections Division's subscription service established pursuant to ORS 183.335(8);

(3) By mailing, or transmitting by electronic mail a copy of the text of the proposed rule to any person upon request;

(4) By mailing, or transmitting by electronic mail a copy of the Statement of Need and Fiscal Impact, the Notice of Proposed Rulemaking, or the Notice of Proposed Rulemaking Hearing, and the text of the proposed rule to the following persons or organizations at least 28 days prior to the effective date:

- (a) County Clerks;
- (b) The chair or designee of each statewide political party;
- (c) Members of the Oregon Legislature;
- (d) The Governor's legal counsel;
- (e) Attorney General's office;
- (f) League of Oregon Cities;
- (g) Association of Oregon Counties;
- (h) Oregon Special Districts Association;
- (i) Oregon School Boards Association; and
- (j) Capitol Press Room.

(5) By mailing, or transmitting by electronic mail a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(6) Within 10 business days after the adoption, amendment or repeal of any temporary or permanent administrative rule, the Secretary of State, Elections Division will provide, by mail, or electronic mail a copy of the certificate and order and the text of the adopted rule to each person or

organization listed in sections (2) through (5) of this rule and to the Legislative Counsel, as required by ORS 183.715.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183.335 & 183.341
Hist.: SD 103, f. & ef. 1-22-76; Elect 16-1994, f. & cert. ef. 8-25-94; ELECT 9-1997, f. & cert. ef. 10-27-97; ELECT 14-2001, f. & cert. ef. 6-15-01; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 7-2005, f. & cert. ef. 12-14-05

Adm. Order No.: ELECT 8-2005
Filed with Sec. of State: 12-14-2005
Certified to be Effective: 12-14-05
Notice Publication Date: 10-1-05
Rules Adopted: 165-007-0280

Subject: This proposed rule adopts notification and translation requirements for county clerks who choose to prepare and make available an official ballot translated into Spanish for any election.

Rules Coordinator: Brenda Bayes—(503) 986-1518

**165-007-0280
Spanish Language Ballots**

A county elections official may choose to prepare and make available an official ballot translated into Spanish for any election. If a county chooses to prepare and make available a Spanish language official ballot the following procedures must be followed:

(1) Not later than the 70th day before any election the county elections official must notify the Division in writing of the official's decision to prepare and make ballots available in Spanish. The notice must include the method by which Spanish ballots will be made available to electors and the method by which those ballots voted and returned by 8pm on election night will be tallied.

(2) To guarantee consistency of translated material the county elections official must use the Secretary of State's certified vendor for translation; and

(3) The cost of translation must be paid directly to the vendor by the county.

Stat. Auth.: ORS 246.150, 254.465, 254.470
Stats. Implemented: ORS 247 & 254
Hist.: ELECT 8-2005, f. & cert. ef. 12-14-05

Adm. Order No.: ELECT 9-2005
Filed with Sec. of State: 12-14-2005
Certified to be Effective: 12-14-05
Notice Publication Date: 11-1-05
Rules Amended: 165-010-0005

Subject: This proposed rule amendment designates the *2006 State Candidate's Manual: Major Political Party*; *2006 State Candidate's Manual: Nonpartisan*; *2006 State Candidate's Manual: Minor Political Party*; *2006 State Candidate's Manual: Assembly of Electors*; *2006 State Candidate's Manual: Individual Electors*; and the *2006 County Candidate's Manual* and associated forms as the procedures and forms used by candidates filing and running for elected office. In addition this rule designates the *2006 State Candidate's Manual: Minor Political Party* to be used for the formation of a Minor Party.

Rules Coordinator: Brenda Bayes—(503) 986-1518

**165-010-0005
Designating the State Candidates Manuals, County Candidate's Manual and Forms**

(1) The Secretary of State designates the *2006 State Candidate's Manual: Major Political Party* and associated forms as the procedures and forms to be used by major political party candidates filing and running for state elective office.

(2) The Secretary of State designates the *2006 State Candidate's Manual: Nonpartisan* and associated forms as the procedures and forms to be used by nonpartisan candidates filing and running for state elective office.

(3) The Secretary of State designates the *2006 State Candidate's Manual: Minor Political Party* and associated forms as the procedures and forms to be used to form a Minor Political Party and by minor political party candidates filing and running for state elective office.

(4) The Secretary of State designates the *2006 State Candidate's Manual: Assembly of Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by assembly of electors for state elective office.

ADMINISTRATIVE RULES

(5) The Secretary of State designates the *2006 State Candidate's Manual: Individual Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by individual electors for state elective office.

(6) The Secretary of State designates the *2006 County Candidate's Manual* and associated forms as the procedures and forms to be used by county office candidates and precinct committee person candidates filing and running for elective office.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 246.120, 246.150 & 249.009
Stats. Implemented: ORS 246.120, 246.150 & 249.009
Hist.: SD 35-1980, f. & ef. 3-6-80; SD 31-1983, f. & ef. 12-20-83; SD 5-1986, f. & ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 2-2004(Temp), f. & cert. ef. 4-9-04 thru 10-6-04; Administrative correction 10-22-04; ELECT 9-2005, f. & cert. ef. 12-14-05

Adm. Order No.: ELECT 10-2005

Filed with Sec. of State: 12-14-2005

Certified to be Effective: 12-14-05

Notice Publication Date: 10-1-05, 11-1-05

Rules Amended: 165-014-0005, 165-014-0110

Subject: 165-014-0005: This proposed rule amendment designates the *2006 State Initiative and Referendum Manual*; *2006 Recall Manual*; and the *2006 County Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the initiative, referendum and recall processes. In addition this proposed rule amendment designates the *2006 County, City and District Referral Manual* to be used for the local referral process.

165-014-0110: The proposed rule amendment for OAR 165-014-0110 would incorporate into the Appendix for statistical sampling procedures for local petitions an accounting for triplicate signatures. Additionally to avoid confusion with the appendix for statistical sampling procedures for state petitions the local petition Appendix is now designated as Appendix 2.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0005

Designating the Initiative, Referendum and Recall Manuals and Forms

(1) The Secretary of State designates the *2006 State Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the state initiative and referendum process.

(2) The Secretary of State designates the *2006 Recall Manual* and associated forms as the procedures and forms to be used for the recall process.

(3) The Secretary of State designates the *2006 County Initiative and Referendum Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the county initiative and referendum process.

