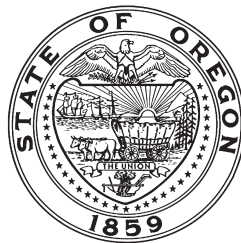


# OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

**Volume 46, No. 6**  
**June 1, 2007**

For April 16, 2007–May 15, 2007



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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, Julie.A.Yamaka@state.or.us

## 2006–2007 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, 2006	January 1, 2007
January 12, 2007	February 1, 2007
February 15, 2007	March 1, 2007
March 15, 2007	April 1, 2007
April 13, 2007	May 1, 2007
May 15, 2007	June 1, 2007
June 15, 2007	July 1, 2007
July 13, 2007	August 1, 2007
August 15, 2007	September 1, 2007
September 14, 2007	October 1, 2007
October 15, 2007	November 1, 2007
November 15, 2007	December 1, 2007

## 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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# TABLE OF CONTENTS

	Page
<b>Information and Publication Schedule</b> .....	2
<b>Table of Contents</b> .....	3
<b>Other Notices</b> .....	4–6
<b>Notices of Proposed Rulemaking Hearings/Notices</b>	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Board of Massage Therapists, Chapter 334 .....	7
Board of Medical Examiners, Chapter 847.....	7, 8
Board of Tax Practitioners, Chapter 800.....	8
Construction Contractors Board, Chapter 812.....	8, 9
Department of Agriculture, Chapter 603.....	9
Department of Agriculture, Oregon Potato Commission, Chapter 658.....	9
Department of Consumer and Business Services, Building Codes Division, Chapter 918 .....	9, 10
Department of Energy, Chapter 330.....	10
Department of Environmental Quality, Chapter 340 .....	10
Department of Fish and Wildlife, Chapter 635 .....	10, 11
Department of Human Services, Addictions and Mental Health Division: Mental Health Services, Chapter 309 .....	11
Administrative Services Division and Director’s Office, Chapter 407 .....	11
Children, Adults and Families Division: Child Welfare Programs, Chapter 413.....	12
Seniors and People with Disabilities Division, Chapter 411 .....	12, 13
Department of Justice, Chapter 137 .....	13
Department of Revenue, Chapter 150.....	13, 14
Department of State Lands, Chapter 141 .....	14
Department of Transportation, Highway Division, Chapter 734.....	14, 15
Employment Department, Chapter 471 .....	15
Occupational Therapy Licensing Board, Chapter 339.....	15
Office of Private Health Partnerships, Chapter 442.....	15
Oregon Department of Education, Chapter 581 .....	15, 16
Oregon Liquor Control Commission, Chapter 845.....	16, 17
Oregon Patient Safety Commission, Chapter 325 .....	17
Oregon State Marine Board, Chapter 250.....	17
Oregon University System, Chapter 580 .....	17
Oregon University System, Portland State University, Chapter 577 .....	17
Southern Oregon University, Chapter 573 .....	18
University of Oregon, Chapter 571 .....	18, 19
Oregon Youth Authority, Chapter 416.....	19
Parks and Recreation Department, Chapter 736 .....	19
Real Estate Agency, Chapter 863 .....	19
<b>Administrative Rules</b>	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Board of Architect Examiners, Chapter 806 .....	20
Board of Medical Examiners, Chapter 847.....	20–23
Board of Nursing, Chapter 851 .....	23–25
Bureau of Labor and Industries, Chapter 839 .....	25, 26
Commission for the Blind, Chapter 585 .....	26–28
Construction Contractors Board, Chapter 812 .....	28
Department of Administrative Services, Human Resource Services Division, Chapter 105 .....	28–30
Department of Agriculture, Chapter 603.....	31
Department of Agriculture, Oregon Bartlett Pear Commission, Chapter 606.....	31
Oregon Processed Vegetable Commission, Chapter 647.....	31
Department of Consumer and Business Services, Building Codes Division, Chapter 918 .....	31, 32
Department of Corrections, Chapter 291 .....	32
Department of Energy, Energy Facility Siting Council, Chapter 345 .....	32–87
Department of Fish and Wildlife, Chapter 635 .....	87–95
Department of Human Services, Addictions and Mental Health Division: Mental Health Services, Chapter 309 .....	95–101
Children, Adults and Families Division: Child Welfare Programs, Chapter 413.....	101–109
Seniors and People with Disabilities Division, Chapter 411 .....	109–114
Department of Public Safety Standards and Training, Chapter 259.....	114
Landscape Architect Board, Chapter 804.....	114–116
Oregon Board of Dentistry, Chapter 818 .....	116, 117
Oregon Commission on Children and Families, Chapter 423.....	117–119
Oregon Criminal Justice Commission, Chapter 213.....	119
Oregon Department of Education, Chapter 581.....	119–171
Oregon Housing and Community Services, Chapter 813.....	171–173
Oregon Liquor Control Commission, Chapter 845.....	173, 174
Oregon Patient Safety Commission, Chapter 325 .....	174–176
Oregon State Fair and Exposition Center, Chapter 622.....	176
Oregon State Marine Board, Chapter 250.....	176
Oregon State Treasury, Chapter 170 .....	176, 177
Oregon University System, Eastern Oregon University, Chapter 579.....	177
Southern Oregon University, Chapter 573 .....	177
University of Oregon, Chapter 571 .....	177, 178
Parks and Recreation Department, Chapter 736 .....	178–183
Public Utility Commission, Chapter 860 .....	183–191
Secretary of State, Archives Division, Chapter 166 .....	191, 192
Elections Division, Chapter 165.....	192, 193
Teacher Standards and Practices Commission, Chapter 584.....	193–204
 <b>OAR Revision Cumulative Index</b> .....	 205–238

## OTHER NOTICES

### CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION DECISION, FORMER COAST TIRE SITE

**COMMENTS DUE:** July 2, 2007

**PROJECT LOCATION:** 635 North Main Street (Highway 101), Tillamook, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a "Conditional No Further Action" (CNFA) determination for the former Coast Tire Site.

**HIGHLIGHTS:** The site was developed in the mid-1950s as a tire repair shop, and operated until 2001 when the business was closed due to repeated flooding. Automobile lubing, fueling and repair were conducted at the site. Tire recycling which including shredding, was also conducted at the site. Fuel was stored in above-ground storage tanks (ASTs) located along the northern property boundary, and dispensed at two pump islands via underground piping in the northwest portion of the site. The City of Tillamook conducted a series of investigations and the property owner completed a soil removal. Upon completion of the site cleanup DEQ issued a CNFA in 2003, and the City of Tillamook acquired the property.

Due to high concentrations of benzene detected in subsequent groundwater monitoring, DEQ required additional remedial action to address soil and groundwater contamination associated with the former fuel lines. The City of Tillamook implemented a remedial action during the summer of 2006 that included removal and land-farming of approximately 100 cubic yards of soil, and in-situ groundwater treatment with EHC-O (a proprietary oxidizing compound). Post-treatment soil, groundwater and storm water sampling has demonstrated that the site is protective for use as open-space, and is not adversely significantly impacting storm water quality in the adjacent storm water conveyance along Highway 101 that subsequently discharges to Hoquarten Slough.

DEQ has concluded that the site does not present an unacceptable risk to human health or the environment. DEQ's finding is conditional upon the City of Tillamook rezoning the site property to open space.

**HOW TO COMMENT:** You can review the administrative record for the proposed Conditional No Further Action at DEQ's Northwest Region located at 2020 SW Fourth Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call DEQ File Clerk, Dawn Weinberger at (503)229-6729 or toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201 or via email at: pugh.mark@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on July 2, 2007. This notice will also be published in the local newspaper The Tillamook Headlight Herald.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

**THE NEXT STEP:** DEQ will consider all public comments received by the July 2, 2007 deadline. A final decision will be made after consideration of public comment.

### CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION DECISION, FORMER SANDY OIL SITE

**COMMENTS DUE:** June 30, 2007

**PROJECT LOCATION:** The site is located at 39625 Proctor Boulevard, Sandy, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a "Conditional No Further Action" (CNFA) determination for the former Sandy Oil Site. Because institutional and controls will be implemented the site will not be removed from the Confirmed Release and Inventory Lists.

**HIGHLIGHTS:** The site operated as a bulk petroleum storage facility and retail service station from the 1930s to the 1980s, and was abandoned in 1989. DEQ conducted the initial site investigative work and corrective actions using the Orphan Fund account. Trimatrix LLC successfully bid to purchase the property at a Clackamas County auction. Due to contamination issues, Trimatrix agreed to enter into a Prospective Purchaser Agreement (PPA) with DEQ to conduct a site investigation and risk-based corrective action if needed to address soil contamination. Under terms of the PPA DEQ addressed groundwater contamination, and later installed a groundwater treatment system.

Soil and groundwater contamination does not appear to present a significant threat through to occupational or construction/excavation workers. In the absence of any engineering or institutional controls, levels of benzene, xylenes, and gasoline in soil and groundwater at the western side of the site may present a significant risk to human health through vapor intrusion into future residential buildings in this area.

Based on the results of the risk evaluation DEQ has determined that no further action is required to address site contamination provided residential use of the property is restricted. To ensure that the site remains protective of human health, DEQ will restrict residential use unless vapor barriers are installed for new buildings, require a soil management plan prior to development, and prohibit groundwater use.

**HOW TO COMMENT:** You can review the administrative record for the proposed No Further Action at DEQ's Northwest Region located at 2020 SW Fourth Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call DEQ File Clerk, Dawn Weinberger at (503)229-6729 or toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201 or via email at: pugh.mark@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on June 30, 2007. This notice will also be published in the local newspaper The Oregonian.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

**THE NEXT STEP:** DEQ will consider all public comments received by the June 30, 2007 deadline. A final decision will be made after consideration of public comment.

## OTHER NOTICES

### **PUBLIC COMMENT PERIOD NOTICE OF NO FURTHER ACTION REQUIRED FORMER UNOCAL BULK PLANT — REEDSPORT 155 EAST RAILROAD STREET, REEDSPORT, OREGON**

**COMMENTS DUE:** July 2, 2007

**PROJECT LOCATION:** Former Unocal Bulk Plant — Reedsport, 155 East Railroad Street, Reedsport, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed 'No Further Action' determination for the Former Unocal Bulk Plant in Reedsport, OR. This determination applies to the 0.4 -acre property located in old-town Reedsport, where the Former Unocal Bulk Plant operated between 1926 and 1993. This determination does not include further investigation activities required to complete an assessment of potential impacts to the former Standard Oil Bulk Plant property that is located on the North side of the Umpqua River floodwall and immediately adjacent to the Former Unocal property.

**HIGHLIGHTS:** This property has been used by Unocal as a petroleum storage and distribution facility beginning in 1926. Several developments occurred at the site over the years including warehouses, aboveground storage tanks, and product loading and unloading pipelines to the railroad and adjoining properties. In 1993 all aboveground and underground structures were demolished and removed. The property has recently been sold to a new owner and is currently used as vehicle parking lot. Site development is likely in the future.

Petroleum contaminated soil and groundwater was discovered at the site in 1991 and the DEQ assigned Environmental Cleanup Site Inventory file #1343 to the site. Various phases of investigation have been completed over the years including October 2004, when a major excavation and disposal of contaminated soil and groundwater was completed. Since then, groundwater monitoring has been conducted and risk-based conceptual site model and request for no further action reports have been submitted to the DEQ.

The results of site investigations indicate: (1) there are no current unacceptable risks to humans or wildlife from chemical constituents that were detected in soil or groundwater; (2) there is a limited and defined area in the northwest corner of the site that may pose a potential risk to indoor air should future building development occur; (3) the extent of chemicals remaining in soil and groundwater on-site have been adequately defined; and, (4) assessment of potential off-site soil and groundwater impacts remains to be completed and is not part of this no further action determination.

**HOW TO COMMENT:** The DEQ staff report on this determination will be available for public review at the DEQ Western Region Office in Coos Bay beginning June 1, 2007. To schedule an appointment to review files in DEQ's Coos Bay office, call (541) 269-2721 x31. The DEQ Project Manager is Eric Clough. Written comments should be sent to the Project Manager at the DEQ, Western Region, 381 North 2nd Street, Coos Bay, OR 97420. Comments must be received by June 31, 2007.

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

### **PROPOSED CONDITIONAL NO FURTHER ACTION DETERMINATION FORMER PRINEVILLE CHEVRON PRINEVILLE, OREGON**

**COMMENTS DUE:** July 1, 2007

**PROJECT LOCATION:** 498 W. Third Street in Prineville

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a conditional No Further Action determination following investigation and cleanup of petroleum contaminated soil from a former Chevron gas station in Prineville, Oregon. This determination is based on approval of investigation and remedial

measures conducted to date. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** Chevron conducted investigation and remediation at this former gas station site in 1992 through 1994. This consisted primarily of excavation and disposal of about 830 cubic yards of petroleum contaminated soil and groundwater monitoring.

The site is currently occupied by a McDonalds restaurant. Based on a review of soil and groundwater data, DEQ determined that contamination had been reduced to acceptable levels, based on the assumption that shallow groundwater would not be used for drinking. DEQ had previously requested that the property owner agree to a deed restriction prohibiting this use. The deed restricted was not implemented.

In December 2006, the City of Prineville issued an ordinance requiring all businesses and homes in and around downtown Prineville that use water for purposes other than agriculture or irrigation to connect to the City water system and to disconnect private wells. DEQ had recommended that the City issue this ordinance in light of residual gasoline contamination primarily from two other former gas stations nearby. Water use surveys in this area indicate that shallow groundwater is not used for drinking. Because the recent ordinance serves the purpose that the previously recommended deed restriction would have served, an individual deed restriction is not necessary.

DEQ is therefore proposing to issue a No Further Action determination contingent upon maintenance of and adherence to the City ordinance prohibiting extraction of shallow groundwater. DEQ also proposes to close LUST file 07-93-0034, which pertains to the former leaking underground storage tanks at this site.

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

Bob Schwarz, Project Manager

Phone: 541-298-7255, ext. 30

Fax: 541-298-7330

Email: Schwarz.bob@deq.state.or.us

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by July 1, 2007.

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

### **PROPOSED NO FURTHER ACTION DETERMINATION UPRR DIESEL SPILL — ROWENA ROWENA, OREGON**

**COMMENTS DUE:** July 1, 2007

**PROJECT LOCATION:** Rail siding near Rowena River Road

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a No Further Action determination following investigation and cleanup of diesel fuel from a rail siding in Rowena, Oregon. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** DEQ has been overseeing investigation and cleanup of a diesel spill that occurred at a rail siding operated by Union Pacific Railroad (UPRR) in Rowena on February 13, 2004. About 800 to 1,000 gallons of diesel fuel were released at this location as a result of equipment malfunction.

Emergency response activities were conducted in the weeks following the spill. Groundwater monitoring was conducted between May 2004 and April 2006. Results indicated that contamination was within acceptable levels. However, there was a concern that the groundwater plume could migrate north onto residential property. UPRR therefore installed an air sparge system in June 2006 in an effort to reduce contaminant concentrations in the source area. This

## OTHER NOTICES

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system was operated for about six months. Groundwater was then sampled again in January 2007.

Based on soil and groundwater sample results, DEQ has determined that no further action is needed at this site. DEQ therefore proposes to issue a No Further Action determination and to remove the site from the Confirmed Release List and the Inventory of Hazardous Substance Sites.

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

Bob Schwarz, Project Manager

Phone: 541-298-7255, ext. 30

Fax: 541-298-7330

Email: Schwarz.bob@deq.state.or.us

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by July 1, 2007.

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

# 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 Massage Therapists Chapter 334

**Rule Caption:** Rules to amend 05-07 budget, adopt 07-09 budget and revise written exam requirements.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-15-07	9 a.m.	OBMT Board Rm. 748 Hawthorne Ave. Salem OR 97301

**Hearing Officer:** Stephanie Manriquez

**Stat. Auth.:** ORS 182.462 & 687.121

**Other Auth.:** SB 1127

**Stats. Implemented:** ORS 182.462 & 687.121

**Proposed Amendments:** 334-001-0012, 334-010-0010

**Last Date for Comment:** 6-15-07, close of hearing

**Summary:** 2005-2007 Revised Budget:

334-001-0012, Budget, The Oregon Board of Massage Therapists hereby amends, and fully incorporates herein, the Oregon Board of Massage Therapists' 2005-2007 Biennium budget of \$1,064,877.

2007-2009 Proposed Budget: 334-001-0012, Budget, The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2007-2009 Biennium budget of \$1,287,346.

Examination: 334-010-0010, Examination, Applicants are required to take and pass a Board approved written exam and the Oregon practical examination, which includes a written test on Oregon statutes and administrative rules.

**Rules Coordinator:** Patty Glenn

**Address:** 748 Hawthorne Avenue NE, Salem OR 97301

**Telephone:** (503) 365-8657

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### Board of Medical Examiners Chapter 847

**Rule Caption:** Establish application requirements for out-of-state physicians applying for Emeritus status.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.120, 677.265

**Proposed Adoptions:** 847-023-0010, 847-023-0015

**Last Date for Comment:** 6-28-07

**Summary:** The proposed rule adoptions establish application requirements for out-of-state physicians applying for Emeritus status under OAR 847, Division 023 — Rules for Licensure of Volunteer Emeritus Physicians, deleting some of the licensure requirements set forth in Division 020 — Rules for Licensure to Practice Medicine in Oregon, in order to streamline the application process for out-of-state physician applicants for Emeritus status.

**Rules Coordinator:** Diana M. Dolstra

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

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

\*\*\*\*\*

**Rule Caption:** Establish timeframes for accreditation of facilities performing office-based surgery or procedures.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.085, 677.097, 677.265

**Proposed Amendments:** 847-017-0010

**Last Date for Comment:** 6-28-07

**Summary:** The proposed rule amendment adds language allowing office-based procedures to be performed within one year of the rule's adoption at facilities already performing the procedures or, for facilities beginning procedures after the rule's adoption, within two years of the start date of the procedures being performed, while the office or facility is being accredited.

**Rules Coordinator:** Diana M. Dolstra

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

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

\*\*\*\*\*

**Rule Caption:** Remove documents required for physician licensure to streamline application process.

**Stat. Auth.:** ORS 677.265

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

**Proposed Amendments:** 847-020-0150, 847-020-0160

**Last Date for Comment:** 6-28-07

**Summary:** The proposed rule amendments delete documents no longer required to be submitted for physician licensure in accordance with the Board's approval of streamlining the licensure application process. No requirements for qualifications or eligibility for licensure are being deleted.

**Rules Coordinator:** Diana M. Dolstra

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

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

\*\*\*\*\*

**Rule Caption:** Remove obsolete references and detail criteria for granting and canceling Limited License, Postgraduate.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.265, 677.759, 677.780

**Proposed Amendments:** 847-070-0018, 847-070-0022, 847-070-0036, 847-070-0037, 847-070-0050

**Last Date for Comment:** 6-28-07

**Summary:** The proposed rule amendments remove references to fees and requirements that are no longer required by the Board, update a reference to another rule within the Division to be consistent with the current numbering, specify that the Limited License, Postgraduate expires if the licensee fails the acupuncture certification examination given by the NCCAOM, and remove specifications for committee member term ending dates that are now in the past.

**Rules Coordinator:** Diana M. Dolstra

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

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

# NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** Streamline application process for podiatric physician licensure.

**Stat. Auth.:** ORS 677.265

**Stats. Implemented:** ORS 677.265, 677.820, 677.830

**Proposed Amendments:** 847-080-0013, 847-080-0017, 847-080-0018

**Last Date for Comment:** 6-28-07

**Summary:** The proposed rules delete documents to be submitted for licensure in line with the Board's approval of streamlining the licensure process for physicians (MD/DOs) and podiatrists (DPMs), and lists other items for podiatrists that are already required for physicians so that the rules are similar to the physician administrative rules.

**Rules Coordinator:** Diana M. Dolstra

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

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

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## Board of Tax Practitioners Chapter 800

**Rule Caption:** OAR 800-020-0025—Fees and OAR 800-030-0050—Obtaining Information & Purchasing Board Provided Materials & Services.

Date:	Time:	Location:
7-2-07	9 a.m.	3218 Pringle Rd. SE, #120 Salem, Oregon 97302

**Hearing Officer:** Monica J. Walker

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

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

**Proposed Amendments:** 800-020-0025, 800-030-0050

**Last Date for Comment:** 7-2-07, 5 p.m.

**Summary:** The amendment(s) to OAR 800-020-0025 propose to increase the fees of the Board. The fee increases include the fees for licenses, examinations, business registrations and late fees. The increased revenues will be used to cover the agencies; Department of Administrative Services assessments, Department of Justice assessments, inflation, salary increases and rent. The remaining revenues will be used to add an additional staff member; upgrade the agency's database to include the compliance program; and replace the agency's computer hardware per the Department of Administrative Services schedule.

The amendment(s) to OAR 800-030-0050 provide the Board guidance when processing requests and assessing charges for board materials. These amendments also assist tax practitioners and the general public by clarifying the services available from the Board for purchase as well as the Board's intentions and practice in processing requests and assessing charges for board materials.

**Rules Coordinator:** Monica J. Walker

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

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

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## Construction Contractors Board Chapter 812

**Rule Caption:** Increase the minimum civil penalty for limited contractor category and allows ALJ to withdraw and correct an order.

Date:	Time:	Location:
6-26-07	11 a.m.	West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

**Hearing Officer:** Tom Skaar

**Stat. Auth.:** ORS 183.310-183.500, 6701.310, 701.235, 701.992

**Stats. Implemented:** ORS 87.093, 183.415, 183.450, 183.460, 183.464, 183.470, 279C.590, 701.005, 701.055, 701.075, 701.078, 701.100, 701.135, 701.145, 701.147, 701.175, 701.227, 701.992

**Proposed Amendments:** 812-005-0800, 812-009-0160

**Last Date for Comment:** 6-26-07, 11 a.m.

**Summary:** 812-005-0800 is amended to increase the minimum civil penalty for violation of ORS 701.075(4) (the limited contractor category) from \$1,000 to \$5,000 and to include language to clarify that the licensee is conforming to the terms of the application.

812-009-0160 is amended allow the administrative law judge to withdraw and correct an order under OAR 137-003-0655(1).

**Rules Coordinator:** Catherine Dixon

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

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

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**Rule Caption:** Clarification and housekeeping revisions, and close loophole in RMI experience.

Date:	Time:	Location:
6-26-07	11 a.m.	West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem OR

**Hearing Officer:** Tom Skaar

**Stat. Auth.:** ORS 87.093, 293.445, 670.310, 701.055, 701.072, 701.150, 701.235, & 701.530

**Stats. Implemented:** ORS 87.093, 183.415, 183.460, 183.470, 192.430, 293.445, 701.005, 701.055, 701.058, 701.072, 701.078, 701.085, 701.143, 701.145, 701.146, 701.147, 701.150, 701.235, 701.250, & 701.530

**Proposed Adoptions:** 812-002-0673

**Proposed Amendments:** 812-001-0200, 812-001-0160, 812-001-0200, 812-002-0220, 812-003-0130, Division 4 title, 812-004-0110, 812-004-0500, 812-004-0520, 812-004-0540, 812-004-0600, 812-006-0450

**Last Date for Comment:** 6-26-07, 11 a.m.

**Summary:** 812-001-0160 is amended to change the words "tape recordings" to "recordings" since the agency does not record meetings on tape any more; and to clarify that the hourly charge for staff work on public records requests includes time spent on copying records as well as time spent on researching related to the request.

812-001-0200 is amended to implement Task Force on Construction Claims recommended revisions to use the full name of the "Information Notice to Owners About Construction Liens" and delete language allowing previous versions of the notice to be used and is amended by CCB to adopt the revised form "Information Notice to Property Owners About Construction Responsibilities".

812-002-0220, 812-004-0500, 812-004-0520, 812-004-0540, and 812-004-0600 and the titles in divisions 4 and 9 are amended to change the word "claim" to "complaint" to reflect the change in terms used by the agency.

812-002-0673 is adopted to define the term "signed by respondent" to clarify that it means a return receipt or letter indicating receipt of a notice of intent to file a complaint may be signed by the principals, employees or authorized agents of the respondent.

812-003-0130 amended to correct the category name from "special" contractor to properly read "specialty" contractor.

812-004-0110 is amended to adopt the January 24, 2007 version of the Department of Health and Human Services Poverty Guidelines used to establish eligibility for a waiver of the complaint processing fee.

812-006-0450 is amended to close an unintended loophole for those licenses that were grandfathered in. The amendment requires that the RMI must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI for not less than 24 consecutive months before the date of the a new application.

**Rules Coordinator:** Catherine Dixon

**Address:** 700 Summer St NE Suite 300, Salem OR 97301

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



# NOTICES OF PROPOSED RULEMAKING

**Rule Caption:** ORS Cite Reference Correction.

**Date:** 6-26-07  
**Time:** 11 a.m.  
**Location:** West Salem Roth's IGA  
Santiam Rm.  
1130 Wallace Rd.  
Salem, OR

**Hearing Officer:** Tom Skarr

**Stat. Auth.:** ORS 183.310–183.500, 670.310, 701.235, 701.992  
**Stats. Implemented:** ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.078, 701.100, 701.135, 701.175, 701.227, 701.992  
**Proposed Amendments:** 812-005-0800  
**Last Date for Comment:** 6-26-07, 11 a.m.

**Summary:** OAR 812-005-0800(33) is amended to correct the cite reference from ORS 701.135(1)(f) to read ORS 701.135(1)(e) for knowingly providing false information to the Board.

**Rules Coordinator:** Catherine Dixon

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

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

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## Department of Agriculture Chapter 603

**Rule Caption:** Updating Rules for Supervised Price Negotiations for Grass Seed.

**Date:** 6-18-07  
**Time:** 8:30 a.m.  
**Location:** OR Dept. of Agriculture  
Basement Hearing Rm.  
Salem, OR

**Hearing Officer:** Ron McKay

**Stat. Auth.:** ORS 62.015, 646.535, 646.740  
**Stats. Implemented:** ORS 62.848, 646.535(2), 646.740(10)  
**Proposed Amendments:** 603-076-0005 – 603-076-0051  
**Last Date for Comment:** 6-25-07

**Summary:** House Bill 3811 (2001) established the legal framework for state-supervised price negotiations for perennial ryegrass. HB 3461 (2005) broadened the original legislation to include other grass species, such as tall fescue and annual ryegrass, if growers of these other crops form cooperatives or bargaining associations to represent growers in voluntary price negotiations with dealers who have contracts with those growers. The proposed rule:

(1) Updates the rule to reflect the change in the 2005 law to enable ODA to supervised price negotiations for other grass species if asked;

(2) Implements a “pre-mediation agreement” by participating parties to negotiate in good faith and pay an upfront participation fee as a cost of service as specified in the statute; and

(3) Stipulates that the negotiated price will be settled by October 1 of each year, with adjustments occurring after harvest of the following year.

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4558

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**Rule Caption:** Remove the reference to having to meet USDA requirements to determine fitness of game meat.

**Stat. Auth.:** ORS 561.190  
**Stats. Implemented:**  
**Proposed Amendments:** 603-028-0005, 603-028-0300, 603-028-0850, 603-028-0860  
**Last Date for Comment:** 6-25-07

**Summary:** OAR 603-028-0860(2) requires that fitness of game meat for human consumption be determined in accordance with the meat inspection procedures established by the Food Safety Inspection Service of the United States Department of Agriculture (USDA). In consultation with the USDA it was discovered that they do not have these inspection procedures. We are proposing to delete this requirement from the regulation.

OAR 603-028-0850 and OAR 603-028-0005(11) are correcting spelling errors. OAR 603-028-0300 identifies the version of the Uniform Retail Meat Identity Standards that are referenced in this regulation.

**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 Potato Commission Chapter 658

**Rule Caption:** Creates additional rules related to assessments and to implement an assessment increase.

**Date:** 6-22-07  
**Time:** 8:20 a.m.  
**Location:** 425 SW Bluff Dr.  
Bend, OR 97702

**Hearing Officer:** Jim Carlson

**Stat. Auth.:** ORS 576.304, 576.325–576.370  
**Other Auth.:** Motion made by Commission at Third Quarterly Meeting March 28, 2007.

**Stats. Implemented:** ORS 576.325-576.370  
**Proposed Adoptions:** 658-010-0015, 658-010-0020, 658-010-0030, 658-010-0040, 658-010-0050

**Proposed Repeals:** 658-010-0005, 658-010-0006, 658-010-0007

**Last Date for Comment:** 6-22-07, close of hearing

**Summary:** Due to the repeal of ORS 579 and the inclusion of the Oregon Potato Commission in ORS 576, the Oregon Potato Commission needs to adopt additional rules on the collection of assessments. In addition, during the 2006–07 Third Quarterly Meeting of the Oregon Potato Commission, the commissioners approved a motion to increase the Producers’ assessment from 0.04 cents to 0.05 cents per hundredweight of potatoes sold and to change the Process Potato Producers’ assessment from 80% to 90% of the net payable weight.

**Rules Coordinator:** Jennifer Fletcher

**Address:** 700 NE Multnomah Suite 460, Portland, OR 97232

**Telephone:** (503) 731-3300

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**Rule Caption:** Sets per diem and reimbursement for a substitute rates for commissioners that correspond with ORS 292.495.

**Date:** 6-22-07  
**Time:** 8 a.m.  
**Location:** 425 SW Bluff Dr.  
Bend, OR 97702

**Hearing Officer:** Jim Carlson

**Stat. Auth.:** ORS 576.304  
**Other Auth.:** Motion made by Commission at the Third Quarterly Meeting March 28, 2007.

**Stats. Implemented:** ORS 292.495, 576.206(7), 576.265

**Proposed Adoptions:** OAR 658-040-0005, 658-040-0010, 658-040-0020

**Last Date for Comment:** 6-22-07, close of hearing

**Summary:** Sets per diem stipend, reimbursement for hiring a substitute and allowable travel reimbursements for commissioners. Per diem and reimbursement for hiring a substitute correspond with limit set in ORS 292.495.

**Rules Coordinator:** Jennifer Fletcher

**Address:** 700 NE Multnomah Suite 460, Portland, OR 97232

**Telephone:** (503) 731-3300

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

**Rule Caption:** Beverage service pressure vessel inspection frequency rules.

**Date:** 6-19-07  
**Time:** 10 a.m.  
**Location:** 1535 Edgewater St. NW  
Salem, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Casey Hoyer  
**Stat. Auth.:** ORS 480.545, 480.550  
**Stats. Implemented:** ORS 480.560  
**Proposed Amendments:** Rules in 918-225  
**Proposed Repeals:** 918-225-0405, 918-225-0580  
**Last Date for Comment:** 6-22-07, 5 p.m.

**Summary:** These proposed rules adjust the inspection frequencies of certain beverage service Co2 and hydro-pneumatic pressure vessels, while preserving public safety.

**Rules Coordinator:** Marianne Manning  
**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309  
**Telephone:** (503) 373-7438

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**Rule Caption:** Completes implementation of HB 2180 to prioritize elevator inspection frequencies.

Date:	Time:	Location:
6-19-07	9:30 a.m.	1535 Edgewater St. NW Salem, OR

**Hearing Officer:** Celina Patterson  
**Stat. Auth.:** ORS 460.085  
**Stats. Implemented:** ORS 460.055, 460.065, 460.085, 460.125  
**Proposed Amendments:** Rules in 918-400  
**Last Date for Comment:** 6-22-07, 5 p.m.  
**Summary:** These proposed rules implement House Bill 2180 (2005), which prioritize elevator inspection frequencies for certain lifts, dumbwaiters and limited-used limited application ("LULA") elevators.  
**Rules Coordinator:** Marianne Manning  
**Address:** Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309  
**Telephone:** (503) 373-7438

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## Department of Energy Chapter 330

**Rule Caption:** Repeal agency rules for screening and selection for personal service contracts.

**Stat. Auth.:** ORS 279  
**Stats. Implemented:** ORS 279  
**Proposed Repeals:** 330-120-0005, 330-120-0010, 330-120-0015, 330-120-0020, 330-120-0025, 330-120-0030, 330-120-0035, 330-120-0040  
**Last Date for Comment:** 6-15-07

**Summary:** The Department of Energy proposes to repeal its rules relating to screening and selection of contractors for personal services contracts. These rules were adopted in 1983. Enactment in 2003 of the Public Contracting Code (ORS Chapter 279) and adoption of related rules by the Department of Administrative Services and the Department of Justice have made these rules obsolete.

Paper copies of the rules to be repealed are available to any person upon request by calling Jan Simmons at (503) 378-6968 or by e-mail: [janis.h.simmons@state.or.us](mailto:janis.h.simmons@state.or.us)

The rules are also available at [http://arcweb.sos.state.or.us/rules/OARs\\_300/OAR\\_330/330\\_tofc.html](http://arcweb.sos.state.or.us/rules/OARs_300/OAR_330/330_tofc.html)

Public comment may be mailed to the agency address or sent via email to [janis.h.simmons@state.or.us](mailto:janis.h.simmons@state.or.us)

**Rules Coordinator:** Kathy Stuttaford  
**Address:** Department of Energy, 625 Marion St. NE, Salem, OR 97301-3737  
**Telephone:** (503) 378-4128

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## Department of Environmental Quality Chapter 340

**Rule Caption:** Clarification of Proposed Orders in Contested Enforcement Cases.

Date:	Time:	Location:
6-19-07	6:30 p.m.	DEQ Headquarters Conf. Rm. EQC-A, 10th Floor 811 SW Sixth Avenue Portland, Oregon

**Hearing Officer:** Sarah Greenley, DEQ staff  
**Stat. Auth.:** ORS 468.020, 183.341, 183.452  
**Stats. Implemented:** ORS 468A.035, 468.070, 468.090-468.140, 183.341, 183.452, 183.460, 183.464, 183.470  
**Proposed Adoptions:** 340-011-0009, 340-011-0573  
**Proposed Amendments:** 340-011-0005, 340-011-0510, 340-011-0515, 340-011-0575, 340-200-0040  
**Last Date for Comment:** 7-2-07, 5 p.m.

**Summary:** Adopt OAR 340-011-0573 and amend OAR 340-011-0575 to allow any party to a DEQ contested case proceeding to file a motion requesting that the Administrative Law Judge (ALJ) revise the proposed order so as to provide a more clear and complete record on appeal to the Environmental Quality Commission (EQC).

Amend OAR 340-011-0510 to clarify that Environmental Law Specialists may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials.

Correct a typographical error in OAR 340-011-0515 to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC.

Adopt OAR 340-011-0009 and amend OAR 340-011-0005(5) to update the incorporation of portions of the Attorney General's Model Rules and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

Amend OAR 340-200-0040(2) to reflect the date that the rules are adopted by the EQC. This amendment is required because these amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP), which is a requirement of the Clean Air Act.

To submit comments or request additional information, please contact Sarah Greenley at the Department of Environmental Quality (DEQ), 811 SW 6th Avenue, Portland, OR, 97204, toll free in Oregon at 800-452-4011, extension 6927, or 503-229-6927, or at [greenley.sarah@deq.state.or.us](mailto:greenley.sarah@deq.state.or.us), or by fax at 503-229-5100, or visit DEQ's website at <http://www.deq.state.or.us/programs/enforcement/contestcasesrulemkg.htm>

**Rules Coordinator:** Larry McAllister  
**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204  
**Telephone:** (503) 229-6412

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Amend rules related to the Rogue Spring Chinook Salmon Conservation Plan of 2007.

Date:	Time:	Location:
7-13-07	8 a.m.	Inn at Spanish Head El Toro Rm. 4009 SW Highway 101 Lincoln City, OR

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 496.138, 496.146, 506.036, 506.119, 506.129  
**Stats. Implemented:** ORS 496.162, 506.109, 506.129  
**Proposed Adoptions:** Rules in 635-500  
**Proposed Amendments:** Rules in 635-500  
**Proposed Repeals:** Rules in 635-500  
**Last Date for Comment:** 7-13-07

**Summary:** Rules relating to implementation of the Rogue Spring Chinook Salmon Conservation Plan of 2007 may be adopted, amended, or repealed as determined necessary by the Oregon Fish and Wildlife Commission. Housekeeping and technical corrections to the regulations relating to hatcheries and harvest opportunities; preda-

# NOTICES OF PROPOSED RULEMAKING

tors; regulatory programs; water quality; and adaptive management may occur as determined necessary to ensure rule consistency.

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

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**Rule Caption:** Review of regulations for commercial razor clam fishery.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-13-07	8 a.m.	Inn at Spanish Head 4009 SW Highway 101 Lincoln City, OR

**Hearing Officer:** Fish & Wildlife Commission

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

**Stats. Implemented:** ORS 506.129

**Proposed Adoptions:** Rules in 635-005

**Proposed Amendments:** Rules in 635-005

**Proposed Repeals:** Rules in 635-005

**Last Date for Comment:** 7-13-07

**Summary:** Adopt and/or amend rules as determined necessary, upon conclusion of review by the Oregon Fish and Wildlife commission in the matter of rules pertaining to prohibition of commercial razor clam harvest in areas south of Tillamook Head.

Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

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## Department of Human Services, Addictions and Mental Health Division: Mental Health Services Chapter 309

**Rule Caption:** Contract Programs: Semi-Independent Living Program.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-22-07	2 p.m.	Human Services Bldg. 500 Summer St. NE Rm. 137AB Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 430.021

**Stats. Implemented:** ORS 430.021, 430.630

**Proposed Repeals:** 309-041-0015 – 309-041-0024

**Last Date for Comment:** 6-25-07, 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to repeal Oregon Administrative Rules, OAR 309-041-0015 through 309-041-0024, related to the Semi-Independent Living Program.

**Rules Coordinator:** Christina Hartman  
**Address:** Department of Human Services, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E-10, Salem, OR 97301  
**Telephone:** (503) 945-6398

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**Rule Caption:** Repeal of obsolete mental health rules in OAR Chapter 309.

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 409.050

**Proposed Repeals:** 309-031-0225, 309-031-0230, 309-031-0235, 309-031-0240, 309-031-0245, 309-034-0005

**Last Date for Comment:** 6-22-07, 5 p.m.

**Summary:** The Addictions & Mental Health Division is repealing OARs 309-031-0225; 309-031-0230; 309-031-0235; 309-031-0240; 309-031-0245; & 309-034-0005, as these rules are no longer needed or used by the Division.

**Rules Coordinator:** Richard Luthé  
**Address:** 500 Summer St. NE E86, Salem OR 97301  
**Telephone:** (503) 947-1186

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## Department of Human Services, Administrative Services Division and Director's Office Chapter 407

**Rule Caption:** Renumbering of Abuse Reporting and Protective Services In Community Programs and Community Facilities Rules.

**Stat. Auth.:** ORS 179.040

**Stats. Implemented:** ORS 430.735–430.765, 443.400–443.460, 443.705–443.825

**Proposed Renumberings:** 410-009-0050 to 407-045-0250, 410-009-0060 to 407-045-0260, 410-009-0070 to 407-045-0270, 410-009-0080 to 407-045-0280, 410-009-0090 to 407-045-0290, 410-009-0100 to 407-045-0300, 410-009-0110 to 407-045-0310, 410-009-0120 to 407-045-0320, 410-009-0130 to 407-045-0330, 410-009-0140 to 407-045-0340, 410-009-0150 to 407-045-0350, 410-009-0160 to 407-045-0360

**Last Date for Comment:** 6-21-07, 5 p.m.

**Summary:** The Abuse Reporting and Protective Services In Community Programs and Community Facilities rules are being moved to the DHS department-wide rule chapter to join other related rules for the Office of Investigations and Training already located in Chapter 407.