(4) The Secretary of State designates the *2006 County, City and District Referral Manual* and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local referral process.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 264.120, 246.150 & 250.015
Stats. Implemented: ORS 246.120, 246.150 & 250.015
Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993(Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 20-2003, f. & cert. ef. 12-5-03; ELECT 10-2005, f. & cert. ef. 12-14-05

165-014-0110

Statistical Sampling Procedures for Local and Recall Petitions

This rule is adopted to implement ORS 249.875, 250.105, 250.215, 250.315, and 255.175 and presumes that all requirements for petition filing have been met and that the petition signature sheets, as presented, are accepted for verification. The rule designates a sampling formula to be used in determining whether a county, city or district initiative or referendum

petition, or any recall petition contains the required number of signatures of electors. The sampling formula must be used for petitions requiring a number of signatures exceeding 4,500. Two signature samples may be taken in order to determine if the petition contains the required number of valid signatures of electors to qualify the petition to the ballot. The sampling formula referred to in this rule is contained in *Appendix 2*, which is incorporated into this rule by reference.

(1) The petitioners must certify upon submission of signatures that the petition contains enough unverified signatures to meet the statutory requirements. The petition is then accepted for signature verification. If the chief petitioners can not certify that the petition contains enough unverified signatures to meet the statutory requirements, the petition is not accepted.

(2) The chief petitioners must separate all signature sheets by county. The chief petitioners must then sequentially number the sheets within each county prior to submission.

(3) Prior to verification, each petition cover and signature sheet is first reviewed, and subsequently removed, if it does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator certification is sufficient.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(5) The sample size of the first sample of signatures will be 10% of the total signatures submitted for verification. The size of the second sample of signatures will be the same number used in the first sample, plus at least one additional signature.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. A "second" sample list will be produced by using the remainder of the random numbers.

(b) The "first" and "second" sample list will show the petition identification number, county number, petition signature sheet number and petition sheet line number of each signature selected for verification.

(c) The signatures selected on the "first" sampling list will be color coded with a color different than the signatures on the "second" sampling list.

(6) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the county stacks and the selected signatures are highlighted. If the selected signature line is a blank or crossed out line, the next available line below will be selected. If there are no available lines below, the line above will be selected. These changes will be noted on the random sampling selection list.

(7) A "Summary of Results of Verification" form, will be used to record the verification results.

(8) Upon completion of the procedures required in sections (1) through (7) of this rule, the county elections official will immediately begin verifying the signatures of the "first" sample. As soon as all the signatures of the "first" sample are verified, the county election official will post these results to the "First Sample" section of the Summary of Results of Verification form.

(9) The county elections official will immediately consolidate and tabulate all "first" sample data contained on the Summary of Results of Verification form.

(10) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample, no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, the "second" larger sample will be verified.

(11) The county elections official will immediately begin verifying the signatures of the "second" sample, if the petition is not accepted as a result of the "first" sample. As soon as all the signatures of the "second" sample are verified the county election official will post these results to the "Second Sample" section of the Summary of Results of Verification form.

(12) The county elections official will immediately consolidate and tabulate all "second" sample data contained on the Summary of Results of Verification form.

(13) If the results of the "first" sample do not qualify the petition, the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

ADMINISTRATIVE RULES

(14) In the event additional signatures are filed pursuant to ORS 250.165(7), 250.265(7), or 255.135(7), the county elections official has the option to either verify all additional signatures or to continue to use the sampling process described in this rule. If the county elections official chooses to verify additional signatures using the sampling process, samples will be selected solely from each additional submittal(s) of signatures.

(a) The sample size of any additional submittal(s) will be directly proportional to the combined "first" and "second" samples from the first submittal or 100 whichever is greater.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to any additional submittal of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of any additional submittal will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

[ED. NOTE: Appendix referenced is available from the agency.]
Stat. Auth.: ORS 246.150, 250.105, 250.215, 250.315 & 255.175
Stats. Implemented: ORS 249.875, 250.105, 250.215, 250.315 & 255.175
Hist.: ELECT 19-1991(Temp), f. & cert. ef. 12-20-91; ELECT 13-1993, f. & cert. ef. 4-16-93; ELECT 7-2000, f. & cert. ef. 4-5-00; ELECT 3-2004, f. & cert. ef. 4-15-04; ELECT 3-2005, f. & cert. ef. 3-22-05; ELECT 10-2005, f. & cert. ef. 12-14-05

Adm. Order No.: ELECT 11-2005
Filed with Sec. of State: 12-14-2005
Certified to be Effective: 12-14-05
Notice Publication Date: 11-1-05
Rules Amended: 165-020-0005

Subject: This proposed rule amendment designates the 2006 *City Elections Manual* and the 2006 *District Elections Manual* and associated forms as the procedures and forms used for in the city and district elections process.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-0005
Designating the City and District Elections Manuals and Forms

(1) The Secretary of State designates the 2006 *City Elections Manual* and associated forms as the procedures and forms to be used for city elections processes.

(2) The Secretary of State designates the 2006 *District Elections Manual* and associated forms as the procedures and forms to be used for district elections processes.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 246.120 & 246.150
Stats. Implemented: ORS 246.120 & 246.150
Hist.: SD 33-1980, f. & ef. 3-6-80; SD 47-1980, f. & ef. 10-17-80; SD 12-1984, f. & ef. 6-20-84; SD 40-1985, f. & ef. 11-15-85; SD 12-1986, f. & ef. 4-3-86; ELECT 34-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 11-1992(Temp), f. & cert. ef. 4-14-92; ELECT 33-1992, f. & cert. ef. 10-8-92; ELECT 36-1993, f. & cert. ef. 11-1-93; ELEC 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 4-1999, f. & cert. ef. 3-1-99; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 16-2003, f. & cert. ef. 12-5-03; ELECT 11-2005, f. & cert. ef. 12-14-05

Teacher Standards and Practices Commission Chapter 584

Adm. Order No.: TSPC 11-2005(Temp)
Filed with Sec. of State: 11-18-2005
Certified to be Effective: 1-1-06 thru 6-29-06
Notice Publication Date:
Rules Amended: 584-021-0170, 584-036-0055

Subject: 584-021-0170 *Fees* - Increases fees for issuance of a School Nurse License.

584-036-0055: *Fees* - Increases all fees for the agency for licensure and licensure services. Generates income to fund the increase in technological, telephonic and other services being provided by the agency.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-021-0170
Fees

(1) All fees are assessed for evaluation of the application and are non-refundable.

(2) The Commission issues the appropriate license at no additional cost if the applicant qualifies for it within ninety days following evaluation of the application except as provided in OAR 584-021-0160(2):

(3) The fee for evaluating an application for a school nurse license is \$100.

(4) The fee for evaluating an application for renewal of a license is \$100.

(5) The fee for each duplicate license is \$30.