**Rules Coordinator:** Jennifer Bittel  
**Address:** 500 Summer St. NE, E-03, Salem, OR 97301  
**Telephone:** (503) 947-5250

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**Rule Caption:** Renumbering of Abuse of Individuals Living 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

**Proposed Renumberings:** 410-011-0000 to 407-045-0400, 410-011-0010 to 407-045-0410, 410-011-0020 to 407-045-0420, 410-011-0030 to 407-045-0430, 410-011-0040 to 407-045-0440, 410-011-0050 to 407-045-0450, 410-011-0060 to 407-045-0460, 410-011-0070 to 407-045-0470, 410-011-0080 to 407-045-0480, 410-011-0090 to 407-045-0490, 410-011-0100 to 407-045-0500, 410-011-0110 to 407-045-0510, 410-011-0120 to 407-045-0520

**Last Date for Comment:** 6-21-07, 5 p.m.

**Summary:** The Abuse of Individuals Living in State Hospitals and Residential Training Centers rules are being moved to the DHS department-wide rule chapter to join other related rules for the Office of Investigations and Training already located in Chapter 407.

**Rules Coordinator:** Jennifer Bittel  
**Address:** 500 Summer St. NE, E-03, Salem, OR 97301  
**Telephone:** (503) 947-5250

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**Rule Caption:** Renumbering of Confidentiality and Mediation Communications Rules.

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 36.224, 36.228, 36.230, 36.232, 36.234  
**Proposed Renumberings:** 410-006-0011 to 407-014-0200, 410-006-0021 to 407-014-0205

**Last Date for Comment:** 6-21-07, 5 p.m.

**Summary:** The Confidentiality and Mediation Communications rules are being moved to the DHS department-wide rule chapter because they are agency-wide in nature.

**Rules Coordinator:** Jennifer Bittel  
**Address:** 500 Summer St. NE, E-03, Salem, OR 97301  
**Telephone:** (503) 947-5250

# NOTICES OF PROPOSED RULEMAKING

**Department of Human Services,  
Children, Adults and Families Division:  
Child Welfare Programs  
Chapter 413**

**Rule Caption:** Changing OARs affecting Child Welfare programs.  
**Date:** 6-26-07      **Time:** 8:30 a.m.      **Location:** Rm 254, 500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Other Auth.:** 25 USC 1901-1923

**Stats. Implemented:** ORS 418.280, 418.285, 419B.090

**Proposed Amendments:** 413-120-0000, 413-120-0010, 413-120-0020, 413-120-0030, 413-120-0033, 413-120-0035, 413-120-0040, 413-120-0045, 413-120-0060, 413-120-0075, 413-120-0080

**Last Date for Comment:** 6-26-07

**Summary:** These Adoption Placement Selection rules are being amended to clarify Department practice when selecting an adoptive placement for a child for whom the Indian Child Welfare Act (ICWA) placement preferences apply. The Department practice was developed to follow the placement preference requirements of ICWA. The amendments to these rules make it clear that the Department will follow the tribe's placement preference (i.e. member of the child's extended family, other members of the Indian child's tribe, other Indian families) as required by federal law. These amendments clarify that when an Indian child is determined to be appropriate for a legal risk placement or is legally free for adoption, the child's worker is not required to refer the child to an adoption committee. The rules outline the procedure that the caseworker will follow in order to select the adoptive placement for these cases. An approved adoption home study recommending the placement would still be needed. Rights, such as the right to request a review of certain adoption committee decisions, would not apply when no adoption committee is held. These rules are also being amended to update terminology, add cross-references, and follow stylistic conventions similar to other recently amended and adopted rules in Chapter 413.

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301

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

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**Rule Caption:** Changing OARs affecting Child Welfare programs.  
**Date:** 6-26-07      **Time:** 9:30 a.m.      **Location:** Rm 254, 500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.050, 418.005

**Other Auth.:** Title IV of the Social Security Act; Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 which amended Title IV and established Title IV Part E (Title IV-E); the Adoption and Safe Families Act; and the Deficit Reduction Act of 2005; 45 CFR 1355.20

**Stats. Implemented:** ORS 409.010, 418.005, 418.163, 419B.175, 419B.180, 419B.185

**Proposed Amendments:** 413-100-0000, 413-100-0010, 413-100-0020, 413-100-0030, 413-100-0040, 413-100-0060, 413-100-0070, 413-100-0080, 413-100-0090, 413-100-0110, 413-100-0120, 413-100-0130, 413-100-0135, 413-100-0150, 413-100-0160, 413-100-0170, 413-100-0180, 413-100-0190, 413-100-0200, 413-100-0210, 413-100-0220, 413-100-0230, 413-100-0240, 413-100-0250, 413-100-0260, 413-100-0270, 413-100-0280, 413-100-0300, 413-100-0310, 413-100-0320

**Proposed Repeals:** 413-100-0050, 413-100-0100, 413-100-0272, 413-100-0274, 413-100-0276, 413-100-0290, 413-100-0330, 413-100-0340, 413-100-0350, 413-100-0360

**Last Date for Comment:** 6-26-07

**Summary:** The Department is amending OAR 413-100-0000, 413-100-0010, 413-100-0020, 413-100-0030, 413-100-0040, 413-100-0060, 413-100-0070, 413-100-0080, 413-100-0090, 413-100-0110, 413-100-0120, 413-100-0130, 413-100-0135, 413-100-0150, 413-100-0160, 413-100-0170, 413-100-0180, 413-100-0190, 413-100-0200, 413-100-0210, 413-100-0220, 413-100-0230, 413-100-0240, 413-100-0250, 413-100-0260, 413-100-0270, 413-100-0280, 413-100-0300, 413-100-0310, and 413-100-0320 about Title IV-E Foster Care eligibility determinations for children in substitute care for whom the Department has placement and care responsibility. OAR 413-100-0020 is being amended to make permanent temporary rule changes, with some further revisions, ensuring the definitions used are consistent with federal and state Child Welfare definitions. Definitions were changed to conform with other state rules where possible. Some definitions continue to be slightly different due to the federal definitions found in the 45 CFR-1355.20. OAR 413-100-0135 and 413-100-0150 are being amended to make permanent, with some further revisions, temporary rule changes adopted because the Deficit Reduction Act (DRA) of 2005 effectively eliminated the use of the 9th Circuit Court decision in *Rosales v. Thompson* that allowed states in the 9th Circuit more latitude on certain Title IV-E eligibility criteria. The DRA made legislative changes to the Social Security Act which negated the effect of the court's decision by requiring the financial need criteria be based on the home of the specified relative from which the child was removed. States may no longer link the financial need to any specified relative the child had lived within the six months prior to removal. The DRA requires at the annual re-determination of Title IV-E Foster Care eligibility that if the child is not otherwise eligible for Title IV-E Foster Care the child's eligibility will cease at the end of the month of re-determination. All of these rules are being amended to follow federal and state law and clarify the rules. OAR 413-100-0050, 413-100-0100, 413-100-0272, 413-100-0274, 413-100-0276, 413-100-0290 413-100-0330, 413-100-0340, 413-100-0350, and 413-100-0360 are being repealed and included in the Title IV-E procedure manual because these rules were procedural in nature.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301

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

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

**Rule Caption:** Adult Foster Homes.

**Date:** 6-22-07      **Time:** 10 a.m.      **Location:** Human Services Bldg.  
500 Summer St. NE, Rm. 473  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070

**Stats. Implemented:** ORS 410-070

**Proposed Amendments:** 411-050-0420, 411-050-0443, 411-050-0445

**Last Date for Comment:** 6-25-07, 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to amend:

- (1) OAR 411-050-0420(2) to correct a type;
- (2) OAR 411-050-0443 to replace the word "dependent" with "full assistance"; and
- (3) OAR 411-050-0445(5)(o) to specify the frequency and type of evacuation drills required in adult foster homes.

**Rules Coordinator:** Christina Hartman

## NOTICES OF PROPOSED RULEMAKING

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

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**Rule Caption:** Child Foster Homes.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-21-07	2 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 410.070, 430.215, 443.835

**Stats. Implemented:** ORS 443.830, 443.835

**Proposed Amendments:** Rules in 411-346

**Last Date for Comment:** 6-22-07, 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to amend their Oregon Administrative Rules in chapter 411, division 346 related to child foster homes.

**Rules Coordinator:** Christina Hartman

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

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**Rule Caption:** Pre-Admission Screening, Pre-Admission Assessment and Pre-Admission Screening and Resident Review.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-25-07	2 p.m.	Human Services Bldg 500 Summer Street NE Rm. 137 ABC Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070, 410.535, 414.065

**Other Auth.:** 42 DFR, Part 483, Subpart C-E

**Stats. Implemented:** ORS 410.070, 410.535, 414.065

**Proposed Amendments:** 411-070-0005, 411-070-0040, 411-070-0043

**Last Date for Comment:** 6-29-07, 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to amend Oregon Administrative Rule (OAR) 411-070-0005, 411-070-0040 and 411-070-0043 to clarify the Pre-Admission Screening, Pre-Admission Assessment and Pre-Admission Screening and Resident Review processes related to nursing facility admission.

**Rules Coordinator:** Christina Hartman

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

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### Department of Justice Chapter 137

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-27-07	10 a.m.	Commerce Bldg. 158 12th St. NE Salem, OR

**Hearing Officer:** Hardy Myers

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

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

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

**Last Date for Comment:** 7-27-07

**Summary:** OAR 137-020-0020, known as the "Motor Vehicle Price and Sales Disclosure rule" and originally adopted in 1979, has not been substantively amended since 1996. The proposed amendment addresses changes in the industry and more clearly distinguishes between lawful and unlawful conduct in the pricing, financing, sale and leasing practices for used and new motor vehicles.

Advertising and sales practices have changed since the rule last was amended. Complaints received by DOJ allege unfair or decep-

tive conduct in connection with many of the new practices, including advanced sales promotions, long-term financing contracts, payment packing, and adding interest points to financing and negative equity financing of sales and leases. The full text of the proposed amendment is available at [http://www.doj.state.or.us/hot\\_topics/2007\\_consumer\\_protection\\_rulemaking.shtml](http://www.doj.state.or.us/hot_topics/2007_consumer_protection_rulemaking.shtml)

**Rules Coordinator:** Carol Riches

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

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

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**Rule Caption:** Provides clarification on child support matters.

**Stat. Auth.:** ORS 18.005, 25.020, 180.345

**Stats. Implemented:** ORS 25.015, 25.020, 25.080, 25.167, 25, 381, 183.413, 192.820-192.858, 416.415, 416.425, 416.429

**Proposed Amendments:** 137-055-1020, 137-055-1160, 137-055-2140, 137-055-3240

**Last Date for Comment:** 6-25-07, 5 p.m.

**Summary:** OAR 137-055-1020 is amended to clarify the definition of legal proceeding to apply only to administrative proceedings; OAR 137-055-1160 is amended to remove the current process for a separate order for nondisclosure on address confidentiality program cases in order for the program to use their current process and make it applicable to all cases; OAR 137-055-2140 is amended to provide administrative law judges with authority to hear objection to withdrawal requests; OAR 137-055-3240 is amended to bring the rule into compliance with statutes and with other division of child support rules.

**Rules Coordinator:** Shawn Brenizer

**Address:** 494 State St., Suite 300, Salem, Oregon 97301

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

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### Department of Revenue Chapter 150

**Rule Caption:** Alternative certification of assessment and taxation expenditures for counties; exempt leased property.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-26-07	10 a.m.	955 Center St. NE Fishbowl Conference Rm. Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 305.100, 306.120, 308.709, 308.720

**Stats. Implemented:** ORS 294.175, 294.178, 294.181, 307.112, 307.475, 308.709

**Proposed Adoptions:** 150-294.181

**Proposed Amendments:** 150-307.112, 150-307.475, 150-308.709

**Proposed Repeals:** 150-330.123, 150-570.562, 150-820.560(9)

**Last Date for Comment:** 6-26-07, 5 p.m.

**Summary:** 150-294.181 describes how a county may qualify for certification of assessment and taxation expenditures using an alternative method of certification.

150-307.112 describes requirements to determine savings below market rent for certain leases on property exempt from property tax. Amends existing rule to distinguish between gross and net lease for purpose of determining eligibility for a property tax exemption. Reorganizes rule to improve readability.

150-307.475 describes situations that may meet test of "hardship" for property tax exemption. This amendment modifies the section related to disability certificates used to determine eligibility of Disabled War Veteran exemption.

150-308.709 Describes the information required; deadline for making application; and approval process for special assessment as Government Restricted Multiunit Rental Housing. Amendment clarifies that assessor must annotate the assessment and tax roll of potential penalty if disqualified.

**Rules Coordinator:** Debra L. Buchanan

# NOTICES OF PROPOSED RULEMAKING

**Address:** Department of Revenue, 955 Center St. NE, Salem, OR 97301  
**Telephone:** (503) 945-8653

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**Rule Caption:** Defining tangible personal property for corporate tax apportionment; denomination of cigarette tax stamps.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-26-07	10 a.m.	955 Center St. NE Fishbowl Conference Rm. Salem, OR 97301

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 305.100

**Stats. Implemented:** ORS 314.665, 323.160

**Proposed Adoptions:** 150-314.665(2)-(C)

**Proposed Amendments:** 150-314.665(2)-(A), 150-323.160(1), 150-323.160(2)

**Last Date for Comment:** 6-26-07, 5 p.m.

**Summary:** 150-314.665(2)-(A)—Add definition of “tangible personal property.” Clarify language dealing with property shipped to a purchaser in another state. Provide that provisions related to shipments directly to a third party (current section (7)) is authorized under ORS 314.670.

150-314.665(2)-(C)—Provides direction as to computing sales of electricity and natural gas for purposes of the Oregon sales factor.

150-323.160(1) and 150-323.160(2) are amended to provide the manner in which the Department of Revenue will sell self-adhesive cigarette tax stamps and to delete references to stamps sold for a 10 unit package of cigarettes.

**Rules Coordinator:** Debra L. Buchanan

**Address:** Department of Revenue, 955 Center St. NE, Salem, OR 97301

**Telephone:** (503) 945-8653

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**Rule Caption:** Penalty and interest waivers; appealing denial of a waiver.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-26-07	10 a.m.	955 Center St. NE Fishbowl Conference Rm. Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 305.100, 305.145

**Stats. Implemented:** ORS 305.145, 305.217, 305.265, 314.402, 314.724, 316.992

**Proposed Adoptions:** 150-305.145(4), 150-314.402(6), 150-316.992

**Proposed Amendments:** 150-305.145, 150-305.145(3), 150-305.265(1)-(B), 150-305.265(15), 150-305.217, 150-314.724(3)

**Proposed Repeals:** 150-305.145(4)(a), 150-305.145(4)(b), 150-305.145(4)(c)

**Last Date for Comment:** 6-26-07, 5 p.m.

**Summary:** 150-305.145(3) To clarify waiver of interest charges. To provide that the waiver of interest for late-filed electronic returns applies only once.

150-305.145, 150-305.265(1)-(B)—Clarify the time period for filing an appeal from penalty or interest charges.

150-305.265(15)—To provide that the five percent penalty applies to tax that is assessed in order to allow the taxpayer to appeal directly to the Tax Court.

150-305.145(4)—Provides for waiver of payroll taxes, adds a compliance requirement before waiver would be granted, and changes the current policy for granted waivers to an updated one that applies to all programs other than payroll.

150-305.145(4)(a), 150-305.145(4)(b), 150-305.145(4)(c)—Rules are repealed due to adoption of waiver provisions in 150-305.145(4).

150-305.217, 150-314.402(6), 150-314.724(3)—Clarify penalty waiver provisions

**Rules Coordinator:** Debra L. Buchanan

**Address:** Department of Revenue, 955 Center St. NE, Salem, OR 97301  
**Telephone:** (503) 945-8653

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## Department of State Lands Chapter 141

**Rule Caption:** Rules Governing Placement of Ocean Energy Conversion Devices Within the Territorial Sea.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-28-07	7–9 p.m.	Auditorium Hatfield Marine Science Center Oregon State University 2030 SE Marine Science Drive Newport, OR 97365

**Hearing Officer:** Jeff Kroft

**Stat. Auth.:** ORS 273.045, 274.040, 247.710

**Other Auth.:** Oregon Constitution, Article VIII, Section 5; Oregon Admission Act

**Stats. Implemented:** ORS 273.045, 274.040, 247.710

**Proposed Adoptions:** 141-140-0010 – 141-140-0130

**Last Date for Comment:** 7-31-07

**Summary:** These rules apply to: (1) Ocean energy monitoring equipment and ocean energy conversion devices placed on or over state-owned submerged and submersible land in the Territorial Sea for a research project, demonstration project or commercial operation, and (2) All associated buoys, anchors, energy collectors, cables, control and transmission lines, and other equipment that are a necessary component of an energy conversion device research project, demonstration project or commercial operation. These rules establish a process for authorizing ocean energy research projects, demonstration projects and commercial operations through the granting of temporary use permits and ocean energy facility licenses.

**Rules Coordinator:** Liz Bott

**Address:** Department of State Lands, 775 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 378-3805, ext. 239

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## Department of Transportation, Highway Division Chapter 734

**Rule Caption:** Amendment of rules relating to vehicles or non-divisible loads subject to variance permits.

**Stat. Auth.:** ORS 184.616, 184.619, 810.050, 810.060, 818.200

**Stats. Implemented:** ORS 818.210, 818.220, 818.225

**Proposed Amendments:** 734-082-0001, 734-082-0005, 734-082-0010, 734-082-0020, 734-082-0035, 734-082-0040, 734-082-0051

**Last Date for Comment:** 6-21-07

**Summary:** Division 82 rules govern highway transportation of vehicles and loads that exceed legal limits. Rules describe variance permit terms, requirements and exemptions for such operations. The proposed rule amendments are needed to clarify the scope and intent of Division 82 rules, reflect current practices, address industry changes, and enhance safety for operations requiring three pilot vehicles. The proposed amendments: (1) Clarify that Division 82 rules govern not only variance permit operations, but also requirements and exemptions for such operations; (2) Revise the definition of “non-divisible load” to be uniform with the federal definition; (3) Revise restrictions related to tires on vehicles operating under a variance permit; (4) Allow pre-assembled railroad track sections to be considered non-divisible for the purpose of obtaining over-width authorization; (5) Add signage requirements for pilot-vehicles escorting certain oversize loads; (6) Address changes in the manufactured housing industry by allowing the transport of reusable manufactured housing chassis under the terms of a 30-day permit, rather than a single-trip permit; (7) Update permit attachment revision dates and definitions.

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

# NOTICES OF PROPOSED RULEMAKING

**Rules Coordinator:** Brenda Trump  
**Address:** Department of Transportation, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301  
**Telephone:** (503) 986-3171

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**Employment Department**  
**Chapter 471**

**Rule Caption:** ORS 471-030-0017 Defining and Allocating Remuneration, Holidays and Vacations.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-19-07	11 a.m.	Employment Auditorium 875 Union St. NE Salem, OR 97311

**Hearing Officer:** Lynn Nelson

**Stat. Auth.:** ORS 657

**Stats. Implemented:** ORS 657.100, 657.150, 187.010(1)(b)-(j) & (2)

**Proposed Amendments:** 471-030-0017

**Last Date for Comment:** 6-20-07, 5 p.m.

**Summary:** Purpose of amendment is to define employment, bonus and back pay for purposes of this rule; adds methods for allocating bonuses to the period worked; provides that back pay is neither reportable nor deductible from unemployment insurance benefits.