(6) The fee to evaluate an application for reinstatement of an expired license is \$100 plus a late application fee of \$25 for each month or portion of a month that the license has been expired to a maximum of \$200 total.

(7) The fee for evaluating an application for reinstatement of a suspended license is \$100.

(8) The fee for evaluating an application for reinstatement of a revoked license is \$150 in addition to the \$100 application fee.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.455 - 342.495
Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1982(Temp), f. & ef. 12-9-82; TS 1-1983, f. & ef. 2-9-83; TS 6-1983, f. & ef. 10-18-83; TS 4-1985, f. & ef. 10-4-85, ef. 1-1-86; TS 1-1988, f. & ef. 1-14-88, cert. ef. 1-15-88; TS 5-1988, f. & ef. 10-6-88, cert. ef. 1-15-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TS 4-1994, f. & cert. ef. 10-15-94; TS 5-1994, f. & cert. ef. 9-29-94, cert. ef. 10-15-94; TSPC 11-2005(Temp), f. & cert. ef. 1-1-06 thru 6-29-06

584-036-0055
Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) The Commission issues the appropriate license at no additional cost if the applicant qualifies for it within 90 days following evaluation of the application. After 90 days, the applicant may attempt to satisfy the same requirements without paying another fee but must file a new application form. After one year, the applicant must pay another fee, file a new application, and satisfy all license requirements in effect at the time of filing.

(3) The fee for evaluating an application for a license based upon completion of an Oregon approved program is \$100.

(4) The fee for evaluating an application for a license not based upon completion of an Oregon approved program is \$120.

(5) The fee for evaluating an application for renewal of a license is \$100.

(6) The fee for each duplicate license is \$30.

(7) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is \$100. No additional fee is required to add an endorsement in conjunction with an application for renewal or reinstatement of a license.

(8) The fee to evaluate an application for reinstatement of an expired license is \$100 plus a late application fee of \$25 for each month or portion of a month that the license has been expired to a maximum of \$200 total.

(9) The fee for evaluating an application for reinstatement of a suspended license is \$100.

(10) The fee for evaluating an application for reinstatement of a revoked license is \$150 in addition to the \$100 application fee.

(11) Forfeiture for a check which the applicant's bank will not honor is \$25, unrelated to any evaluation fees. The total amount due shall be paid in cash or credit at the Commission's office or by a Money Order.

(12) There is no fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries.

(13) The fee for alternative assessment in lieu of the test of educational specialty is \$100.

(14) An employer and an applicant may jointly request expedited service by submitting a license application, which must include the C-1 and C-3 forms, accompanied by the regular application fee and an additional service fee of \$100.

(a) Qualified applicants will be authorized to perform all duties of the position upon receipt of the emergency licensed issued by the Commission. This emergency license and future licensure is conditional upon determination that all requirements for the license have been met.

(b) The Commission may limit the number of applications from an employing district to a maximum of 100 in any two-day period.

(15) The fee for registration of a charter school teacher is \$75 which includes the fee for required criminal records and fingerprinting costs.

(16) The fee for renewal of a charter school registration is \$25.

(17) The fee for a criminal records check including fingerprinting is \$62.

(18) The fee for a "highly qualified teacher" evaluation is \$50.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200, 342.400 & 342.985
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. &

ADMINISTRATIVE RULES

cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06

Water Resources Department
Chapter 690

Adm. Order No.: WRD 2-2005

Filed with Sec. of State: 11-22-2005

Certified to be Effective: 11-22-05

Notice Publication Date: 9-1-05

Rules Amended: 690-315-0010, 690-315-0020, 690-315-0030, 690-315-0040, 690-315-0060, 690-315-0070, 690-315-0080, 690-315-0090

Subject: The Water Resources Commission amended rules relating to Water Right Permit Extensions (OAR Chapter 690, Division 315).

These rules implement statutory changes from the 2005 legislative session. They adjust the standards the Department uses to review applications for extensions of time filed by holders of municipal use permits and clarifies that holders of municipal permits may not develop additional water under their permit until the Department approves a water management and conservation plan.

Rules Coordinator: Debbie Colbert—(503) 986-0878

690-315-0010

Purpose

(1) OAR 690-315-0010 through 690-315-0100 establish the procedures and standards by which the Department shall evaluate applications for extensions of time for water right permit holders to:

(a) Begin actual construction pursuant to ORS 537.248 or as otherwise authorized by law; or

(b) Complete construction or completely apply water to the full beneficial use pursuant to ORS 537.230 and 537.630.

(2) OAR 690-315-0010 through 690-315-0100 do not apply to permit holders requiring Federal Energy Regulatory Commission permits pursuant to ORS 537.240.

(3) Except as provided in subsection (4) of this Section, these rules shall become effective July 1, 2001, superceding OAR 690-320-0010 and all applications requesting extensions of time to begin construction and perfect water rights permits filed with the Department on or after July 1, 2001 shall be governed by OAR 690-315-0010 through 690-315-0060.

(4) Notwithstanding subsection (3), all extension applications for municipal and quasi-municipal water use permits requesting additional time to complete construction and/or apply water to full beneficial use for which the Department has not issued a Proposed Final Order by November 1, 2002, shall be governed by 690-315-0070 through 690-315-0100.

(5) For the purpose of the rules in this Division "Protest" means a written statement expressing disagreement with a proposed final order issued under OAR 690-315-0050, filed in the manner and having the content as described in OAR 690-315-0060.

(6) For the purpose of the rules in 690-315-0070 through 690-315-0100:

(a) "Municipal Water Use" means the delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing. Such uses shall not include generation of hydroelectric power;

(b) "Municipal Corporation" means any county, city, town or district as defined in ORS 198.010 or 198.180(5) that is authorized by law to supply water for usual and ordinary municipal water uses except: an irrigation district organized under ORS Chapter 545, a drainage district organized under ORS Chapter 547, a water improvement district organized under ORS Chapter 552, or a water control district organized under ORS Chapter 553;

(c) "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation, other than a public corporation, created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use;

(d) "Fish species listed as sensitive, threatened, or endangered under state or federal law" and "Listed fish species" means fish species listed as threatened or endangered under the federal Endangered Species Act of 1973 (PL 93-205, 16 U.S.C.) or listed as sensitive, threatened or endan-

gered by the Oregon State Fish and Wildlife Commission under ORS 496.172 to 496.176 and OAR chapter 635, division 100;

(e) "Use of the undeveloped portion of the permit" means the diversion of the undeveloped portion of a surface water permit or the impact on a stream from pumping the undeveloped portion of a ground water permit where the Department has determined there is a potential for substantial interference pursuant to OAR chapter 690, division 9;

(f) "Portions of waterways affected by water use under the permit" means those portions of the drainage basin at or below the point of diversion for a surface water permit or the location of impact on a stream from a ground water permit where the Department has determined there is a potential for substantial interference pursuant to OAR chapter 690, division 9 downstream to the lower-most point within the applicable river basin as identified by the Department pursuant to its authority under ORS 536.700;

(g) "Undeveloped portion of the permit" means the portion of the permit that is the difference between the maximum rate, or duty if applicable, specified in the permit and the maximum rate, or duty if applicable, diverted for beneficial use before the extension; and

(h) "Water Management and Conservation Plan" means a Water Management and Conservation Plan pursuant to OAR chapter 690, division 86.

(7) By November 30, 2006, the Water Resources Commission shall evaluate implementation of rules related to applications for extension of time for municipal water use permits.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 1-2001, f. & cert. ef. 1-31-01; WRD 1-2002, f. & cert. ef. 4-30-02; WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

690-315-0020

Application for Extension of Time for Other Than Municipal and Quasi-Municipal Water Use Permits

(1) Under this rule, water right permit holders for other than municipal or quasi-municipal uses may apply to the Department for extensions of time to complete construction and/or apply the water to the full beneficial use pursuant to ORS 537.230 or 537.630.

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a water right permit holder shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) If the water right permit holder receives delivery of the subject water right permit from a municipality, municipal corporation, or other special district, the applicant shall provide the name of the entity and evidence that a copy of the application for extension of time has been provided to the entity responsible for delivering the water;

(d) Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension:

(A) "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence;

(B) "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying.

(e) Evidence of progress made toward completion of the water development and application to full beneficial use, which includes but is not limited to:

(A) The annual accomplishments toward perfecting the water right under the terms and conditions of the permit, including the dates on which each condition contained in the relevant permit and any previous extension(s) was satisfied or the reason the condition was not satisfied;

(B) The maximum rate, or duty if applicable, of diversion, if any, made to date; and

(C) If for irrigation, a listing by year of the number of acres irrigated each year since permit issuance, the total number of acres irrigated to date under the permit or previous extension, and a copy of the application map showing the acres irrigated.

(f) A description of financial expenditures made toward completion of the water development;

(g) An estimate of the cost to complete the water development;

(h) A summary of any additional unforeseen events which delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the

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project which have significantly delayed completion of construction or perfection of the right;

(i) The date by which the water development will be completed and water put to full beneficial use;

(j) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;

(k) Justification of why the requested time in subsection (i) is needed to complete the project and/or apply the water to full beneficial use;

(l) A description of any undue hardship to the applicant which will result from denial of the extension, and that there are no other reasonable alternatives for meeting water use needs;

(m) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and these rules; and

(n) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(4) If the Department does not receive an extension application within 90 days after the required date of completion specified by the permit or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.260 or 537.410.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

690-315-0030

Application for Extension of Time to Begin Construction on Storage Projects

(1) Counties, municipalities or districts constructing new storage projects pursuant to ORS 537.248 may apply for extensions of time to begin construction.

(2) To apply for an extension of time under this rule, a water right permit holder shall submit to the Department a completed application for extension of time. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application to begin construction must include the fee specified in ORS 536.050 and an application form setting forth:

(a) The name and mailing address of the water right permit holder(s);

(b) The permit number for which an extension is requested;

(c) A summary of any unforeseen events which delayed the beginning of construction;

(d) The date by which the water development will be completed and water applied to the full beneficial use;

(e) A justification of why the requested time is needed to begin construction and fully apply water to beneficial use;

(f) Any additional information the applicant determines is relevant to evaluate the application in accordance with applicable statutory requirements and these rules; and

(g) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements.

(4) If the Department does not receive an extension application 90 days after the required date specified by the permit to begin construction or previous permit extension, the Department may begin cancellation proceedings on the permit pursuant to ORS 537.410.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 2-2005, f. & cert. ef. 11-22-05

690-315-0040

Criteria for Department Review of Extension Applications for Other Than Municipal and Quasi-Municipal Water Use Permits

(1) In order to approve an application for an extension of time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department shall find:

(a) The applicant has submitted a completed application, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;

(b) For applications filed pursuant to OAR 690-315-0020, the applicant began construction on the project within the time period required by applicable statute;

(c) The applicant can complete the project within the time period requested for the extension; and

(d) There is good cause to approve the extension.

(2) In order to make a finding of good cause to approve the extension, the Department shall consider, but is not limited to, the following criteria:

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;

(b) The cost to appropriate and apply the water to a beneficial purpose;

(c) The good faith of the appropriator;

(d) The market for water or power to be supplied;

(e) The present demands for water or power to be supplied;

(f) The income or use that may be required to provide fair and reasonable returns on investment;

(g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;

(h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;

(i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and

(j) Any other factors relevant to a determination of good cause.

(3) In determining reasonable diligence in subsection (2)(a), the Department shall consider, but is not limited to, the following factors:

(a) The amount of construction completed within the time allowed in the permit or previous extension;

(b) The amount of beneficial use made of the water during the permit or previous extension time limits;

(c) Water right permit holder conformance with the permit or previous extension conditions; and

(d) Financial investments made toward developing the beneficial water use.

(4) In determining the market and the present demand for water or power to be supplied pursuant to subsections (2)(d) and (e) above, the Department shall consider, but is not limited to, the following factors:

(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;

(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);

(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;

(d) Economic investment in the project to date;

(e) Other economic interests dependent on completion of the project; and

(f) Other factors relevant to the determination of the market and present demand for water and power.

(5) If the extension is requested pursuant to ORS 537.230 or 537.630, the applicant must have begun actual construction work, as defined in OAR 690-315-0020(3)(d)(A) and (B), during the period required by statute. If the Department finds the applicant did not begin construction by that date, the permit cannot be extended and the Department may begin cancellation proceedings pursuant to ORS 537.260 or 537.410.

(6) The Department may request additional information necessary to evaluate an application.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, cert. ef. 11-2-98; WRD 2-2005, f. & cert. ef. 11-22-05

690-315-0060

Proposed Final Order Hearing Rights

(1) The applicant or any other person adversely affected or aggrieved by the proposed final order described in OAR 690-315-0050(2) may submit a written protest to the proposed final order. The written protest must be filed within 45 days from the date of publication of the proposed final order in the Department's weekly notice.

(2) A written protest shall include:

(a) The name, address and telephone number of the petitioner;

(b) A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the petitioner, if known;

(f) Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and

(g) The protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.