**Rules Coordinator:** Lynn M. Nelson

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

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

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**Rule Caption:** OAR 471-030-0174 Child Support Intercept Appeals.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-19-07	11 a.m.	Employment Auditorium 875 Union St. NE Salem, OR 97311

**Hearing Officer:** Lynn Nelson

**Stat. Auth.:** ORS 657

**Stats. Implemented:** ORS 657.780, 183.480

**Proposed Amendments:** 471-030-0174

**Last Date for Comment:** 6-20-07, 5 p.m.

**Summary:** Provides child support intercept appellants with the option to file a request for hearing via telephone; establishes consistency with methods for requesting hearings on all other unemployment insurance benefit matters.

**Rules Coordinator:** Lynn M. Nelson

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

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

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

**Rule Caption:** Occupational Therapy fee reduction and adjustment and addition to definition of scope of practice of occupational therapy.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-27-07	1 p.m.	Portland State Office Bldg. Rm. 445 Portland, OR

**Hearing Officer:** OTLB Board Director

**Stat. Auth.:** ORS 675.210-675.320

**Other Auth.:** OAR 339-001-0000, 339-001-0005

**Stats. Implemented:** ORS 675.210-675.320

**Proposed Amendments:** 339-005-0000, 339-010-0005

**Last Date for Comment:** 7-27-07

**Summary:** Adds scope of practice into the Board definition of Occupational Therapy: During the 2007 in SB 135 the Occupational Therapy Licensing Board wanted to change the statutory definition of occupational therapy and were advised by legislative counsel's office to add scope of practice of occupational therapy language from the

national American Occupational Therapy Association to the Board's rules.

Adjusts the fee for applicants: The adjustment makes the fee the same at \$100 for both in state and out of state Occupational Therapy applicants who are license by endorsement; and the same at \$70 for Occupational Therapy Assistants both in state and out of state applicants by endorsement from out of state.

Reduces the fees for all renewals. The fee for renewal of Occupational Therapy fees are reduced from \$200 to \$170 for two years; The fee for renewal of Occupational Therapy Assistant are reduced from \$140 to \$120 for two years.

**Rules Coordinator:** Felicia Holgate

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

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

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**Office of Private Health Partnerships**  
**Chapter 442**

**Rule Caption:** Clarifying FHIAP definition of member and applicants' ability to count dependents in their family size.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-15-07	8:30 a.m.	525 Trade St. SE Lower Level Salem OR 97301

**Hearing Officer:** Wanda Davis

**Stat. Auth.:** ORS 735.734

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

**Proposed Amendments:** 442-005-0010, 442-005-0020, 442-005-0050, 442-005-0190, 442-005-0220, 442-005-0230

**Last Date for Comment:** 6-15-07

**Summary:** FHIAP is amending 442-005-0050(6) to enable dependents to be counted in two separate households (i.e. divorced or unmarried parents living separately) for the purpose of determining family size for eligibility for any state benefits including, but not limited to, premium subsidy, medical assistance, food stamps, cash assistance, etc. Amended language does not change rules regarding dual enrollment, but does enable legal dependents to be counted in their family size for eligibility.

OAR 442-005-0010(18) modifies the definition of a "member" to include Homecare Union Benefits Board (HUBB) homecare workers who have been approved but are not yet enrolled, awaiting COBRA qualification.

OAR 442-005-0020(12) clarifies that HUBB/FHIAP members who terminate can re-enroll in the program if re-enrollment is during the same 12-month eligibility period.

OAR 442-005-0190(4) clarifies that HUBB/FHIAP members do not have to be enrolled in FHIAP before being allowed to use subsidy for COBRA, since they won't enroll in FHIAP until they qualify for COBRA.

OAR 442-005-0220(2) clarifies that subsidies for HUBB/FHIAP members are not reimbursed using the normal group reimbursement method. Member premiums are billed, collected and combined with FHIAP subsidies and sent to the carriers.

OAR 442-005-0230(3) clarifies that individual insurance is an option for HUBB members losing their 100%-paid premiums.

**Rules Coordinator:** Cindy Bowman

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

**Telephone:** (503) 378-4674

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

**Rule Caption:** Amendment would change numbering to reflect previous amendment.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-27-07	1-3 p.m.	Public Service Bldg. 2nd Floor, Rm. 251 Salem, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Randy Harnisch  
**Stat. Auth.:** ORS 326.051  
**Stats. Implemented:** ORS 326.051, 329.451  
**Proposed Amendments:** 581-022-1130  
**Last Date for Comment:** 6-27-07, 5 p.m.

**Summary:** The rule was previously amended and the amendment should have resulted in the rule being renumbered. One section of the rule was not renumbered and this amendment will correct that error.

**Rules Coordinator:** Paula Merritt  
**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310  
**Telephone:** (503) 378-3600, ext. 2223

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**Rule Caption:** Amends rule to reflect current requirements for Certificate of Initial Mastery.

Date:	Time:	Location:
6-27-07	1-3 p.m.	Public Service Bldg. 2nd Floor, Rm. 251 Salem, OR

**Hearing Officer:** Randy Harnisch  
**Stat. Auth.:** ORS 326.051  
**Stats. Implemented:** ORS 329.075, 329.465, 329.485  
**Proposed Amendments:** 581-022-1110  
**Last Date for Comment:** 6-27-07, 5 p.m.

**Summary:** Changes to requirements for Certificate of Initial Mastery were made during the 2003 Legislative Session. The rule was amended to reflect those changes as a temporary rule. These amendments would be approved as permanent rules.

**Rules Coordinator:** Paula Merritt  
**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310  
**Telephone:** (503) 378-3600, ext 2223

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**Rule Caption:** Adds health and physical education to list of curriculum defined by state content standards.

Date:	Time:	Location:
6-27-07	1-3 p.m.	Public Service Bldg, 2nd Floor, Rm. 251 Salem, OR

**Hearing Officer:** Randy Harnisch  
**Stat. Auth.:** ORS 326.051  
**Stats. Implemented:** ORS 329.045  
**Proposed Amendments:** 581-022-1210  
**Last Date for Comment:** 6-27-07, 5 p.m.

**Summary:** The proposed amendments would include reference to the instructional content areas of health and physical education as content areas that are defined by state adopted content standards.

**Rules Coordinator:** Paula Merritt  
**Address:** Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310  
**Telephone:** (503) 378-3600, ext 2223

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## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amend rule to reflect two statutory time limits for response to a service permit refusal.

Date:	Time:	Location:
7-11-07	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman  
**Stat. Auth.:** ORS 183.341(2), 183.745, 471.730(5) & (6)  
**Stats. Implemented:** ORS 183.341(2), 183.430(2), 183.435, 183.745, 471.331(1), 471.380(2)  
**Proposed Amendments:** 845-003-0270  
**Last Date for Comment:** 7-25-07

**Summary:** This rule describes the process by which a party may request a contested case hearing and the various time limits for

response to the charging document. The statutory language in ORS 471.380 now reflects two different time limits for response to a service permit refusal: (1) 15 days if the refusal is based on failure to complete the alcohol server education course and examination, and (2) 30 days for all other service permit refusals. We need to amend this rule to reflect the time periods for response to service permit refusals which will bring the rule into compliance with statute. Staff further proposes the creation of subsections (a)-(e) within section (1), breaking out the various time limits for different categories of charge documents, in order to simplify and clarify the rule language. We also need to amend the Statutory Authority and Statutes Implemented sections of this rule in order to accurately and completely cite all Oregon Revised Statutes.

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

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**Rule Caption:** Amend rule to clarify that Special Events Winery licensees may sell malt beverages.

Date:	Time:	Location:
7-19-07	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman  
**Stat. Auth.:** ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
**Stats. Implemented:** ORS 471.223, 471.227  
**Proposed Amendments:** 845-005-0415  
**Last Date for Comment:** 8-2-07

**Summary:** This rule needs amendment in order to comply with statutory changes regarding Special Events Winery licenses. The amendment will add language clarifying that these licensees are allowed to sell malt beverages, in addition to wine and cider, at the special event. The change needs to be made to comply with the 2007 legislature's House Bill 2164. Staff further proposes amending the references to OAR 845-006-0340(8) in both sections (6) and (6)(b) of the rule so that OAR 845-006-0340 is referenced in its entirety rather than a specific section. We also need to amend the Statutes Implemented section of this rule in order to accurately and completely cite all Oregon Revised Statutes.

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

.....

**Rule Caption:** Amend rule to revise definition of "aware" regarding unlawful drug activity on licensed premises.

Date:	Time:	Location:
7-12-07	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman  
**Stat. Auth.:** ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
**Stats. Implemented:** ORS 471.542, 471.547  
**Proposed Amendments:** 845-006-0348  
**Last Date for Comment:** 7-26-07

**Summary:** This rule describes the circumstances under which the Commission will suspend or cancel Full On-Premises Sales, Limited On-Premises Sales or Brewery-Public House licenses when the licensee is aware of unlawful drug use or sales on the licensed premises. Section (1)(c) of the rule describes the licensee witnessing or being informed of drug sale arrests off of the premises as one way to meet the definition of the licensee being "aware" of unlawful drug use or sales on the licensed premises. We need to remove section (1)(c) from the rule because our current definitions of being "aware" of unlawful drug use or sales on the licensed premises are broader than the language of the underlying statute, which defines being "aware" as either personally witnessing drug use or sales on the



# NOTICES OF PROPOSED RULEMAKING

premises, arrests for drug sales occurring on the premises, or seizures of drugs occurring on the premises. Staff further proposes removal of section (7) from this rule as it is expired language applying to dispenser licenses. We also need to amend the Statutory Authority and Statutes Implemented sections of this rule in order to accurately and completely cite all Oregon Revised Statutes.

**Rules Coordinator:** Jennifer Huntsman

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

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

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**Rule Caption:** Amend rule to delete minimum time requirement for initial Alcohol Server Education classroom course.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
7-10-07	10 a.m.–12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

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

**Stats. Implemented:** ORS 471.542, ORS 471.547

**Proposed Amendments:** 845-016-0015

**Last Date for Comment:** 7-13-07

**Summary:** This rule describes the Commission's standards and requirements for Alcohol Server Education (ASE) provider certification for those providing the initial course in a classroom setting. The Commission has accepted a petition from the Oregon Server Education Providers & Instructors Association (OSEPIA), requesting amendment of the rule to delete language requiring a minimum of 4.5 hours of instruction time, and replace it with language requiring the assessment of student comprehension at periodic intervals. The petitioner's stated goal is to make the classroom course the same as the online course as it relates to the utilization of student comprehension criteria rather than a specific time requirement.

**Rules Coordinator:** Jennifer Huntsman

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

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

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## **Oregon Patient Safety Commission** **Chapter 325**

**Rule Caption:** Amends OAR 325-005-0015 to establish a 2007–2009 Biennial Budget.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-26-07	1 p.m.	Rm. 1A-80 800 NE Oregon St. Portland OR

**Hearing Officer:** Shannon O'Fallon

**Stat. Auth.:** ORS 442.820

**Other Auth.:** Sec. 9, Ch. 686, OL 2003

**Stats. Implemented:** ORS 182.462(1), 182.462(2)

**Proposed Amendments:** 325-005-0015

**Last Date for Comment:** 6-26-07 5 p.m.

**Summary:** This rule amends OAR 325-005-0015 to create a 2007–2009 biennial budget of \$1,047,933 for the Patient Safety Commission.

**Rules Coordinator:** Jim Dameron

**Address:** PO Box 285, Portland OR 97207-0285

**Telephone:** (503) 224-9226

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## **Oregon State Marine Board** **Chapter 250**

**Rule Caption:** Amend boat title certification rules and the numbering system used for floating homes and boathouses.

**Stat. Auth.:** ORS 830

**Stats. Implemented:** ORS 830.110, 830.850, 830.870

**Proposed Amendments:** 250-010-0055, 250-010-0300, 250-010-0320

**Last Date for Comment:** 6-22-07

**Summary:** These rules provide the process by which a lost boat title application is made and issued; in addition, the rules outline the registration numbering system used for floating homes and boathouses in Oregon. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** June LeTarte

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

**Telephone:** (503) 378-2617

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## **Oregon University System** **Chapter 580**

**Rule Caption:** To protect information assets of OUS students, faculty, customers, and research partners.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-22-07	1:30–3:30 p.m.	3rd Floor Conf. Rm. SCH, UO Campus Eugene, OR

**Hearing Officer:** Marcia Stuart

**Stat. Auth.:** ORS 351

**Stats. Implemented:** ORS 351

**Proposed Adoptions:** 580-055-0000, 580-055-0010, 580-055-0020, 580-055-0030, 580-055-0040, 580-055-0050, 580-055-0060, 580-055-0070

**Last Date for Comment:** 6-22-07

**Summary:** It is proposed that OUS adopt an umbrella information security policy under which each university will adopt specific policies governing campus operations in compliance with this overarching policy framework. The Oregon University System and its member institutions have a responsibility to protect information entrusted to them, ensure the effective operation of business critical processes, and must abide by the security policies established by the State Board of Higher Education as well as laws and regulation at the federal, state, and local level relating to information security. OUS must meet a standard of due care regarding the protection of institutional information assets as well as those belonging to OUS students, faculty members, customers, and research partners.

**Rules Coordinator:** Marcia M. Stuart

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

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

\*\*\*\*\*

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

**Rule Caption:** The Schedule of Fines and Fees for General Services and other charges.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-20-07	3 p.m.	Cramer Hall (CH 307) Portland, OR

**Hearing Officer:** Jeremy Dalton

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 352.360

**Proposed Amendments:** 577-060-0020

**Last Date for Comment:** 6-22-07

**Summary:** The proposed amendment establishes additional fees, charges, fines, and deposits for General Services for the 2007–2008 fiscal year.

**Rules Coordinator:** Jeremy Dalton

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

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

# NOTICES OF PROPOSED RULEMAKING

## Oregon University System, Southern Oregon University Chapter 573

**Rule Caption:** Parking Enforcement and Appeals.

**Stat. Auth.:** 351.070

**Stats. Implemented:** 352.360

**Proposed Amendments:** 573-050-0010, 573-050-0025, 573-050-0030, 573-050-0035, 573-050-0040, 573-050-0045

**Last Date for Comment:** 7-1-07

**Summary:** This amendment in Div. 050 increases parking fees and fines and clarify other regulations such as types of permits.

**Rules Coordinator:** Treasa Sprague

**Address:** Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

**Telephone:** (541) 552-6319

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## Oregon University System, University of Oregon Chapter 571

**Rule Caption:** Update and amend student medical leave rules to represent best practices for responding to students' need for medical leave.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-20-07	1:30 p.m.	Metolius & Owyhee Rms. EMU, UO Eugene, OR

**Hearing Officer:** Deb Eldredge

**Stat. Auth.:** 352.004

**Other Auth.:** 351.010, 351.060

**Stats. Implemented:** 352.004

**Proposed Adoptions:** 571-023-0000, 571-023-0100, 571-023-0105, 571-023-0110, 571-023-0115, 571-023-0120

**Proposed Amendments:** 571-023-0005, 571-023-0025

**Proposed Repeals:** 571-023-0010, 571-023-0015, 571-023-0020, 571-023-0030, 571-023-0035, 571-023-0040

**Last Date for Comment:** 6-20-07, 5 p.m.

**Summary:** Revise and update outdated student medical policy to ensure rules represent best practices for responding to students' need for medical leave for serious health conditions. Identical to permanent rule changes adopted September 20, 2005, and temporary rules adopted February 14, 2007.

**Rules Coordinator:** Deb Eldredge

**Address:** 1226 University of Oregon Eugene, OR 97403

**Telephone:** (541) 346-3082

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**Rule Caption:** Updates immunization policy as recommended by Center for Disease Control&Prevention. Identical to rule changes adopted 9/1/06.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-20-07	3:30 p.m.	Metolius & Owyhee Rms. EMU, UO Eugene, OR

**Hearing Officer:** Deb Eldredge

**Stat. Auth.:** ORS 351, 352

**Stats. Implemented:** ORS 351.070

**Proposed Amendments:** 571-004-0016

**Last Date for Comment:** 6-20-07, 5 p.m.

**Summary:** The University of Oregon requires that all entering students eligible for services at the University Health Center demonstrate evidence of immunity to measles and mumps. This amendment will require entering students to have documentation of two doses of MMR (Measles/Mumps/Rubella) vaccine. Identical to rule changes adopted September 1, 2006 and temporary rules adopted February 14, 2007.

**Rules Coordinator:** Deb Eldredge

**Address:** 1226 University of Oregon Eugene, OR 97403

**Telephone:** (541) 346-3082

**Rule Caption:** Rules governing the community dispute resolution grant program pursuant to ORS 36.175.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-20-07	2 p.m.	Metolius & Owyhee Rms. EMU, UO Eugene, OR

**Hearing Officer:** Deb Eldredge

**Stat. Auth.:** ORS 36.175, 351.070

**Stats. Implemented:** ORS 36.175

**Proposed Adoptions:** 571-100-0000, 571-100-0010, 571-100-0020, 571-100-0030, 571-100-0040, 571-100-0050, 571-100-0060, 571-100-0070, 571-100-0080, 571-100-0090, 571-100-0100, 571-100-0110, 571-100-0120, 571-100-0130, 571-100-0140, 571-100-0150, 571-100-0160

**Last Date for Comment:** 6-20-07, 5 p.m.

**Summary:** These rules are being adopted to administer the community dispute resolution grant program as mandated by ORS 36.175. The administration of the community dispute resolution program was granted to the University of Oregon, acting through the Dean of its School of Law, by the state legislature by ORS 36.110 through 36.175.

These rules are identical to the temporary rules adopted February 20, 2007.

**Rules Coordinator:** Deb Eldredge

**Address:** 1226 University of Oregon Eugene, OR 97403

**Telephone:** (541) 346-3082

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**Rule Caption:** Revise and update the student conduct code to represent best practices for responding to student conduct matters.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-20-07	3 p.m.	Metolius & Owyhee Rms. EMU, UO Eugene, OR

**Hearing Officer:** Deb Eldredge

**Stat. Auth.:** ORS 351, 352

**Stats. Implemented:** ORS 351.070

**Proposed Adoptions:** 571-021-0100, 571-021-0105, 571-021-0110, 571-021-0115, 571-021-0120, 571-021-0125, 571-021-0130, 571-021-0140, 571-021-0150, 571-021-0160, 571-021-0165, 571-021-0200, 571-021-0205, 571-021-0210, 571-021-0215, 571-021-0220, 571-021-0230, 571-021-0240, 571-021-0250

**Proposed Repeals:** 571-021-0005, 571-021-0009, 571-021-0015, 571-021-0019, 571-021-0024, 571-021-0029, 571-021-0030, 571-021-0035, 571-021-0038, 571-021-0040, 571-021-0045, 571-021-0050, 571-021-0055, 571-021-0056, 571-021-0057, 571-021-0060, 571-021-0064, 571-021-0068, 571-021-0070, 571-021-0072, 571-021-0073

**Last Date for Comment:** 6-20-07, 5 p.m.

**Summary:** Revises and updates the student conduct code to represent best practices for responding to student conduct matters. Identical to permanent rule changes adopted October 18, 2006 and temporary rules adopted February 14, 2007.

**Rules Coordinator:** Deb Eldredge

**Address:** 1226 University of Oregon Eugene, OR 97403

**Telephone:** (541) 346-3082

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**Rule Caption:** Revises and establishes procedures for contracting and purchasing. Identical to rule changes adopted 9/1/06.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-20-07	2:30 p.m.	Metolius & Owyhee Rms. EMU, UO Eugene, OR

**Hearing Officer:** Deb Eldredge

**Stat. Auth.:** ORS 351.070

**Other Auth.:** ORS 351.086, 351.087

**Stats. Implemented:** ORS 351.070, 351.086, 351.087

**Proposed Adoptions:** 571-040-0010, 571-040-0015, 571-040-0100, 571-040-0400

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 571-040-0380, 571-040-0382, 571-040-0390

**Proposed Repeals:** 571-040-0220, 571-040-0240, 571-040-0253, 571-040-0280

**Proposed Ren. & Amends:** 571-040-0200 to 571-040-0201, 571-040-0210 to 571-040-0220, 571-040-0230 to 571-040-0240, 571-040-0243 to 571-040-0260, 571-040-0261, 571-040-0263 to 571-040-0460, 571-040-0270 to 571-040-0050, 571-040-0271 to 571-040-0450, 571-040-0290 to 571-040-0060, 571-040-0310 to 571-040-0070, 571-040-0320 to 571-040-0080, 571-040-0350 to 571-040-0410, 571-040-0352 to 571-040-0420, 571-040-0360 to 571-040-0430, 571-040-0361 to 571-040-0450, 571-040-0370 to 571-040-0440, 571-040-0371 to 571-040-0450

**Last Date for Comment:** 6-20-07, 5 p.m.

**Summary:** In 1996, the University of Oregon adopted rules governing the procurement of goods and services. The proposed rule adoptions and amendments will: clarify which transactions are subject to the rules; set forth signature authority for various types of contracts and instruments; update a code of ethics applicable to university personnel; update applicable definitions; clarify the basis for awarding contracts; permit procurement by electronic means; add provisions governing the screening and selection for professional services contracts; streamline and update the processes governing the procurement of goods and non-professional services; set forth a comprehensive process for making determinations regarding responsiveness and disqualification; and set forth a comprehensive process for protests. Identical to permanent rule changes adopted 9/1/6 and temporary rules adopted 2/14/07.

**Rules Coordinator:** Deb Eldredge

**Address:** Oregon University System, University of Oregon, 1226 University of Oregon, Eugene, OR 97403

**Telephone:** (503) 346-3082

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

**Rule Caption:** Renaming and revising the entire division to provide clarity and additional safeguards.

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

**Stats. Implemented:** ORS 420.810-420.840, 420.888-420.892

**Proposed Adoptions:** 416-530-0035

**Proposed Amendments:** 416-530-0000, 416-530-0010, 416-530-0020, 416-530-0030, 416-530-0040, 416-530-0050, 416-530-0060, 416-530-0070, 416-530-0080, 416-530-0090, 416-530-0100, 416-530-0110, 416-530-0125, 416-530-0130, 416-530-0140, 416-530-0150, 416-530-0160, 416-530-0170

**Last Date for Comment:** 6-21-07

**Summary:** Division 530 will be revised substantially. The division will be re-titled and new definitions added. The certification process will be amended to better define the certification process, foster parent qualifications, and selection process. The rules will be revised to clarify existing standards and include additional standards for foster homes. The rule governing exceptions will be revised to refine the process of granting exceptions to these rules. Denial, suspension, revocation processes and inactive referral status will be clarified. In

addition, changes to the certification standards for private youth care agencies will be made to correspond with changes in the above noted rules.

**Rules Coordinator:** Mike Riggan

**Address:** 530 Center St. NE Ste. 200 Salem, Oregon 97301

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

.....  
**Parks and Recreation Department**  
**Chapter 736**

**Rule Caption:** ATV Rule Changes Affecting Grant Match Requirements.

Date:	Time:	Location:
6-5-07	6 p.m.	725 Summer St. NE Salem, OR

6-7-07	6 p.m.	Bend Senior Center 1600 SE Reed Market Rd. Bend, OR
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**Hearing Officer:** C. Wayne Rawlins

**Stat. Auth.:** ORS 183, 390.124

**Stats. Implemented:** ORS 390.124(1)

**Proposed Amendments:** Rules in 736, 736-004-0015, 736-004-0025

**Last Date for Comment:** 6-20-07

**Summary:** Modifying the term "shall" to the term "must" or "will" wherever appropriate within 736.

736-004-0015(26) adding the term "successor" and defining the same.

736-004-0025(1)(d) describing the use of a "successor".

736-004-0025(3)(b) providing criteria for requesting the waiver of the match requirement for land acquisition.

**Rules Coordinator:** Pamela Berger

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

**Telephone:** (503) 986-0719

.....  
**Real Estate Agency**  
**Chapter 863**

**Rule Caption:** Real estate advertising.

Date:	Time:	Location:
6-21-07	10 a.m.	Real Estate Agency Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 696.385

**Stats. Implemented:** ORS 696.020, 693.301(1), (4)

**Proposed Amendments:** 863-015-0125

**Last Date for Comment:** 6-21-07, 5 p.m.

**Summary:** Clarifies that advertising shall be reasonable identifiable as advertising of a real estate licensee. In addition, a real estate licensee may advertise real estate that is owned by the licensee for sale or lease that is not listed with a broker; however, the individual must be identified as a licensee.

Replaces temporary rule in effect January 1, 2007 through June 29, 2007.

**Rules Coordinator:** Laurie Skillman

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

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

# ADMINISTRATIVE RULES

## Board of Architect Examiners Chapter 806

**Rule Caption:** Board's Biennial Budget.

**Adm. Order No.:** BAE 1-2007

**Filed with Sec. of State:** 5-8-2007

**Certified to be Effective:** 7-1-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 806-001-0003

**Subject:** This rule adopts the 2007–2009 biennial budget for the Oregon Board of Architect Examiners, with an expenditure limit of \$660,000.

**Rules Coordinator:** Carol Halford—(503) 763-0662

### 806-001-0003

#### Biennial Budget

Pursuant to the provisions of ORS 182.462, the Board adopts by reference the Oregon State Board of Architect Examiners' 2007–2009 Biennial Budget of \$660,000 covering the period July 1, 2007, through June 30, 2009. The Board Administrator will amend budgeted accounts as necessary, within the approved budget of \$660,000, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying holders of licenses, and holding a public hearing. Copies of the budget are available from the Board's office.

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

Stat. Auth.: ORS 671.120, 671.125 & 182.462

Stats. Implemented: ORS 671.125 & 182.462

Hist.: AE 1-1997(Temp), f. & cert. ef. 7-25-97; AE 3-1997, f. & cert. ef. 12-11-97; BAE2-1998, f. & cert. ef. 6-22-98; BAE 2-1999, f. & cert. ef. 5-25-99; BAE 2-2001, f. 6-6-01, cert. ef. 7-1-01; BAE 2-2003, f. 4-11-03 cert. ef. 7-1-03; BAE 1-2005, f. 3-14-05, cert. ef. 7-1-05; BAE 1-2007, f. 5-8-07, cert. ef. 7-1-07

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## Board of Medical Examiners Chapter 847

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

**Adm. Order No.:** BME 10-2007

**Filed with Sec. of State:** 4-26-2007

**Certified to be Effective:** 4-26-07

**Notice Publication Date:** 12-1-06

**Rules Amended:** 847-070-0016, 847-070-0038

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

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

### 847-070-0016

#### Qualifications

Effective November 21, 2001, an applicant for licensure as an acupuncturist in the State of Oregon must have the following qualifications:

(1) Have graduated from an acupuncture program that satisfies the standards of the Accreditation Commission for Acupuncture and Oriental Medicine (A.C.A.O.M.), or its successor organization, or an equivalent accreditation body that are in effect at the time of the applicant's graduation. An acupuncture program may be established as having satisfied those standards by demonstration of one of the following:

(a) Accreditation, or candidacy for accreditation by ACAOM at the time of graduation from the acupuncture program; or

(b) Approval by a foreign government's Ministry of Education, or Ministry of Health, or equivalent foreign government agency at the time of graduation from the acupuncture program. Each applicant must submit their documents to a foreign credential equivalency service, which is approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) for the purpose of establishing equivalency to the ACAOM accreditation standard. Acupuncture programs that wish to

be considered equivalent to an ACAOM accredited program must also meet the curricular requirements of ACAOM in effect at the time of graduation.

(2) Certification in acupuncture by the National Certification Commission for Acupuncture and Oriental Medicine (N.C.C.A.O.M.). An applicant shall be deemed certified by the N.C.C.A.O.M. in Acupuncture if the applicant has passed the N.C.C.A.O.M. Acupuncture Certification Examinations, or has been certified through the N.C.C.A.O.M. Credentials Documentation Examination; or

(3) An applicant who does not meet the criteria in OAR 847-070-0016(1) and (2) must have the following qualifications:

(a) Five years of licensed clinical acupuncture practice in the United States prior to July 1, 1998. This practice must include a minimum of 500 acupuncture patient visits per year. Documentation shall include:

(A) Two affidavits from office partners, clinic supervisors, accountants, or others approved by the Board, who have personal knowledge of the years of practice and number of patient visits per year; and

(B) Notarized copies of samples of appointment books, patient charts and financial records, or other documentation as required by the Board; and

(b) An applicant must have practiced as a licensed acupuncturist in the U.S. during five of the last seven years prior to application for Oregon licensure. Licensed practice includes clinical practice, clinical supervision, teaching, research, and other work as approved by the Board within the field of acupuncture and oriental medicine. Documentation of this practice will be required and is subject to Board approval; and

(c) Successful completion of the A.C.A.O.M. western medicine requirements in effect on July 1, 1998; and

(d) Current certification in acupuncture by the N.C.C.A.O.M. An applicant shall be deemed certified in Acupuncture by the N.C.C.A.O.M. if the applicant has passed the N.C.C.A.O.M. Acupuncture Certification Examinations, or has been certified through the N.C.C.A.O.M. Credentials Documentation Examination; or

(4) An individual whose acupuncture training and diploma were obtained in a foreign country and who cannot document the requirements of subsections (1) through (3) of this rule because the required documentation is now unobtainable, may be considered eligible for licensure if it is established to the satisfaction of the Board that the applicant has equivalent skills and training and can document one year of training or supervised practice under a licensed acupuncturist in the United States; and

(5) In addition to meeting the requirements in (1) and (2), or (3), or (4) of this rule, all applicants for licensure must have the following qualifications:

(a) Licensure in good standing from the state or states of all prior and current health related licensure; and

(b) Have good moral character as those traits would relate to the applicant's ability of properly engaging in the practice of acupuncture; and

(c) Have the ability to communicate in the English language well enough to be understood by patients and physicians. This requirement is met if the applicant passes the N.C.C.A.O.M. written acupuncture examination in English, or if in a foreign language, must also have passed an English language proficiency examination, such as TOEFL (Test of English as a Foreign Language), or TSE (Test of Spoken English). An applicant must obtain a TOEFL score of 500 or more for the written TOEFL exam and 173 or more for the computer based TOEFL exam, or a TSE score of 200 or more prior to July 1995, and a score of 50 or more after July 1995. An applicant who is certified through the N.C.C.A.O.M. Credentials Documentation Examination must also have passed an English proficiency examination.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.757 & 677.780

Hist.: ME 5-1997, f. & cert. ef. 11-3-97; BME 5-1998, f. & cert. ef. 4-22-98; BME 15-1998, f. & cert. ef. 10-26-98; BME 15-1998, f. & cert. ef. 10-26-98; BME 16-1999, f. & cert. ef. 10-28-99; BME 13-2001, f. & cert. ef. 10-30-01; BME 6-2002, f. & cert. ef. 4-23-02; BME 12-2005, f. & cert. ef. 10-12-05; BME 21-2006, f. & cert. ef. 10-23-06; BME 10-2007, f. & cert. ef. 4-26-07

### 847-070-0038

#### Limited License, Visiting Professor

(1) An acupuncturist who has received a teaching position in a school of acupuncture in this state may be issued a Limited License, Visiting Professor if the following criteria are met:

(a) The applicant has established to the satisfaction of the Board that he/she has the skills and training equivalent to OAR 847-070-0016 (1);

(b) The applicant has at least five years experience as an acupuncturist; and

(c) The applicant has submitted the appropriate form and fee for a Limited License, Visiting Professor.

# ADMINISTRATIVE RULES

(2) The head of the acupuncture school in which the applicant will be teaching shall certify in writing to the Board that the applicant has been offered a teaching position which will be under the direction of the head of the department and will not be permitted to practice acupuncture unless as a necessary part of the applicant's teaching position as approved by the Board.

(3) An acupuncturist who is applying for a Limited License, Visiting Professor may also be approved as a clinical supervisor if the applicant meets the requirements of OAR 847-070-0017.

(4) The Limited License, Visiting Professor may be granted for one year and may be granted a total of two one-year extensions upon annual review of the written justification of the need based upon academic necessity. The renewal form and fee must be submitted 30 days before the end of the year if an extension of the Limited License, Visiting Professor is requested.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265, 677.759

Hist.: ME 2-1981, f. & ef. 2-3-81; ME 9-1982, f. & ef. 10-27-82; ME 6-1984, f. & ef. 1-20-84; ME 1-1985, f. & ef. 1-21-85; ME 13-1989, f. & cert. ef. 8-4-89; ME 8-1990, f. & cert. ef. 4-25-90; ME 9-1991, f. & cert. ef. 7-24-91; ME 6-1993, f. & cert. ef. 4-22-93; ME 10-1996, f. & cert. ef. 10-29-96; ME 5-1997, f. & cert. ef. 11-3-97; BME 14-2001, f. & cert. ef. 10-30-01; BME 15-2003, f. & cert. ef. 10-23-03; BME 10-2007, f. & cert. ef. 4-26-07

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**Rule Caption:** Add PA to POLST; amend administration of atropine sulfate and pralidoxime chloride by EMT-Basics.

**Adm. Order No.:** BME 11-2007

**Filed with Sec. of State:** 4-26-2007

**Certified to be Effective:** 4-26-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 847-035-0030

**Subject:** The proposed rule amendment (1) adds physician assistants to the health care providers who can sign a life-sustaining treatment order; and (2) replaces the term "chemical agents" with the term "organophosphate agents" and removes the requirement that either the supervising physician provide the EMT-Basic with a direct verbal order or that the EMT-Basic be under the direction of an EMT-Paramedic on the scene when an EMT-Basic administers atropine sulfate and pralidoxime chloride by autoinjector in the event of a release of organophosphate agents. EMT-Basics must still have completed DHS-EMS approved training and use protocols adopted by his/her supervising physician prior to administering the drugs.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

## 847-035-0030

### Scope of Practice

(1) The Board of Medical Examiners has established a scope of practice for emergency and nonemergency care for First Responders and EMTs. First Responders and EMTs may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001(5).

(2) The scope of practice for First Responders and EMTs is not intended as statewide standing orders or protocols. The scope of practice is the maximum functions which may be assigned to a First Responder or EMT by a Board-approved supervising physician.

(3) Supervising physicians may not assign functions exceeding the scope of practice; however, they may limit the functions within the scope at their discretion.

(4) Standing orders for an individual EMT may be requested by the Board or Section and shall be furnished upon request.

(5) No EMT may function without assigned standing orders issued by Board-approved supervising physician.

(6) An Oregon-certified First Responder or EMT, acting through standing orders, shall respect the patient's wishes including life-sustaining treatments. Physician supervised First Responders and EMTs shall request and honor life-sustaining treatment orders executed by a physician, nurse practitioner or physician assistant if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) The scope of practice for emergency and nonemergency care established by the Board for First Responders is intended as authorization for performance of procedures by First Responders without direction from a Board-approved supervising physician, except as limited by subsection (2) of this rule. A First Responder may perform the following emergency care procedures without having signed standing orders from a supervising physician:

- (a) Conduct primary and secondary patient examinations;
- (b) Take and record vital signs;
- (c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;
- (d) Open and maintain an airway by positioning the patient's head;
- (e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (f) Provide care for soft tissue injuries;
- (g) Provide care for suspected fractures;
- (h) Assist with prehospital childbirth; and
- (i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

(8) A First Responder may perform the following procedures only when the First Responder is providing emergency care as part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:

- (a) Administration of medical oxygen;
- (b) Open and maintain an airway through the use of a nasopharyngeal and a noncuffed oropharyngeal and pharyngeal suctioning devices;
- (c) Operate a bag mask ventilation device with reservoir;
- (d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and
- (e) Administer epinephrine by automatic injection device for anaphylaxis;
- (f) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

(9) An Oregon-certified EMT-Basic may perform emergency and nonemergency procedures. Emergency care procedures shall be limited to the following basic life support procedures:

- (a) Perform all procedures that an Oregon-certified First Responder can perform;
- (b) Ventilate with a non-invasive positive pressure delivery device;
- (c) Insert a cuffed pharyngeal airway device in the practice of airway maintenance. A cuffed pharyngeal airway device is:

(A) A single lumen airway device designed for blind insertion into the esophagus providing airway protection where the cuffed tube prevents gastric contents from entering the pharyngeal space; or

(B) A multi-lumen airway device designed to function either as the single lumen device when placed in the esophagus, or by insertion into the trachea where the distal cuff creates an endotracheal seal around the ventilatory tube preventing aspiration of gastric contents.

(d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;

(f) Provide care for suspected medical emergencies, including:

(A) Obtaining a capillary blood specimen for blood glucose monitoring;

(B) Administer epinephrine by subcutaneous injection or automatic injection device for anaphylaxis;

(C) Administer activated charcoal for poisonings; and

(D) Administer aspirin for suspected myocardial infarction.

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(k) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient; and

(l) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer

# ADMINISTRATIVE RULES

atropine sulfate and pralidoxime chloride from a Section-approved pre-loaded auto-injector device, and perform endotracheal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline;

(m) In the event of a release of organophosphate agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride by autoinjector, using protocols approved by the Section and adopted by the supervising physician.

(10) An Oregon-certified EMT-Intermediate may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to the following:

(a) Perform all procedures that an Oregon-certified EMT-Basic can perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate and maintain an introsseous infusion;

(d) Initiate saline or similar locks;

(e) Draw peripheral blood specimens;

(f) Administer the following medications under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician:

(A) Physiologic isotonic crystalloid solution;

(B) Vasoconstrictors:

(i) Epinephrine;

(ii) Vasopressin.

(C) Antiarrhythmics:

(i) Atropine sulfate;

(ii) Lidocaine;

(iii) Amiodarone.

(D) Antidotes: Naloxone hydrochloride;

(E) Antihypoglycemics:

(i) Hypertonic glucose;

(ii) Glucagon.

(F) Vasodilators: Nitroglycerine;

(G) Nebulized bronchodilators:

(i) Albuterol;

(ii) Ipratropium bromide;

(H) Analgesics:

(i) Morphine;

(ii) Nalbuphine Hydrochloride;

(iii) Ketorolac tromethamine.

(I) Antihistamine: Diphenhydramine;

(J) Diuretic: Furosemide.

(g) Administer immunizations in the event of an outbreak or epidemic as declared by the Governor of the state of Oregon, the State Public Health Officer or a county health officer, as part of an emergency immunization program, under the agency's supervising physician's standing order;

(h) Administer routine or emergency immunizations, as part of an EMS Agency's occupational health program, to the EMT's EMS agency personnel, under the supervising physician's standing order;

(i) Insert an orogastric tube;

(j) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for such maintenance have been provided by the physician, nurse practitioner or physician assistant at the sending medical facility;

(k) Initiate electrocardiographic monitoring and interpret presenting rhythm;

(l) Perform cardiac defibrillation with a manual defibrillator.

(11) An Oregon-certified EMT-Paramedic may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to:

(a) Perform all procedures that an Oregon-certified EMT-Intermediate can perform;

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Tracheal suctioning techniques;

(C) Cricothyrotomy; and

(D) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.