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(3) Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:

- (a) Issue a final order on the extension request; or
- (b) Schedule a contested case hearing if a protest has been submitted, and:

(A) Upon review of the issues, the director finds there are significant disputes related to the proposed agency action; or

(B) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4-1998, f. & cert. ef. 11-2-98; WRD 2-2005, f. & cert. ef. 11-22-05

690-315-0070

Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits

(1) Under this rule, holders of municipal and quasi-municipal water use permits may apply to the Department for an extension of time to complete construction and/or apply the water to full beneficial use pursuant to ORS 537.230 or 537.630.

(2) To apply for an extension of time to complete construction and/or to apply the water to the full beneficial use, a holder of a municipal or quasi-municipal water use permit shall submit to the Department a completed extension application. A separate application must be completed for each permit. Application forms are available from the Department.

(3) The completed application must include the fee specified in ORS 536.050 and an application form setting forth:

- (a) The name and mailing address of the water right permit holder(s);
- (b) The permit number for which an extension is requested;

(c) For quasi-municipal water use permit holders, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d), if required under the applicable statute;

(d) For municipal water use permits issued on or after June 29, 2005, evidence of the actions taken to begin actual construction on the project, as defined in 690-315-0020(3)(d);

(e) Evidence of actions taken to develop the right within the permitted time period and/or time period of the previous extension;

(f) Evidence of compliance with conditions contained in the permit and any previous extension(s) or the reason the condition was not satisfied;

(g) Evidence of the maximum rate, or duty if applicable, diverted for beneficial use, if any, made to date;

(h) An estimate of the population served and a description of the methodology(ies) used to make the estimate;

(i) A description of financial expenditures made toward completion of the water development;

(j) An estimate of the cost to complete the water development;

(k) A summary of any events that delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project that have significantly delayed completion of construction or perfection of the right;

(l) An estimated demand projection and a description of the methodology(ies) used for the subject water right permit, considering the other water rights held by the municipal or quasi-municipal water use permit holder, and a date by which the water development is anticipated to be completed and water put to full beneficial use. Extension requests for greater than 50 years must include documentation that the demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder.

(m) A summary of the applicant's plan and schedule to complete construction and/or perfect the water right;

(n) Justification for the time requested to complete the project and/or apply the water to full beneficial use;

(o) Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and rules;

(p) Any other information required by the Department that is necessary to evaluate the application in accordance with applicable statutory requirements; and

(q) For municipal water use permits issued before November 2, 1998, for the first extension issued after June 29, 2005, the completed application must include a copy of any agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

690-315-0080

Criteria for Department Review of Extension Applications for Municipal and Quasi-Municipal Water Use Permits

(1) In order to approve an application for an extension of time for municipal and quasi-municipal water use permits holders to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, the Department shall find:

(a) The application is complete, including the fee specified in ORS 536.050. The Department shall return any incomplete or deficient applications to the applicant, and shall specify the deficiency;

(b) The applicant began actual construction on the project, as defined in 690-315-0020(3)(d), within the time period, if any, required under the applicable statute;

(c) The time requested to complete construction or apply water to full beneficial use is reasonable;

(d) The applicant can complete the project within the time period requested for the extension; and, if the request is for more than 50 years that the estimated demand projection is consistent with the amount and types of lands and uses proposed to be served by the permit holder;

(e) There is good cause to approve the extension; and

(f) For the first extension issued after June 29, 2005 for municipal water use permits issued before November 2, 1998:

(A) There are agreements regarding use of the undeveloped portion of the permit between the permit holder and a federal or state agency that include conditions or required actions that maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or

(B) It is determined that use of the undeveloped portion of the permit will maintain the persistence of listed fish species in the portions of waterways affected by water use under the permit; or

(C) If it is determined that use of the undeveloped portion of the permit would not maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit, the undeveloped portion of the permit is conditioned to maintain the persistence of listed fish species in the portions of the waterways affected by water use under the permit.

(2) The Department's finding for municipal use permits under subsection (1)(f) of this rule shall be based on existing data and advice of the Oregon Department of Fish and Wildlife (ODFW). The Department's finding shall be limited to impacts related to streamflow as a result of use of the undeveloped portion of the permit and further limited to where, as a result of use of the undeveloped portion of the permit, ODFW indicates that streamflow would be a limiting factor for the subject listed fish species.

(a) Except for municipal ground water permit extension applications where the Department has determined there is not the potential for substantial interference with surface water under OAR chapter 690 division 9, the Department shall notify ODFW of each pending municipal water use permit extension application that is subject to subsection (1)(f) of this rule and provide at least 60 days for ODFW to respond prior to issuing a proposed final order under 690-315-0050. The Department may issue a proposed final order prior to 60 days if comments are received from ODFW.

(b) Upon notifying ODFW under subsection (2)(a) of this rule, the Department shall also notify the applicant and, within 10 days, give public notice in the weekly notice published by the Department that the municipal permit extension application has been sent to ODFW for review.

(c) For ground water permits submitted to ODFW under this rule, the Department shall provide to ODFW and the applicant the Department's estimate of surface water impacts that would result from use of the undeveloped portion of the ground water permit.

(d) ODFW shall provide its written advice to the Department on the extension application within 60 days of the Department's notice in subsection (2)(a) of this rule or notify the Department that additional time, not to exceed 120 days unless the applicant consents to more time, will be needed to complete its evaluation.

(e) ODFW may recommend to the Department fishery resource protection conditions for inclusion in the proposed final order under OAR 690-315-0050 that would provide protection to maintain the persistence of listed fish species if its written advice to the Department indicates that:

(A) Use of the undeveloped portion of the permit would not maintain persistence in the portions of the waterways affected by water use under the permit; and

(B) As a result of the use of the undeveloped portion of the permit, streamflow would be a limiting factor for the listed fish species.

(f) Upon receiving ODFW's written advice, the Department shall notify the applicant and any persons that requested notification of any fishery resource protection conditions that may be proposed in the proposed final order under OAR 690-315-0050. The Department's notice shall also

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provide the applicant an opportunity to request the Department place the permit extension application on administrative hold.

(g) The Department may place fishery resource protection conditions on the undeveloped portion of the permit in the extension proposed and final order under 690-315-0050 if the Department finds that, without such conditions, use of the undeveloped portion of the permit will not maintain, in the portions of waterway affected by water use under the permit, the persistence of listed fish species.

(3) The Department's determination of good cause shall consider:

(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;

(b) The cost to appropriate and apply the water to a beneficial purpose;

(c) The good faith of the appropriator;

(d) The market and present demands for water or power to be supplied;

(e) The income or use that may be required to provide fair and reasonable returns on investment;

(f) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right; and

(g) Any events over which the water right permit holder had no control and which delayed development under the permit.

(4) In determining reasonable diligence and good faith of the holder of a municipal or quasi-municipal water use permit, the Department shall consider activities associated with the development of the right that may include, but are not limited to: water management planning; conservation planning; development of a water master plan for the Oregon Health Division; planning of a diversion system; demand forecasting; flow or water quality monitoring; source evaluation; entry into intergovernmental agreements for water delivery; property acquisition; engagement in governmental permitting or project financing; procurement of planning, design, or construction services; surveying; and any physical work performed toward completion of the system and development of the right.

(5) For municipal and quasi-municipal water use permits issued after November 2, 1998, in making a determination of good cause pursuant to subsection (3)(d) above, in addition to subsections (1)(a)–(e), (3), and (4) of this rule, the Department shall also consider, but is not limited to, the following factors:

(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;

(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic

rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);

(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;

(d) Economic investment in the project to date;

(e) Other economic interests dependent on completion of the project; and

(f) Other factors relevant to the determination of the market and present demand for water and power.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

690-315-0090

Time of Extensions and Additional Development of Municipal and Quasi-Municipal Water Use Permits

(1) Extensions may be granted for the reasonable time necessary to complete water development or apply all the water to beneficial use.

(2) A holder of a municipal or quasi-municipal water use permit is not precluded from seeking additional extensions of time as provided in OAR 690-315-0070 through 690-315-0100.

(3) Except as provided in subsection (4) and (5), any water right permit extended under OAR 690-315-0070 to 690-315-0100 shall be conditioned to provide that diversion of water beyond the maximum rate, or duty if applicable, diverted for beneficial use before the extension shall only be authorized upon issuance of a final order approving a Water Management and Conservation Plan. The required Water Management and Conservation Plan shall be submitted within 3 years of an approved extension application.

(4) Quasi-municipal water use permit holders that serve a population of less than 1000 are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary.

(5) Quasi-municipal water use permit holders that can reasonably demonstrate that fewer than 5 years is necessary to complete construction and apply the water to beneficial use are not subject to subsection (3) of this rule unless on review of the criteria under 690-315-0080(1) and (2) the Department determines that compliance with subsection (3) of this rule is necessary. Additional extensions that, together with the initial extension, exceed a cumulative total of 5 years will be subject to the requirements of subsection (3) above.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 537.230, 537.248, 537.630 & 539.010

Hist.: WRD 4 2002, f. & cert. ef. 11-1-02; WRD 2-2005, f. & cert. ef. 11-22-05

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165-014-0110	12-14-05	Amend	1-1-06	410-122-0190	12-1-05	Amend	1-1-06
165-020-0005	12-14-05	Amend	1-1-06	410-132-0140	12-1-05	Repeal	1-1-06
170-030-0055	12-15-05	Adopt	1-1-06	410-136-0420	12-1-05	Amend	1-1-06
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257-050-0020	11-18-05	Adopt	1-1-06	410-140-0400	12-1-05	Amend	1-1-06
257-050-0040	11-18-05	Amend	1-1-06	410-141-0000	1-1-06	Amend	1-1-06
257-050-0070	11-18-05	Amend	1-1-06	410-141-0060	1-1-06	Amend	1-1-06
257-050-0080	11-18-05	Repeal	1-1-06	410-141-0070	1-1-06	Amend	1-1-06