(c) Initiate a nasogastric tube;

(d) Provide advanced life support in the resuscitation of patients in cardiac arrest;

(e) Perform emergency cardioversion in the compromised patient;

(f) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

(g) Initiate needle thoracostomy for tension pneumothorax in a pre-hospital setting;

(h) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;

(i) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(j) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

(12) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:

(a) Designing the supervising physician and agent application;

(b) Approving a supervising physician or agent; and

(c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.

(13) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 677.265, 682.245

Stats. Implemented: ORS 127.505-127.660, 677.265, 677.515, 682.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04; BME 11-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & cert. ef. 6-11-04 thru 12-8-04; BME 21-2004(Temp), f. & cert. ef. 11-15-04 thru 4-15-05; BME 2-2005, f. & cert. ef. 1-27-05; BME 5-2005, f. & cert. ef. 4-21-05; BME 9-2005, f. & cert. ef. 7-20-05; BME 18-2006, f. & cert. ef. 7-25-06; BME 22-2006, f. & cert. ef. 10-23-06; BME 7-2007, f. & cert. ef. 1-24-07; BME 11-2007, f. & cert. ef. 4-26-07

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**Rule Caption:** Specify applicant for physician licensure may have to demonstrate clinical competency.

**Adm. Order No.:** BME 12-2007

**Filed with Sec. of State:** 4-26-2007

**Certified to be Effective:** 4-26-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 847-020-0180

**Subject:** The proposed rule amendment specifies the applicant for physician licensure may have to demonstrate clinical competency if the applicant has ceased the practice of medicine for a period of 12 or more consecutive months.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

## 847-020-0180

### Endorsement or Reciprocity, SPEX Examination and Personal Interview

(1) After complying with OAR 847-020-0110 through 847-020-0200, the applicant may base an application upon certification by the National Board of Medical Examiners of the United States of America, the National Board of Osteopathic Medical Examiners, the Medical Council of Canada, or upon reciprocity with a license obtained by FLEX examination, USMLE examination, or written examination from a sister state. The FLEX and USMLE examination must have been taken in accordance with OAR 847-020-0170. The examination grades must meet Oregon standards pursuant to ORS 677.110(1). In order to reciprocate with a lapsed license, such license must have been in good standing while registered in that state and that board must furnish a current, original certification of grades to the Oregon Board.

(2) The applicant may also be required to pass the Special Purpose Examination (SPEX). This requirement may be waived if:

# ADMINISTRATIVE RULES

(a) The applicant has within ten years of filing an application with the Board, completed one year of an accredited residency, or an accredited or Board approved clinical fellowship; or

(b) The applicant has within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(c) The applicant has received an appointment as Professor or Associate Professor at the Oregon Health and Science University; and

(d) Has not ceased the practice of medicine for a period of 12 or more consecutive months. The SPEX examination may be waived if the applicant, after ceasing practice for a period of 12 or more consecutive months, has subsequently:

(A) Completed one year of an accredited residency; or

(B) Completed one year of an accredited or Board approved clinical fellowship; or

(C) Been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(D) Obtained continuing medical education to the Board's satisfaction.

(3) The applicant who fails the SPEX examination three times, whether in Oregon or other states, shall successfully complete one year of an accredited residency or an accredited or approved clinical fellowship before retaking the SPEX:

(a) However, after the first or second failed attempt, the Board may allow the applicant to take an oral specialty examination, at the applicant's expense, to be given by a panel of physicians in such specialty. The applicant shall submit the cost of administering the oral examination prior to the examination being scheduled;

(b) If an oral specialty examination is requested by the applicant, an Examination Panel of at least three physicians shall be appointed;

(c) The examination shall include questions which test basic knowledge and also test for knowledge expected of a physician with a practice similar in nature to examinee's. The panel shall establish a system for weighing their score for each question in the examination. After it is prepared, the examination shall be submitted to the Board for review and approval;

(d) The Board shall require a passing grade of 75 on the oral specialty examination;

(e) If such oral examination is passed, the applicant would be granted a license limited to the applicant's specialty. If failed, the license would be denied and the applicant would not be eligible for licensure.

(4) The Limited License, SPEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the Special Purpose Examination are available, and the applicant completes the initial registration process. The Limited License, SPEX would become invalid should the applicant fail the SPEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

(5) If the applicant has ceased the practice of medicine for a period of 12 or more consecutive months, the applicant may be required to further demonstrate clinical competency.

(6) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the application. The interview shall be conducted during a regular meeting of the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall be rescheduled only after paying a rescheduling fee prior to the filing deadline date.

(7) All of the rules, regulations and statutory requirements pertaining to the medical school graduate shall remain in full effect.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100, 677.265

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 10-2003, f. & cert. ef. 5-2-03; BME 3-2004, f. & cert. ef. 1-27-04; BME 3-2006, f. & cert. ef. 2-8-06; BME 12-2007, f. & cert. ef. 4-26-07

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**Rule Caption:** Physician and physician assistant to honor life-sustaining treatment orders.

**Adm. Order No.:** BME 13-2007

**Filed with Sec. of State:** 4-26-2007

**Certified to be Effective:** 4-26-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 847-010-0110

**Subject:** The proposed rule specifies that a physician or physician assistant shall respect and honor life-sustaining treatment orders executed by a physician, physician assistant or nurse practitioner. The rule also specifies that a physician or physician assistant must honor a life-sustaining treatment order regardless of whether or not the physician, physician assistant or nurse practitioner who executed the order has admitting privileges at the hospital or health care facility where the patient is being treated.

**Rules Coordinator:** Diana M. Dolstra—(971) 673-2713

**847-010-0110**

**Physicians and Physician Assistants to Honor Life-Sustaining Treatment Orders**

(1) A physician or physician assistant licensed pursuant to ORS Chapter 677 shall respect the patient's wishes including life-sustaining treatments. Consistent with the requirements of ORS Chapter 127, a physician or physician assistant shall respect and honor life-sustaining treatment orders executed by a physician, physician assistant or nurse practitioner. The fact that a physician, physician assistant or nurse practitioner who executed a life-sustaining treatment order does not have admitting privileges at a hospital or health care facility where the patient is being treated does not remove the obligation under this section to honor the order. In keeping with ORS Chapter 127, a physician or physician assistant shall not be subject to criminal prosecution, civil liability or professional discipline.

(2) Should new information on the health of the patient become available the goals of treatment may change. Following discussion with the patient, or if incapable their surrogate, new orders regarding life-sustaining treatment should be written, dated and signed.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 127.505-127.660, 677.265

Hist.: BME 13-2007, f. & cert. ef. 4-26-07

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## Board of Nursing Chapter 851

**Rule Caption:** Advanced Practice Formulary Updated.

**Adm. Order No.:** BN 4-2007

**Filed with Sec. of State:** 5-2-2007

**Certified to be Effective:** 5-2-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 851-056-0012

**Subject:** The Board is authorized by ORS 678.385 and 678.390 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 or clinical nurse specialist under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the February, March and April 2007 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion.

**Rules Coordinator:** KC Cotton—(971) 673-0638

**851-056-0012**

**Formulary for Clinical Nurse Specialists and Nurse Practitioners with Prescriptive Authority**

(1) The following definitions apply for the purpose of these rules:

(a) "Appliance or device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurses with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated April 2007, with the exception of certain drugs and drug groups which are listed below.

(c) "Board" means the Oregon State Board of Nursing.

(2) The Board as authorized by ORS 678.385 shall determine the drugs which clinical nurse specialists and nurse practitioners with prescriptive authority may prescribe, shall periodically revise the formulary by rulemaking hearing at each regular Board meeting, and shall transmit the list of those drugs which are exceptions to the formulary, and which may not be prescribed to nurses with prescriptive authority and other interested parties.

(3) The formulary is constructed based on the following premises:

# ADMINISTRATIVE RULES

(a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;

(b) Clinical nurse specialists may provide care for individuals and populations within their specialty scope of practice;

(c) Prescribing is limited by the individual's scope of practice and knowledge base within that scope of practice;

(d) Clinical nurse specialists and nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005; or 851-054-0020 and 0021;

(e) Clinical nurse specialists and nurse practitioners shall be held strictly accountable for their prescribing decisions;

(f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.

(4) Clinical nurse specialists and nurse practitioners with prescriptive authority are authorized to prescribe:

(a) All over-the-counter drugs;

(b) Appliances and devices.

(5) Clinical nurse specialists and nurse practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated April 2007:

(a) Nutrients and Nutritional Agents — all drugs except Flavocoxid (Limbrel);

(b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris); and Treprostinil Sodium (Romodulin).

(c) Endocrine and Metabolic Agents — all drugs except:

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex); and

(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam); and

(C) Dofetilide (Tikosyn).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

(g) Central Nervous System Agents — all drugs with the following provisions:

(A) Class II Controlled Substances — Only the following drugs:

(i) Tincture of opium;

(ii) Codeine;

(iii) Hydromorphone;

(iv) Morphine;

(v) Oxycodone, Oxymorphone;

(vi) Topical Cocaine Extracts and Compounds;

(vii) Fentanyl;

(viii) Meperidine;

(ix) Amphetamines;

(x) Methylphenidates;

(xi) Pentobarbital;

(xii) Secobarbital;

(xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-056-0026); and

(xiv) Levorphanol.

(B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide.

(C) Chymopapain is excluded.

(D) Ziconotide (Prialt) is excluded.

(h) Gastrointestinal Agents — all drugs except: Monoctanoic;

(i) Anti-infectives, Systemic — all drugs;

(j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);

(k) Dermatological Agents — all drugs except Psoralens;

(l) Ophthalmic and Otic Agents — all drugs except:

(A) Punctal plugs;

(B) Collagen Implants;

(C) Indocyanine Green;

(D) Hydroxypropyl (Methyl) Cellulose;

(E) Polydimethylsiloxane;

(F) Fomivirsin Sodium (Vitravene);

(G) Verteporfin;

(H) Levobetaxolol HCL (Betaxon);

(I) Travoprost (Travatan);

(J) Bimatoprost (Lumigan);

(K) Unoprostone Isopropyl (Rescula);

(L) Pegaptanib Sodium (Macugen);

(M) Triptan Blue (VisionBlue);

(N) Retisert; and

(O) Ranibizumab (Lucentis).

(m) Antineoplastic Agents — all drugs except:

(A) NCI Investigational Agents;

(B) Samarium Sm53;

(C) Denileukin Diftitox (Ontak);

(D) BCG, Intravesical (Pacis);

(E) Arsenic Trioxide (Trisenox);

(F) Ibritumomab Tiuxetan (Zevalin);

(G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar);

(H) Sclerosol; and

(I) Clofarabine (Clolar).

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);

(B) Thyrotropin Alfa (Thyrogen);

(C) Miscellaneous Radiopaque agents — no drugs from this category

except:

(i) Iopamidol;

(ii) Iohexol; and

(iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.385

Stats. Implemented: ORS 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 2-2007, f. & cert. ef. 3-13-07; BN 4-2007, f.

& cert. ef. 5-2-07

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**Rule Caption:** Revised Agency Fees for RNs/LPNs and New Fees for Fingerprinting.

**Adm. Order No.:** BN 5-2007

**Filed with Sec. of State:** 5-4-2007

**Certified to be Effective:** 7-1-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 851-002-0055

**Rules Amended:** 851-002-0010

**Subject:** These rules cover all agency fees for Registered Nurses, Licensed Practical Nurses, and fingerprinting.

**Rules Coordinator:** KC Cotton—(971) 673-0638

## 851-002-0010

### RN/LPN Schedule of Fees

(1) License Renewal — \$105.

(2) Delinquent Renewal — \$12.

(3) License by Endorsement — \$155.

(4) Licensure by Examination — \$120.

(5) Written Verification of License — \$12.

(6) Duplicate License — \$12.

(7) Limited Licenses:

(a) License Memorandum — \$25;

(b) Reentry — \$95;

(c) Extension of Reentry — \$25.

(8) Limited Licenses for Educational Experience:

(a) International Graduate Nursing Students — \$65;

(b) Extension of International Graduate Nursing Students — \$25;

(c) International RN in Short-Term Educational Experience — \$35;

(d) International Exchange Students — \$25;

(e) U.S. RNs in Distance Learning — \$15.

(f) Extension of Distance Learning — \$15

(9) Reexamination for Licensure — \$25.

(10) Reactivation — \$120.

(11) Reinstatement — \$120.

(12) Retired Nurse Status — \$20.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994 f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 11-1999, f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 17-2002, f. & cert. ef. 10-18-02; BN 6-2003, f. & cert. ef. 7-7-03; BN 5-2007, f. 5-4-07, cert. ef. 7-1-07



# ADMINISTRATIVE RULES

## 851-002-0055

### Miscellaneous Fees

Fingerprinting — \$52.  
Stat. Auth.: ORS 678.150, 678.410  
Stats. Implemented: ORS 678.410  
Hist.: BN 5-2007, f. 5-4-07, cert. ef. 7-1-07

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## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amends the prevailing rates of wage for the period beginning January 1, 2007.

**Adm. Order No.:** BLI 10-2007

**Filed with Sec. of State:** 4-30-2007

**Certified to be Effective:** 4-30-07

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2007.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2007, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2007, and the effective dates of the applicable special wage determination and rates amendments:

(a) Marine Rates for Public Works Contracts in Oregon (effective October 4, 2006);

(b) Amendments/Corrections to January 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 19, 2007);

(c) Amendments/Corrections to January 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective February 16, 2007);

(d) Amendment to Oregon Determination 2007-01 (effective April 1, 2007);

(e) Amendments/Corrections to January 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective March 23, 2007);

(f) Amendments/Corrections to January 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective April 1, 2007);

(g) Amendments/Corrections to January 1, 2007 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective April 20, 2007).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2007, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060  
Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert.

ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07

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**Rule Caption:** Corrects incorrect federal regulation citation pertaining to payment of exempt employees on fee basis.

**Adm. Order No.:** BLI 11-2007

**Filed with Sec. of State:** 5-10-2007

**Certified to be Effective:** 5-15-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 839-020-0004

**Subject:** This rule amendment corrects an incorrect federal regulation citation which provides that compensation paid to exempt administrative and professional employees in the form of fees is not inconsistent with the payment of such employees on a salary basis. This proposed amendment would partially make permanent a temporary rule adopted on November 24, 2006 which also reference two other federal regulations that the agency has since determined may not be appropriate to reference in the rule. These have been omitted from the permanent rule amendment.

**Rules Coordinator:** Marcia Ohlemiller—(971) 673-0784

## 839-020-0004

### Definitions

As used in ORS 653.010 to 653.261 and these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Wage and Hour Division.

(2) "Adult" means an individual of 18 years of age or more.

(3) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

(4) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. "Agricultural employment" is employment in "Agriculture" as herein defined.

(5) "Bureau" means Bureau of Labor and Industries.

(6) "Casual basis" as used in ORS 653.020(2) and these rules means employment which is irregular and intermittent and which is not performed by an individual whose vocation is providing domestic services.

(7) "Child care service person" means an individual who performs child care services in the home of the individual or the child and who during any part of a 24 hour period provides custodial care and protection to infants or children.

(8) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(9) "Commission" means the Wage and Hour Commission.

(10) "Commissions" or "pay on a commission basis" means payment based on a percentage of total sales, or of sales in excess of a specified amount, or on a fixed allowance per unit agreed upon as a measure of accomplishment or on some other formula and may be the sole source of compensation or payment in addition to other compensation.

(11) "Companionship services", as used in ORS 653.020(14) and in these rules, means those services which provide fellowship, care and protection for a person who, because of advanced age or physical or mental

# ADMINISTRATIVE RULES

infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the elderly or infirm person such as meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work: provided, however, that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the elderly or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a family home.

(12) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(13) "Domestic service" means services of a household nature performed by an employee in or about a family home (permanent or temporary) of the person by whom the employee is employed. The term includes, but is not limited to, employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, gardeners, and companions to the elderly and infirm.

(14) "Domicile" means the permanent residence of a person or the place to which that person intends to return even though that person may actually reside elsewhere.

(15) "Employed on a seasonal basis at", as used in ORS 653.020(10) and in these rules, means employment that occurs during the time the organized camp provides services to campers at the camp site where campers are located. The term includes employment at the camp site in duties preparatory to the opening or closing of the camp site. The term includes employment during the camping season only and does not include full time, year around employment.

(16) "Employer" has the same meaning as that in ORS 653.010(4).

(17) "Fair market value" means an amount not to exceed the retail price customarily paid by the general public for the same or similar meals, lodging or other facilities or services provided to the employee by the employer. In determining the fair market value of meals, lodging and other facilities and services, the bureau will be guided by these rules and by Title 29, CFR Part 531 — Wage Payments under the Fair Labor Standards Act of 1938, where applicable.

(18) "Family home", as used in ORS 653.020(2) and this section, means a residence, the purpose of which is to provide an abode for the owner or renter of the residence and family members of the owner or renter. For example, a boarding house or an adult foster care home are not family homes for purposes of ORS 653.020(2) and these rules. However, when casual domestic service work is performed in structures where the owner or renter resides and operates a business, such work may qualify as exempt under ORS 653.020(2) depending upon all the facts of the particular arrangement.

(19) "Homeworker" means any employee suffered or permitted to produce goods or services for an employer in or about a home, apartment or room in a residence in which that employee or other employees of an employer resides, regardless of the source of the materials used by the homeworker in such production.

(20) "Hours worked" means all hours for which an employee is employed by and required to give to the employer and includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place and all time the employee is suffered or permitted to work. "Hours worked" includes "work time" as defined in ORS 653.010(12).

(21) "Immediate family" means grandfather, grandmother, father, mother, son, daughter, sister, brother, uncle or aunt.

(22) "Minimum wage" means the rate of pay prescribed in ORS 653.025 and 653.030.

(23) "Minor" means an individual of 17 years of age or less.

(24) "Organized camp" has the same meaning as that in ORS 653.010(7).

(25) "Primary duty" means, as a general rule, the major part, or over 50 percent, of an employee's time. However, a determination of whether an employee has management as the employee's primary duty must be based on all the facts of a particular case. Time alone is not the sole test and in situations where the employee does not spend over 50 percent of the employee's time in managerial duties, the employee might have management as a primary duty if other pertinent factors support such a conclusion. Factors to be considered include, but are not limited to, the relative importance of the managerial duties as compared with other duties, the frequency with which the employee exercises discretionary powers, the relative freedom from supervision and the relationship between the salary paid the employee and

wages paid other employees for the kind of non-exempt work performed by the supervisor.

(26) "Primary school" means a learning institution containing any combination of grades Kindergarten - 8 or age level equivalent.

(27) "Reside" means a personal presence at some place of abode with no present intention of definite and early removal and with the intent to remain for an undetermined period, but not necessarily combined with the intent to stay permanently.

(28) "Resident manager" means an employee of an adult foster home who is domiciled at the home and who is directly responsible for the care of residents in the home on a day to day basis.

(29) "Salary" means a predetermined amount constituting all or part of the employee's compensation paid for each pay period of one week or longer (but not to exceed one month) and in no instance will be any amount less than required to be paid pursuant to ORS 653.025.

(30) "Salary basis" means a salary as defined in section (29) of this rule, which is not subject to deduction because of lack of work for part of a work week, however, deductions for absences of one day or more may be made if the employee is absent for other reasons. Deductions may not be made for absences of less than one day, except as permitted for employers covered by the federal Family and Medical Leave Act of 1993, Public Law 103-3, for part-day absences due to leave pursuant to that law. Employees who are not paid for workweeks in which they performed no work are considered to be on a salary basis provided they are paid on a salary basis in workweeks when work is performed.

(a) Payment of additional compensation is not inconsistent with the salary basis of payment.