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410-141-0160	1-1-06	Amend	1-1-06	436-030-0005	1-1-06	Amend	1-1-06
410-141-0220	1-1-06	Amend	1-1-06	436-030-0007	1-1-06	Amend	1-1-06
410-141-0520	12-1-05	Amend	1-1-06	436-030-0009	1-1-06	Amend	1-1-06
410-146-0100	12-1-05	Amend	1-1-06	436-030-0015	1-1-06	Amend	1-1-06
410-147-0365	1-1-06	Amend	1-1-06	436-030-0020	1-1-06	Amend	1-1-06
411-018-0000	12-12-05	Amend	1-1-06	436-030-0023	1-1-06	Amend	1-1-06
411-018-0010	12-12-05	Amend	1-1-06	436-030-0034	1-1-06	Amend	1-1-06
411-018-0020	12-12-05	Amend	1-1-06	436-030-0055	1-1-06	Amend	1-1-06
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411-031-0050	11-16-05	Amend(T)	1-1-06	436-030-0115	1-1-06	Amend	1-1-06
411-320-0020	11-23-05	Amend(T)	1-1-06	436-030-0155	1-1-06	Amend	1-1-06
411-320-0030	11-23-05	Amend(T)	1-1-06	436-030-0165	1-1-06	Amend	1-1-06
411-320-0040	11-23-05	Amend(T)	1-1-06	436-030-0175	1-1-06	Amend	1-1-06
411-320-0050	11-23-05	Amend(T)	1-1-06	436-030-0185	1-1-06	Amend	1-1-06
411-320-0070	11-23-05	Amend(T)	1-1-06	436-030-0575	1-1-06	Amend	1-1-06
411-320-0080	11-23-05	Amend(T)	1-1-06	436-030-0580	1-1-06	Amend	1-1-06
411-320-0090	11-23-05	Amend(T)	1-1-06	436-035-0005	1-1-06	Amend	1-1-06
411-320-0100	11-23-05	Amend(T)	1-1-06	436-035-0007	1-1-06	Amend	1-1-06
411-320-0110	11-23-05	Amend(T)	1-1-06	436-035-0008	1-1-06	Amend	1-1-06
411-320-0120	11-23-05	Amend(T)	1-1-06	436-035-0009	1-1-06	Amend	1-1-06
411-320-0130	11-23-05	Amend(T)	1-1-06	436-035-0011	1-1-06	Amend	1-1-06
411-320-0140	11-23-05	Amend(T)	1-1-06	436-035-0012	1-1-06	Amend	1-1-06
411-320-0160	11-23-05	Amend(T)	1-1-06	436-035-0016	1-1-06	Amend	1-1-06
411-320-0170	11-23-05	Amend(T)	1-1-06	436-035-0017	1-1-06	Amend	1-1-06
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413-015-0205	12-1-05	Amend	1-1-06	436-035-0110	1-1-06	Amend	1-1-06
413-015-0210	12-1-05	Amend	1-1-06	436-035-0190	1-1-06	Amend	1-1-06
413-015-0211	12-1-05	Adopt	1-1-06	436-035-0230	1-1-06	Amend	1-1-06
413-015-0212	12-1-05	Adopt	1-1-06	436-035-0330	1-1-06	Amend	1-1-06
413-015-0213	12-1-05	Adopt	1-1-06	436-035-0340	1-1-06	Amend	1-1-06
413-015-0215	12-1-05	Amend	1-1-06	436-035-0350	1-1-06	Amend	1-1-06
413-015-0220	12-1-05	Amend	1-1-06	436-035-0360	1-1-06	Amend	1-1-06
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416-425-0010	11-22-05	Adopt	1-1-06	436-035-0395	1-1-06	Amend	1-1-06
416-425-0020	11-22-05	Adopt	1-1-06	436-035-0400	1-1-06	Amend	1-1-06
436-010-0005	1-1-06	Amend	1-1-06	436-035-0410	1-1-06	Amend	1-1-06
436-010-0008	1-1-06	Amend	1-1-06	436-035-0420	1-1-06	Amend	1-1-06
436-010-0210	1-1-06	Amend	1-1-06	436-035-0430	1-1-06	Amend	1-1-06
436-010-0220	1-1-06	Amend	1-1-06	436-035-0500	1-1-06	Amend	1-1-06
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436-060-0030	1-1-06	Amend	1-1-06	461-170-0020	12-1-05	Amend	1-1-06
436-060-0035	1-1-06	Amend	1-1-06	461-170-0101	12-1-05	Amend	1-1-06
436-060-0040	1-1-06	Amend	1-1-06	461-170-0102	12-1-05	Amend	1-1-06
436-060-0055	1-1-06	Amend	1-1-06	461-170-0103	12-1-05	Amend	1-1-06
436-060-0060	1-1-06	Amend	1-1-06	461-170-0104	12-1-05	Amend	1-1-06
436-060-0095	1-1-06	Amend	1-1-06	471-030-0150	12-15-05	Amend	1-1-06
436-060-0105	1-1-06	Amend	1-1-06	577-001-0100	12-15-05	Amend	1-1-06
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436-060-0150	1-1-06	Amend	1-1-06	577-060-0020	12-13-05	Amend	1-1-06
436-060-0155	1-1-06	Amend	1-1-06	581-022-1360	12-15-05	Adopt(T)	1-1-06
436-060-0180	1-1-06	Amend	1-1-06	581-022-1361	12-15-05	Adopt(T)	1-1-06
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436-120-0003	1-1-06	Amend	1-1-06	583-030-0038	12-7-05	Adopt	1-1-06
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437-002-0280	12-14-05	Amend	1-1-06	583-030-0049	12-7-05	Amend	1-1-06
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441-910-0050	1-1-06	Amend	1-1-06	619-001-0050	12-15-05	Adopt	1-1-06
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441-910-0093	1-1-06	Adopt	1-1-06	629-041-0535	7-1-06	Repeal	1-1-06
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629-605-0100	1-1-06	Amend	1-1-06	629-640-0110	1-1-06	Amend	1-1-06
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629-605-0150(T)	1-1-06	Repeal	1-1-06	629-640-0200(T)	1-1-06	Repeal	1-1-06
629-605-0170	1-1-06	Amend	1-1-06	629-640-0400	1-1-06	Amend	1-1-06
629-605-0170(T)	1-1-06	Repeal	1-1-06	629-640-0400(T)	1-1-06	Repeal	1-1-06
629-605-0173	1-1-06	Adopt	1-1-06	629-645-0000	1-1-06	Amend	1-1-06
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629-605-0175	1-1-06	Amend	1-1-06	629-645-0020	1-1-06	Amend	1-1-06
629-605-0175(T)	1-1-06	Repeal	1-1-06	629-645-0020(T)	1-1-06	Repeal	1-1-06
629-605-0180	1-1-06	Amend	1-1-06	629-645-0030	1-1-06	Amend	1-1-06
629-605-0180(T)	1-1-06	Repeal	1-1-06	629-645-0030(T)	1-1-06	Repeal	1-1-06
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629-605-0500	1-1-06	Amend	1-1-06	629-650-0040	1-1-06	Amend	1-1-06
629-605-0500(T)	1-1-06	Repeal	1-1-06	629-650-0040(T)	1-1-06	Repeal	1-1-06
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629-610-0050	1-1-06	Amend	1-1-06	629-665-0110	1-1-06	Amend	1-1-06
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629-610-0060	1-1-06	Amend	1-1-06	629-665-0120	1-1-06	Amend	1-1-06
629-610-0060(T)	1-1-06	Repeal	1-1-06	629-665-0120(T)	1-1-06	Repeal	1-1-06
629-610-0070	1-1-06	Amend	1-1-06	629-665-0210	1-1-06	Amend	1-1-06
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629-610-0090	1-1-06	Amend	1-1-06	629-665-0220	1-1-06	Amend	1-1-06
629-610-0090(T)	1-1-06	Repeal	1-1-06	629-665-0220(T)	1-1-06	Repeal	1-1-06
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629-630-0700	1-1-06	Amend	1-1-06	629-672-0200	1-1-06	Amend	1-1-06
629-630-0700(T)	1-1-06	Repeal	1-1-06	629-672-0200(T)	1-1-06	Repeal	1-1-06
629-630-0800	1-1-06	Amend	1-1-06	629-672-0210	1-1-06	Amend	1-1-06
629-630-0800(T)	1-1-06	Repeal	1-1-06	629-672-0210(T)	1-1-06	Repeal	1-1-06
629-635-0130	1-1-06	Amend	1-1-06	629-672-0220	1-1-06	Repeal	1-1-06

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629-672-0310(T)	1-1-06	Repeal	1-1-06	635-019-0080	1-1-06	Amend	1-1-06
629-674-0100	1-1-06	Amend	1-1-06	635-019-0090	1-1-06	Amend	1-1-06
629-674-0100(T)	1-1-06	Repeal	1-1-06	635-021-0080	1-1-06	Amend	1-1-06
635-004-0011	1-1-06	Adopt	1-1-06	635-021-0090	1-1-06	Amend	1-1-06
635-004-0013	1-1-06	Adopt	1-1-06	635-023-0080	1-1-06	Amend	1-1-06
635-004-0014	1-1-06	Adopt	1-1-06	635-023-0090	1-1-06	Amend	1-1-06
635-004-0016	1-1-06	Adopt	1-1-06	635-023-0095	1-1-06	Amend	1-1-06
635-004-0019	11-30-05	Amend(T)	1-1-06	635-023-0125	1-1-06	Amend	1-1-06
635-004-0019(T)	11-30-05	Suspend	1-1-06	635-023-0130	1-1-06	Amend	1-1-06
635-004-0033	11-30-05	Amend(T)	1-1-06	635-039-0080	1-1-06	Amend	1-1-06
635-004-0033	1-1-06	Amend	1-1-06	635-039-0080	1-1-06	Amend	1-1-06
635-004-0033(T)	11-30-05	Suspend	1-1-06	635-039-0090	11-29-05	Amend(T)	1-1-06
635-004-0170	1-1-06	Amend	1-1-06	635-039-0090	12-30-05	Amend(T)	1-1-06
635-005-0020	1-1-06	Amend	1-1-06	635-039-0090	1-1-06	Amend	1-1-06
635-005-0030	1-1-06	Amend	1-1-06	635-039-0090	1-1-06	Amend	1-1-06
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635-005-0045	11-29-05	Amend(T)	1-1-06	635-039-0090(T)	12-30-05	Suspend	1-1-06
635-005-0045	12-30-05	Amend(T)	1-1-06	635-045-0000	1-1-06	Amend	1-1-06
635-005-0045(T)	12-30-05	Suspend	1-1-06	635-060-0000	1-1-06	Amend	1-1-06
635-006-0215	1-1-06	Amend	1-1-06	635-060-0055	4-1-06	Amend	1-1-06
635-006-0810	1-1-06	Amend	1-1-06	635-065-0001	1-1-06	Amend	1-1-06
635-006-0850	1-1-06	Amend	1-1-06	635-065-0015	1-1-06	Amend	1-1-06
635-006-0850	1-1-06	Amend	1-1-06	635-065-0401	1-1-06	Amend	1-1-06
635-006-0910	1-1-06	Amend	1-1-06	635-065-0625	1-1-06	Amend	1-1-06
635-006-1010	1-1-06	Amend	1-1-06	635-065-0635	1-1-06	Amend	1-1-06
635-006-1010	1-1-06	Amend	1-1-06	635-065-0720	1-1-06	Amend	1-1-06
635-006-1015	1-1-06	Amend	1-1-06	635-065-0740	1-1-06	Amend	1-1-06
635-006-1015	1-1-06	Amend	1-1-06	635-065-0760	6-1-06	Amend	1-1-06
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635-006-1025	1-1-06	Amend	1-1-06	635-066-0000	1-1-06	Amend	1-1-06
635-006-1035	1-1-06	Amend	1-1-06	635-067-0000	1-1-06	Amend	1-1-06
635-006-1035	1-1-06	Amend	1-1-06	635-067-0004	1-1-06	Amend	1-1-06
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635-006-1065	1-1-06	Amend	1-1-06	635-068-0000	3-1-06	Amend	1-1-06
635-006-1075	1-1-06	Amend	1-1-06	635-069-0000	2-1-06	Amend	1-1-06
635-006-1075	1-1-06	Amend	1-1-06	635-070-0000	4-1-06	Amend	1-1-06
635-006-1085	1-1-06	Amend	1-1-06	635-071-0000	4-1-06	Amend	1-1-06
635-006-1085	1-1-06	Amend	1-1-06	635-072-0000	1-1-06	Amend	1-1-06
635-006-1095	1-1-06	Amend	1-1-06	635-073-0000	2-1-06	Amend	1-1-06
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635-006-1110	1-1-06	Amend	1-1-06	635-080-0016	1-1-06	Amend	1-1-06
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731-035-0040	11-21-05	Adopt(T)	1-1-06	735-062-0135	11-18-05	Amend	1-1-06
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734-079-0005	12-14-05	Amend	1-1-06	735-070-0010	11-18-05	Amend	1-1-06
734-079-0015	12-14-05	Amend	1-1-06	735-070-0010	1-1-06	Amend	1-1-06
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735-024-0080	1-1-06	Amend(T)	1-1-06	735-150-0055	1-1-06	Amend	1-1-06
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812-005-0800	1-1-06	Am. & Ren.	1-1-06	860-021-0326	11-30-05	Amend	1-1-06
812-006-0012	1-1-06	Amend	1-1-06	860-021-0335	11-30-05	Amend	1-1-06
812-006-0015	1-1-06	Adopt	1-1-06	860-021-0405	11-30-05	Amend	1-1-06
812-006-0030	1-1-06	Amend	1-1-06	860-021-0410	11-30-05	Amend	1-1-06
812-008-0110	1-1-06	Amend	1-1-06	860-021-0414	11-30-05	Amend	1-1-06
812-009-0160	1-1-06	Amend	1-1-06	860-021-0415	11-30-05	Amend	1-1-06
812-009-0320	1-1-06	Amend	1-1-06	860-021-0420	11-30-05	Amend	1-1-06
812-009-0400	1-1-06	Amend	1-1-06	860-022-0001	11-30-05	Amend	1-1-06
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812-009-0430	1-1-06	Amend	1-1-06	860-022-0040	11-30-05	Amend	1-1-06
820-010-0010	12-13-05	Amend	1-1-06	860-022-0046	11-30-05	Amend	1-1-06
820-010-0205	12-13-05	Amend	1-1-06	860-022-0075	11-30-05	Adopt	1-1-06
820-010-0207	12-13-05	Adopt	1-1-06	860-023-0001	11-30-05	Amend	1-1-06
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820-010-0230	12-13-05	Amend	1-1-06	860-023-0020	11-30-05	Amend	1-1-06
820-010-0255	12-13-05	Amend	1-1-06	860-023-0080	11-30-05	Amend	1-1-06
820-010-0305	12-13-05	Amend	1-1-06	860-023-0090	11-30-05	Amend	1-1-06
820-010-0427	12-13-05	Adopt	1-1-06	860-023-0100	11-30-05	Amend	1-1-06
820-010-0450	12-13-05	Amend	1-1-06	860-023-0110	11-30-05	Amend	1-1-06
820-010-0465	12-13-05	Amend	1-1-06	860-023-0120	11-30-05	Amend	1-1-06
820-010-0610	12-13-05	Amend	1-1-06	860-023-0130	11-30-05	Amend	1-1-06
820-010-0618	12-13-05	Amend	1-1-06	860-023-0140	11-30-05	Amend	1-1-06
820-010-0619	12-13-05	Adopt	1-1-06	860-023-0150	11-30-05	Amend	1-1-06
820-010-0625	12-13-05	Amend	1-1-06	860-023-0160	11-30-05	Amend	1-1-06
820-010-0635	12-13-05	Amend	1-1-06	860-025-0001	11-30-05	Amend	1-1-06
845-005-0306	12-1-05	Amend	1-1-06	860-026-0005	11-30-05	Amend	1-1-06
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856-010-0012	11-29-05	Amend	1-1-06	860-038-0300	11-30-05	Amend	1-1-06
860-011-0036	11-28-05	Adopt	1-1-06	860-038-0400	11-30-05	Amend	1-1-06
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