(b) Compensation paid in the form of fees is not inconsistent with the salary basis of payment, provided the fees paid in each pay period are not less than the amount required to be paid pursuant to ORS 653.025 and meet the requirements for fee payments under the federal Fair Labor Standards Act, as stated in Title 29, Code of Federal Regulations, Part 541.605 and related rules.

(31) "Secondary school" means a learning institution containing any combination of grades 9 — 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(32) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

(33) "Willfully" means knowingly. An action is done knowingly when it is undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of these rules, the employer is presumed to know the requirements of ORS 653.010 to 653.261 and these rules.

Stat. Auth.: ORS 653.040

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 3-1992, f. & cert. ef. 3-2-92; BL 5-1993(Temp), f. 5-7-93, cert. ef. 5-14-93; BL 12-1993, f. 10-29-93, cert. ef. 11-1-93; BL 9-1996, f. & cert. ef. 10-8-96; BL 9-1997, f. & cert. ef. 11-13-97; BLI 1-2002, f. & cert. ef. 1-9-02; TIC 3-2006, f. & cert. ef. 11-24-06; BLI 41-2006(Temp), f. & cert. ef. 11-27-06 thru 5-23-07; BLI 11-2007, f. 5-10-07, cert. ef. 5-15-07

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## Commission for the Blind Chapter 585

**Rule Caption:** Confidentiality and Inadmissibility of Mediation Communications.

**Adm. Order No.:** CFTB 1-2007

**Filed with Sec. of State:** 4-23-2007

**Certified to be Effective:** 4-23-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 585-001-0015

**Subject:** This rule addresses confidentiality and inadmissibility of mediation communications in which the agency is a part or is mediating a dispute for which the agency has regulatory authority.

**Rules Coordinator:** Linda Mock—(971) 673-1588

**585-001-0015**

**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.

# ADMINISTRATIVE RULES

(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.

(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 non-discoverable 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 substantial form the following form. This form may be used separately or incorporated into an "agreement to mediate."

### Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or non-discoverable and inadmissible to the extent authorized by OAR 585-001-0015(7) and this agreement. This agreement relates to the following mediation:

a) \_\_\_\_\_

(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 585-001-0015(7), mediation communications in this mediation are: (check one or more)

\_\_\_ Confidential and may not be disclosed to any other person;

\_\_\_ Not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding;

\_\_\_ 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 administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.

c) \_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Signature of Agency's authorized representative      Date  
(when agency is a party) or Agency employee acting as the mediator  
(when Agency is mediating the dispute)

d) \_\_\_\_\_  
Name of party to the mediation

\_\_\_\_\_  
Signature of party's authorized representative      Date

e) \_\_\_\_\_  
Name of party to the mediation

\_\_\_\_\_  
Signature of party's authorized representative      Date

(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 this subsection 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

# ADMINISTRATIVE RULES

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.

(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;

(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 mediator 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 the agency director 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.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232

Hist.: CFTB 1-2006(Temp), f. & cert. ef. 11-24-06 thru 5-23-07; CFTB 1-2007, f. & cert. ef. 4-23-07

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## Construction Contractors Board Chapter 812

**Rule Caption:** License Fitness Standards Rule.

**Adm. Order No.:** CCB 3-2007

**Filed with Sec. of State:** 4-24-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 4-1-07

**Rules Adopted:** 812-003-0450

**Subject:** In order to exercise authority under ORS 701.135(1)(h) to deny a license to a person who has been convicted of a felony involving crimes that are violent, threatening, intimidating or sexually predatory, which could result in the public being at risk of harm, the CCB adopted rules establishing license standards of fitness. Adoption of the rule ties abusive or predatory behavior crimes to a set of standards that allow the agency to properly exercise its authority to

deny a license to individuals who pose a serious continued threat to the public.

**Rules Coordinator:** Catherine Dixon—(503) 378-4621 ext. 4077

### 812-003-0450

#### License Fitness Standards

(1) In considering whether to sanction an applicant or licensee pursuant to ORS 701.135(1)(h)(A), (B), (C), (D), (E), or (F), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in construction contracting. Fitness to engage in construction contracting includes, but is not limited to, the ability to refrain from violent, threatening, intimidating or sexually predatory behavior. Factors to be considered in denying or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidenced by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(2) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information in order for the Board to conduct a criminal background check as authorized by ORS 701.135(1)(h)(A), (B), (C), (D), (E), or (F). Requested information includes but is not limited to police reports, record of conviction, parole or probation reports, restitution records, counseling reports, and letters of recommendation.

(3) Failure to provide requested information in (2) of this section may result in the denial of a license.

(4) A contractor licensed under ORS 701 must immediately report to the Board if the contractor is convicted of any crime listed in ORS 701.135(1)(h)(A), (B), (C), (D), (E) or (F).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.135

Hist.: CCB 3-2007, f. 4-24-07, cert. ef. 5-1-07

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

**Rule Caption:** 105-040-0020 Expands required use of injured worker list when filling vacant positions to all State positions. 105-040-0060 Replace obsolete term due to HB 2251, remove abolished classifications and remove outdated procedures. 105-050-0020 Repeal because it is unnecessary to address this internal management topic in a public rule.

**Adm. Order No.:** HRSD 1-2007

**Filed with Sec. of State:** 4-24-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 105-040-0020, 105-040-0060

**Rules Repealed:** 105-050-0020

**Subject:** 105-040-0020: 1) "Applicability" of rule is broadened to include other than initial appointment to bargaining unit positions as long as the provision of the rule does not conflict with an applicable bargaining unit.

2) Clarified the term of eligibility in 1(a)(B)(ii) on the Injured Worker List to be until the employee is returned to an "suitable" position.

3) Clarified that the term of eligibility in (1)(a)(B)(iii) on the Injured Worker List to also be until such time an employee loses their reemployment rights for reasons listed in statute.

4) Changed (1)(a)(C) so that the Injured Worker List shall be used first when filling vacancies – not just when filling vacancies at the entry-level. Clarified in this section where another injured worker would have first rights to an available position. Removed "Note" about bypassing this list because it is no longer accurate.

5) In Section (1)(b)(A), clarified and corrected the language regarding the "type" of service to "category" of service designated in statute (ORS 240.195).

6) Removed another "Note" on page 3 because it is no longer consistent with the "Applicability" statement.

105-040-0060: 1) In Section (1), replaced "substantially disabled" with "disabled" as defined by ORS 174.107. With the passage of

# ADMINISTRATIVE RULES

HB2251 in the '05 session, ORS 240.391 was repealed making the term "substantially disabled" obsolete.

2) Changed reference to the HIRE system in Section (1)(a) to a general reference to employment programs for the disabled administered by the Division.

3) Section (2) about reporting certain vacancies to the Salem Employment Department Business & Employment Services Field Office was removed. The appropriate reporting of vacancies is listed in Section (1)(b).

4) Removed all obsolete classifications from the list of Limited-Competitive and Non-Competitive Appointment Classifications in what now will become Section (4).

105-050-0020: The return to work of injured workers is a matter addressed in statute and by Human Resource Services Division (HRSD) statewide policy (internal management directives). It is not necessary to maintain this rule as it does not impact the public or other organizations. Also, this rule does not comply with current interpretation of applicable statutes (see "Stats. Implemented" above). HRSD policy is being revised to ensure statutory compliance.

**Rules Coordinator:** Cheryl Knottingham—(503) 378-2349, ext 325

## 105-040-0020

### Types and Order of Applicant Lists

Applicability: Classified unrepresented, management service, and classified positions, except, where in conflict with a collective bargaining agreement.

(1) The State of Oregon uses a variety of applicant lists (some of which have an established order of use) to facilitate the selection of qualified applicants:

(a) First Consideration: Injured Worker Lists. These lists shall consist of the names of employees with compensable work-related injuries or illnesses that occurred while employed with a state agency in the Executive Branch. The employee must not have waived and reemployment rights in accordance with state workers' compensation laws, OAR 105-050-0020 or an applicable collective bargaining agreement:

(A) These lists are established as follows:

(i) Injured Worker List: by classification, for classifications at or below the injured worker's salary range, for which the injured worker meets the minimum qualifications; and

(ii) Placement on the lists shall be in ascending order by date of injury.

(B) The term of eligibility on the lists shall be until one of the following occurs:

(i) 3 years from date of injury; or

(ii) Until the employee is returned to a suitable position as identified in HRSD State Policy 50.020.03 Reinstatement and Reemployment of Injured Workers; or

(iii) Until an employee loses reemployment rights for reasons listed in ORS 659A.046(3).

(C) The Injured Worker lists shall be used first when filling all vacancies. Exceptions to this consideration are other injured workers with reinstatement rights to their former position and employees entitled to appointment to the position pursuant to provisions or other employment restrictions of a valid collective bargaining agreement between the employer and a representative of the employer's employees. Employees shall be appointed in the order in which they appear on the list if the employee meets the qualifications for the position.

(b) Second Consideration: Agency Layoff Lists. These lists shall consist of the names of permanent (full or part-time) and seasonal employees who have completed initial trial service with the State and have separated from the service in good standing due to layoff or demotion in lieu of layoff:

(A) These lists are established by classification within the category of service as specified in ORS 240.195. The term of eligibility on the list is two years from date of layoff or demotion. An individual shall be removed from the list upon the second refusal of a job offer unless an agency layoff plan allows for additional refusals or when the employee is returned to an equivalent position from which laid off (other than temporary work);

(B) Agency Layoff Lists shall be used when no qualified injured worker is available to fill the vacant position. An employee, on the agency layoff list of the same classification and category of service of the position to be filled, shall be appointed if the employee meets the special qualifica-

tions, if any, for the position. Appointments from the list shall be made consistent with the agency's layoff plan.

(c) Third Consideration: Statewide Reemployment Layoff Lists. These lists shall consist of names of permanent (full or part-time) employees in either the management or classified unrepresented service who have separated due to a layoff from state or unclassified executive service employees terminated from state service due to reduction in force. Employees on the Statewide Reemployment Layoff List must have completed initial trial service:

(A) These lists are established by classification. An employee may request placement on the list via his/her agency's personnel office for classifications for which qualified and which are the same classification, or same, equal, or lower salary range number. The term of eligibility on the list shall not be longer than two years from the date of layoff. An individual shall be removed from the list upon the second refusal of a job offer or when a person accepts a position and is returned to work (other than temporary work);

(B) Statewide Reemployment Layoff Lists shall be used when there are no qualified employees on the agency's layoff list or no agency layoff list exists. An agency shall consider employees on the list for the classification and may consider related classifications having similar knowledge and skills as the position to be filled and shall interview those employees who meet the special qualifications, if any, for the position;

(C) Agency promotion lists, statewide promotion lists, statewide transfer lists and open competitive lists may be used to supplement the applicant pool when fewer than five qualified applicants appear on the Statewide Reemployment Layoff List.

(d) The consideration of using other lists shall follow the injured worker, agency layoff, and statewide reemployment layoff lists, at the agency's discretion, with sequence optional:

(A) Agency Promotion Lists shall consist of names of an agency's employees who meet the qualifications for the position and pass the appropriate promotional test, if any. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from date of placement or adoption of the list, whichever is later;

(B) Statewide Promotion Lists shall consist of names of eligible state employees who meet the qualifications of the position and pass the appropriate promotional test, if any. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from date of placement or adoption of the list, whichever is later. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide promotion list.

(C) Statewide Transfer Lists shall consist of names of eligible state employees who desire a transfer to a position of the same classification, or same, equal, or lower salary range number. These lists are established by classification. Employees may request placement on these lists via their agency's personnel office. The term of eligibility shall be two years from date of application or until the administrator elects to discontinue use of such lists. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide transfer list.

(D) Open Competitive Lists shall consist of names of persons seeking employment with the state who meet the qualifications of the position and pass the appropriate entrance test, if any. In addition, the list will consist of any state employee seeking other employment with the state who has gained regular status in the classification of the position applied for and who meets any special qualification if any, for the position. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from the date of placement or adoption of the list, whichever is later.

(2) Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Record Retention.

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

Stat. Auth.: ORS 184.340, 240.145 & 240.250

Stats. Implemented: ORS 240.306, 659A.052, 659A.043 & 659A.046

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 1-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 3-2003, f. & cert. ef. 4-30-03; HRSD 13-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2007, f. 4-24-07, cert. ef. 5-1-07

# ADMINISTRATIVE RULES

## 105-040-0060

### Limited-Competitive and Noncompetitive Appointments

Applicability: Classified unrepresented and management service positions and initial appointment to all classified positions.

(1) It is the policy of the State of Oregon to facilitate the employment of persons who are disabled (as defined by ORS 174.107), economically disadvantaged or unskilled or semi-skilled through a limited-competitive or non-competitive appointment process:

(a) Recruitment for positions using employment programs serving people with disabilities administered by the Division is not limited to the Limited-Competitive and Non-Competitive Classification list. A limited-competitive selection process through such employment programs administered by the Division may be used to facilitate employment of persons with a disability;

(b) Recruitment for the economically disadvantaged and non-competitive appointments is limited to those classifications listed in this rule (Limited-Competitive and Non-Competitive Appointment Classifications List) unless otherwise authorized by the Division. When an appointing authority chooses to make an appointment using limited-competitive or non-competitive selection and appointment procedures, the appointing authority shall:

(A) Report vacancies to the field office of the Employment Department nearest the location of the vacancy when the recruitment is open to the public;

(B) Provide the Employment Department field office with a brief description of any job reported to that office; and

(C) Make affirmative efforts to supplement referrals to create a diverse pool of candidates.

(c) A limited-competitive selection process may be used for economically disadvantaged persons who meet the following criteria:

(A) Clients of the Department of Human Services programs;

(B) Clients of the Juvenile Justice Division programs funded by the state.

(d) The Division shall use the following criteria when reviewing appointing authority requests for additions to the Limited-Competitive and Non-competitive Appointment Classifications List:

(A) The classification requires minimal or no requisite knowledge or skills;

(B) It is impractical to develop an examination; and

(C) It is impractical to follow the normal recruiting process.

(2) A non-competitive appointment is made to designated classifications comprised of unskilled or semi-skilled positions for which there are minimal or no qualifying knowledge or skills, no screening and no ranking. Where more than one candidate is referred, the hiring manager may use a limited-competitive process to select the most qualified.

(3) Limited-competitive appointment may also be used to limit the competition for appointment to non-competitive classes to those persons who meet the criteria outlined in (1)(b)(A) above.

(4) Following is a list of Limited-Competitive and Non-competitive Appointment Classifications:

(a) 0001, Supported Employment Worker;

(b) 0100, Student Office Worker;

(c) 0101, Office Assistant 1;

(d) 0150, Student Professional/Technical Worker;

(e) 0315, Forestry Communications Dispatcher;

(f) 0405, Mail Services Assistant;

(g) 1105, Traffic Survey Interviewer;

(h) 3769, Experimental Biology Aide;

(i) 4101, Custodian;

(j) 4114, Student Worker Labor/Trades/Service;

(k) 4115, Laborer 1;

(l) 4116, Laborer 2;

(m) 4120, Trades/Maintenance Worker 1;

(n) 4125, Litter Patrol Worker;

(o) 4137, Liquor Distribution Worker 1;

(p) 4403, Transporter;

(q) 5515, Property Guard;

(r) 6605, Human Service Assistant 1;

(s) 6701, Student Human Services Worker;

(t) 6725, Habilitative Training Technician 1;

(u) 6750, Group Life Coordinator 1;

(v) 8125, Agricultural Worker;

(w) 8201, Forest Nursery Worker 1;

(x) 8202, Forest Nursery Worker 2;

(y) 8208, Forest Lookout;

(z) 8235, Student/Professional Forester Worker;

(aa) 8319, Fish and Wildlife Technician (Entry);

(bb) 9100, Food Service Worker 1;

Stat. Auth.: ORS 184.340, 240.145(3) & 240.250

Stats Implemented: ORS 240.306, 240.321 & 657.710

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96; HRSD 17-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2007, f. 4-24-07, cert. ef. 5-1-07

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**Rule Caption:** 105-040-0065 Establishes rule describing Management Service Trial Service Period as delegated pursuant to ORS 240.570(3).

**Adm. Order No.:** HRSD 2-2007

**Filed with Sec. of State:** 4-24-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 4-1-07

**Rules Adopted:** 105-040-0065

**Subject:** 105-040-0065:

The Division currently has the subject of Trial Service for Management Service addressed in internal (HRSD) policy. The Division has reviewed ORS 240.570(3) which states in relevant part "A management service employee is subject to a trial service period established pursuant to rules of the Personnel Division under 240.250." Based on this review, the legislature is specifically directing the Division to establish an OAR on this matter.

**Rules Coordinator:** Cheryl Knottingham—(503) 378-2349, ext 325

## 105-040-0065

### Management Service Trial Service Period

(1) Individuals appointed to a position in the Management Service as provided in ORS 240.195 and 240.212 are subject to a trial service period.

(2) A trial service period is the final phase of the hiring process to afford an employee the opportunity to demonstrate the ability to perform the work and provide state agencies the opportunity to confirm qualifications and fitness of an employee for a position.

(3) A state agency head has the authority to establish a trial service period for appointments to positions in the Management Service consistent with the following criteria:

(a) A trial service period is required upon initial appointment or promotion;

(b) A trial service period shall be no less than 6 months but may be up to 12 months based upon specific circumstances that affect the amount of time needed to demonstrate competency. Part-time employees shall serve a trial service period equivalent to that set by the agency for the specified classification on an hourly basis. For example, a 6-month trial service period is equivalent to 1040 hours for a part-time employee;

(c) A temporary appointment made pursuant to ORS 240.309 does not count as any portion of a trial service period upon subsequent appointment to a regular, limited duration, or seasonal status position in the management service;

(d) Upon successful completion of a trial service period, an employee shall gain regular status. A seasonal employee who does not complete trial service in a single seasonal period shall be credited with accumulated service if a break between service periods does not exceed two years.

(4) At the discretion of a state agency head or a state agency appointing authority, a trial service period, of 6 to 12 months, may be established when a regular status employee in any category of state service is appointed to a position in the Management Service by:

(a) Transfer to a different agency; or

(b) Transfer back to the same agency after an absence of more than one year; or

(c) Reemployment with a different agency; or

(d) Reemployment with the same agency after an absence of more than one year; or

(e) Voluntary demotion to a different classification series.

(5) A state agency head or a state agency appointing authority may extend the trial service period by the corresponding total number of days a period of leave with or without pay exceeds 15 calendar days.

Stat. Auth.: ORS 183.335, 183.341, 184.340, 240.250, 240.145(3)

Stats. Implemented: ORS 183.335, 183.341, 240.316, 240.410, 240.570(3)

Hist.: HRSD 2-2007, f. 4-24-07, cert. ef. 5-1-07

# ADMINISTRATIVE RULES

## Department of Agriculture Chapter 603

**Rule Caption:** Amends requirements of Pesticide Dealers when selling pesticide products containing carbofuran.

**Adm. Order No.:** DOA 8-2007

**Filed with Sec. of State:** 5-9-2007

**Certified to be Effective:** 5-9-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 603-057-0140

**Subject:** Requires Pesticide Dealers to obtain, record, and submit to the Oregon Department of Agriculture additional specific information when the "restricted use" pesticide product sold/distributed contains the active ingredient carbofuran.

**Rules Coordinator:** Sue Gooch—(503) 986-4483

### 603-057-0140

#### Pesticide Dealer Records

(1) As provided in subsections (6) and (7) of ORS 634.322, a pesticide dealer shall prepare and maintain records of his sales of restricted-use and highly toxic pesticides for a period of three years. Such records shall include:

(a) The names and addresses of the purchasers of such pesticides, and the license or certificate numbers of the purchasers;

(b) The date of sale;

(c) The trade name (and the formulation if applicable) of such pesticides;

(d) The quantity of each sale of such pesticides.

(2) In addition to the requirements of a pesticide dealer otherwise specified in (1) of this section, a pesticide dealer shall prepare and maintain records of sales of products containing the active ingredient carbofuran as follows:

(a) The name and address of the person who received the product when the product was not delivered directly to the purchaser;

(b) The crop(s) to which the product will be applied;

(c) The acreage of each crop to which the product will be applied;

(d) The amount of product that will be applied to each acre of each crop;

(e) The intended date of application to each crop.

(3) The information required by (2) above shall be obtained by the pesticide dealer from the person receiving the product at the time of distribution or sale.

(4) All information prepared for every distribution or sale of a pesticide product containing the active ingredient carbofuran shall be submitted by the pesticide dealer to the Oregon Department of Agriculture within five business days of the distribution or sale.

(5) Failure to comply with the conditions set forth in OAR 603-057-0140 may be considered as violations of ORS 634.372, and may be subject to any enforcement action available to the department under ORS 634.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.322

Hist.: AD 7-1977, f. & ef. 4-5-77; DOA 4-2007(Temp), f. 2-26-07, cert. ef. 3-1-07 thru 8-27-07; DOA 8-2007, f. & cert. ef. 5-9-07

## Department of Agriculture, Oregon Bartlett Pear Commission Chapter 606

**Rule Caption:** Oregon Bartlett Pear Commission to be abolished and Chapter 606 repealed.

**Adm. Order No.:** OBPC 1-2007

**Filed with Sec. of State:** 5-9-2007

**Certified to be Effective:** 5-9-07

**Notice Publication Date:** 4-1-07

**Rules Repealed:** 606-001-0000, 606-010-0010, 606-010-0015, 606-010-0020, 606-010-0025, 606-010-0030, 606-030-0010, 606-030-0020, 606-030-0040, 606-040-0010

**Subject:** The Oregon Bartlett industry and the commissioners have asked the legislature to abolish the Oregon Bartlett Pear Commission (OBPC). Pear assessments and promotion programs are successfully managed through other pear organization for all pears, and the state commission for only the Bartlett variety is no longer needed. HB 2444 to abolish the commission has passed the House and the

Senate. The administrative rules in Chapter 606 for the running of the commission are no longer needed.

The commissioners of the OBPC voted unanimously on April 15, 2006 to dissolve the commission in the next legislative session. There is no economic impact as the assessment rates have been set at zero for 2 years, and all remaining funds have been depleted.

**Rules Coordinator:** Linda Bailey—(503) 652-9720

## Department of Agriculture, Oregon Processed Vegetable Commission Chapter 647

**Rule Caption:** Amend Commission assessment rates.

**Adm. Order No.:** OPVC 1-2007

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 6-1-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 647-010-0010

**Subject:** These rules establish the assessment rates necessary to fund Commission research projects.

**Rules Coordinator:** John McCulley—(503) 370-7019

### 647-010-0010

#### Assessments

(1) Any first purchaser shall deduct and withhold an assessment of the following amounts from each of the above named vegetable crops:

(a) Beans — \$.912 per ton based on the net weight of the beans delivered.

(b) Sweet Corn — \$.306 per ton based on the gross weight of the sweet corn delivered.

(c) Table Beets — \$.339 per ton based on the net weight of the table beets delivered.

(d) Carrots — \$.382 per ton based on the net weight of the carrots delivered.

(e) Broccoli — \$1.926 per ton based on the net weight of the broccoli delivered.

(f) Cauliflower — \$.850 per ton based on the net weight of the cauliflower delivered.

(2) From the price paid to the producer thereof, after June 1, 2007 for all of the above named vegetables for processing and grown in Oregon.

Stat. Auth.: ORS 576.051 - 576.595

Stats. Implemented: ORS 576.051 - 576.595

Hist.: PVC 2-1985, f. 7-17-85, ef. 7-22-85; PVC 1-1986, f. 5-30-86, ef. 6-1-86; PVC 2-1987, f. & ef. 6-16-87; PVC 1-1988, f. 4-22-88, cert. ef. 6-1-88; PVC 1-1989, f. 5-4-89, cert. ef. 6-1-89; PVC 1-1990, f. 4-24-90, cert. ef. 6-1-90; PVC 1-1991, f. 5-7-91, cert. ef. 6-1-91; PVC 1-1992, f. 4-15-92, cert. ef. 6-1-92; PVC 1-1993, f. 4-28-93, cert. ef. 6-21-93; PVC 1-1994, f. 4-22-94, cert. ef. 6-21-94; PVC 2-1995, f. 5-24-95, cert. ef. 6-1-95; PVC 1-1996, f. 5-14-96, cert. ef. 1-1-96; PVC 1-1997, f. 5-6-97, cert. ef. 6-1-97; OPVC 1-1998, f. 5-28-98, cert. ef. 6-1-98; OPVC 2-1999, f. 4-26-99, cert. ef. 6-1-99; OPVC 1-2000, f. 5-2-00, cert. ef. 6-1-00; OPVC 2-2001, f. 5-15-01, cert. ef. 6-1-01; OPVC 1-2002, f. 4-26-02, cert. ef. 6-1-02; OPVC 1-2003, f. 5-8-03, cert. ef. 6-1-03; OPVC 2-2004, f. 5-11-04, cert. ef. 6-1-04; OPVC 1-2005, f. 5-13-05, cert. ef. 6-1-05; OPVC 1-2006, f. 5-9-06, cert. ef. 6-1-06; OPVC 1-2007, f. 5-14-07, cert. ef. 6-1-07

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

**Rule Caption:** Allows Tri-county region to use ICC table for structural permit fee calculation.

**Adm. Order No.:** BCD 5-2007

**Filed with Sec. of State:** 5-11-2007

**Certified to be Effective:** 7-1-07

**Notice Publication Date:** 10-1-06

**Rules Amended:** 918-050-0100, 918-050-0110

**Subject:** These rules allow all municipalities in the Tri-county region to use the International Code Council (ICC) Building Valuation Data Table for structural permit fee calculation for new construction and additions in the Tri-county region.

**Rules Coordinator:** Marianne Manning—(503) 373-7438

### 918-050-0100

#### Tri-County Regional Fee Methodology for Residential Permits

All municipalities in the Tri-county region shall use the following methodologies consistent with the terminology of the state building code to calculate permit fees for residential construction.

# ADMINISTRATIVE RULES

(1) Plumbing permit fees for new construction include one kitchen and are based on the number of bathrooms, from one to three, on a graduated scale. An additional set fee shall be assessed for each additional bath or kitchen.

(a) An additional fee shall not be charged for the first 100 feet of water and sewer lines, hose bibbs, icemakers, underfloor low-point drains and rain drain packages that include the piping, gutters, downspouts and perimeter system.

(b) Fee does not include:

(A) Any storm water retention/detention facility;

(B) Irrigation and fire suppression systems; or

(C) Additional water, sewer and service piping or private storm drainage systems exceeding the first 100 feet.

(c) Additions, alterations and repairs shall be calculated based on the number of fixtures, appurtenances and piping with a set minimum fee.

(2) All mechanical permit fees shall be calculated per appliance and related equipment with a set minimum fee.

(3) Effective July 1, 2007, structural permit fees for new construction and additions shall be calculated using the most current ICC Building Valuation Data Table, multiplied by the square footage of the dwelling to determine the valuation. The valuation shall then be applied to the jurisdiction's fee schedule to determine the permit fee. The plan review fee shall be based on a predetermined percentage of the permit fee as set by the local jurisdiction.

(a) The square footage of a dwelling, addition, or garage shall be determined from outside exterior wall to outside exterior wall for each level. The square footage of carports, covered porches or patios and decks shall be calculated separately at fifty percent of the value of private garages from the most current ICC Building Valuation Data Table.

(b) Permit fees for remodels and alterations shall be calculated using the valuation determined by the fair market value as determined by the building official, and applied to the jurisdiction's fee table.

(4) Additional local administrative fees or other local fees shall not be added to the cost of the building permit, except those administrative fees adopted by a municipality for plan reviews performed by licensed plan reviewers accepted pursuant to ORS 455.465.

Stat. Auth.: ORS 455.046, 455.048

Stats. Implemented: ORS 455.046, 455.048

Hist.: BCD 9-2000, f. 6-15-00, cert. ef. 10-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 5-2007, f. 5-11-07, cert. ef. 7-1-07

## 918-050-0110

### Tri-County Regional Fee Methodology for Commercial Permits

All municipalities in the Tri-county region shall use the following methodologies consistent with the terminology of the state building code to calculate permit fees for commercial structures.

(1) Plumbing permit fees shall be calculated based on the number of fixtures and footage of piping with a set minimum fee. The plan review fee shall be calculated separately based on a predetermined percent of the permit fee as set by the local jurisdiction.

(2) Mechanical permit fees shall be determined based on the value of the mechanical equipment and installation costs and applied to the jurisdiction's fee schedule with a set minimum fee. The plan review fee shall be based on a predetermined percentage of the permit fee as set by the local jurisdiction.

(3) Effective July 1, 2007, structural permit fees shall be calculated using the most current ICC Building Valuation Data Table, using the occupancy and construction type as determined by the building official, multiplied by the square footage of the structure to determine the valuation, or value as stated by the applicant, whichever is greater, to determine the valuation. The valuation shall then be applied to the jurisdiction's fee schedule to determine the permit fee, with a set minimum fee. When the construction or occupancy type does not fit the ICC Building Valuation Data Table, the valuation shall be determined by the building official with input from the applicant. The plan review fee shall be based on a predetermined percentage of the permit fee as set by the local jurisdiction.

(4) Additional local administrative fees or other local fees shall not be added to the cost of the building permit.

Stat. Auth.: ORS 455.046, 455.048

Stats. Implemented: ORS 455.046, 455.048

Hist.: BCD 9-2000, f. 6-15-00, cert. ef. 10-1-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 5-2007, f. 5-11-07, cert. ef. 7-1-07

## Department of Corrections Chapter 291

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

**Adm. Order No.:** DOC 3-2007

**Filed with Sec. of State:** 4-16-2007

**Certified to be Effective:** 4-16-07

**Notice Publication Date:** 11-1-06

**Rules Amended:** 291-039-0025

**Rules Repealed:** 291-039-0026, 291-039-0035

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

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

### 291-039-0025

#### News Media — Reporting of Unusual Incidents

Instructions to Department employees regarding the reporting of unusual incidents are specified in the Department of Corrections policy on Unusual Incident Report Process (40.1.6.)

Stat. Auth.: ORS 179.040, 192, 423.020, 423.030 & 423.075

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

Hist.: CD 12-1979, f. & ef. 5-17-79; CD 2-1983, f. & ef. 1-4-83; CD 45-1985, f. & ef. 8-16-85; CD 25-1990, f. & cert. ef. 12-4-90; CD 15-1993, f. 6-7-93, cert. ef. 6-25-93; DOC 3-2007, f. & cert. ef. 4-16-07

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## Department of Energy, Energy Facility Siting Council Chapter 345

**Rule Caption:** Rules implementing the Council's regulatory authority for siting energy facilities and other matters.

**Adm. Order No.:** EFSC 1-2007

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 5-15-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 345-050-0038, 345-076-0050

**Rules Amended:** 345-001-0000, 345-001-0005, 345-001-0010, 345-001-0020, 345-001-0050, 345-001-0060, 345-011-0005, 345-011-0010, 345-011-0015, 345-011-0020, 345-011-0025, 345-011-0035, 345-011-0045, 345-011-0050, 345-011-0055, 345-015-0001, 345-015-0014, 345-015-0016, 345-015-0023, 345-015-0046, 345-015-0051, 345-015-0080, 345-015-0083, 345-015-0085, 345-015-0110, 345-015-0120, 345-015-0130, 345-015-0140, 345-015-0160, 345-015-0180, 345-015-0190, 345-015-0200, 345-015-0210, 345-015-0220, 345-015-0230, 345-015-0240, 345-015-0300, 345-015-0310, 345-015-0320, 345-015-0350, 345-015-0360, 345-015-0370, 345-015-0380, 345-020-0006, 345-020-0011, 345-020-0016, 345-020-0040, 345-020-0060, 345-021-0000, 345-021-0010, 345-021-0050, 345-021-0055, 345-021-0080, 345-021-0090, 345-021-0100, 345-022-0000, 345-022-0020, 345-022-0022, 345-022-0040, 345-022-0060, 345-022-0070, 345-022-0080, 345-022-0090, 345-022-0120, 345-023-0005, 345-023-0020, 345-024-0010, 345-024-0015, 345-024-0030, 345-024-0090, 345-024-0550, 345-024-0580, 345-024-0590, 345-024-0600, 345-024-0620, 345-024-0630, 345-024-0680, 345-024-0720, 345-026-0005, 345-026-0010, 345-026-0048, 345-026-0050, 345-026-0080, 345-026-0105, 345-026-0390, 345-027-0000, 345-027-0020, 345-027-0023, 345-027-0028, 345-027-0030, 345-027-0050, 345-027-0060, 345-027-0070, 345-027-0080, 345-027-0090, 345-027-0100, 345-027-0110, 345-027-0210, 345-027-0220, 345-027-0230, 345-027-0240, 345-029-0000, 345-029-0005, 345-029-0010, 345-029-0020, 345-029-0030, 345-029-0050, 345-029-0060, 345-029-0070, 345-029-0100, 345-030-0005, 345-030-0010, 345-050-0010, 345-050-0030, 345-050-0035, 345-050-0036, 345-050-0050, 345-050-0070, 345-050-0120, 345-060-0001, 345-060-0003, 345-060-0004, 345-060-0005, 345-060-0006, 345-060-0007, 345-060-0045, 345-060-0055, 345-070-0005, 345-070-0010, 345-070-0015, 345-070-0020, 345-070-0025, 345-070-0030, 345-076-0010, 345-076-0012, 345-076-0020, 345-092-0010, 345-092-



# ADMINISTRATIVE RULES

0012, 345-092-0014, 345-092-0025, 345-092-0031, 345-092-0040, 345-092-0050, 345-092-0110, 345-095-0005, 345-095-0015, 345-095-0020, 345-095-0040, 345-095-0045, 345-095-0060, 345-095-0070, 345-095-0080, 345-095-0090, 345-095-0100, 345-095-0115, 345-095-0117, 345-095-0118, 345-095-0120, 345-095-0150, 345-095-0160

**Rules Repealed:** 345-001-0040, 345-001-0090, 345-024-0650, 345-026-0100, 345-026-0200, 345-027-0095, 345-075-0015, 345-075-0020, 345-075-0025, 345-076-0015, 345-076-0025, 345-076-0026, 345-076-0027, 345-076-0029, 345-076-0030, 345-076-0032, 345-076-0035, 345-076-0040, 345-076-0045, 345-092-0060, 345-092-0070, 345-092-0071, 345-092-0080, 345-092-0090, 345-092-0100, 345-095-0010, 345-095-0017, 345-095-0025, 345-095-0105, 345-095-0110

**Subject:** In this rulemaking, the Energy Facility Siting Council (Council) has reviewed all rules in OAR Chapter 345. The Council has streamlined the rules by eliminating obsolete rules, by conforming the rules to changes in Oregon statutes that have occurred since the last review, by correcting errors and by revising and clarifying rules based on knowledge gained from recent energy facility siting experience.

**Rules Coordinator:** John G. White—(503) 378-3194

## 345-001-0000

### Notice of Permanent Rulemaking

(1) Before adopting, amending or repealing any rule, the Council shall give notice of the proposed adoption, amendment or repeal as required by ORS 183.335:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the adoption, amendment or repeal of the rule,

(b) As required under ORS 183.335, by mailing a copy of the notice to the Council's mailing list of persons who have requested notice of rulemaking at least 28 days before the effective date of the rule and to certain legislators at least 49 days before the effective date of the rule, and

(c) By mailing or furnishing a copy of the notice to the Associated Press and the Capitol Press Room.

(2) Notwithstanding the requirements of ORS 183.335, when the Council is required to adopt rules or regulations promulgated by an agency of the federal government and the Council has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the Council shall adopt these rules or regulations under the procedures prescribed in ORS 183.337.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.470 & 469.490

Hist.: EFSC 1, f. & ef. 1-9-76; EFSC 4-1981, f. & ef. 3-25-81; EFSC 6-1986, f. & ef. 9-12-86; EFSC 2-1992, f. & cert. ef. 8-28-92, Renumbered from 345-010-0031; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-001-0005

### Uniform and Model Rules

(1) Except as described in this rule, the Council adopts and incorporates by reference in this chapter the following rules from the Attorney General's Uniform and Model Rules (January 1, 2006): OAR 137-001-0005 through 137-001-0100, 137-002-0010 through 137-002-0060, 137-003-0001 through 137-003-0092, and 137-005-0010 through 137-005-0070.

(2) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of notice of a contested case, the Department of Energy shall enter into the record the substance of any significant contact between a Council member and any Department staff from that point forward, concerning facts in the record.

(3) In any conflict between the model rules and Council rules, the Council shall apply its own rules.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.490

Hist.: NTEC 1, f. 12-16-71, ef. 1-1-72; NTEC 6, f. 11-19-73, ef. 12-11-73; EFSC 13, f. & ef. 6-11-76; EFSC 5-1978, f. & ef. 5-9-78; EFSC 4-1981, f. & ef. 3-25-81; EFSC 10-1981, f. & ef. 12-28-81; EFSC 6-1986, f. & ef. 9-12-86; EFSC 2-1992, f. & cert. ef. 8-28-92, Renumbered from 345-010-0026; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-001-0010

### Definitions

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

(1) "Adjusted to ISO conditions" as defined in ORS 469.503(2)(e).

(2) "Analysis area" means the area or areas specifically described in the project order issued under 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant shall describe the proposed facility's impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.

(3) "Applicant" as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.

(4) "Associated transmission lines" as defined in ORS 469.300.

(5) "Average electric generating capacity" as defined in ORS 469.300.

(6) "Background radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background shall be determined as follows:

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility shall be provided and 6 to 10 measurements shall be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background shall be calculated at the average and at the 95% confidence level.

(b) Environmental samples shall be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples shall be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations shall be selected and surveyed. Six to ten samples of each material shall be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements shall include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout shall be characterized as well.

(d) All measurements shall be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(7) "Base load gas plant" as defined in ORS 469.503(2)(e).

(8) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.

(9) "Chair" means the chairman or chairwoman of the Energy Facility Siting Council.

(10) "Committed firm energy and capacity resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(11) "Construction" as defined in ORS 469.300.

(12) "Corridor" means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. "Micrositing corridor" is defined below in this rule.

(13) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(14) "Council Secretary" means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.

(15) "Department" means the Office of Energy or the Department of Energy created under ORS 469.030.

## ADMINISTRATIVE RULES

(16) "Direct cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(17) "Energy facility" means an energy facility as defined in ORS 469.300, including a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210.

(18) "Energy supplier" means:

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(19) "Existing corridor," as used in ORS 469.300 and ORS 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.

(20) "Facility" as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.

(21) "Facility substantially similar to the proposed facility" means:

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(22) "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.

(23) "Fossil-fueled power plant" as defined in ORS 469.503(2)(e).

(24) "Fuel chargeable to power heat rate" means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula,  $FCP = (FI - FD) / P$ , where:

(a)  $FCP$  = Fuel chargeable to power heat rate.

(b)  $FI$  = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).

(c)  $FD$  = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value).

(d)  $P$  = Annual net electric output of the cogeneration facility in kilowatt-hours.

(25) "Generating facility" as defined in ORS 469.503(2)(e).

(26) "Gross carbon dioxide emissions" as defined in ORS 469.503(2)(e). The Council shall measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis. For non-generating energy facilities that emit carbon dioxide, the Council shall measure the gross carbon dioxide emissions as described in OAR 345-024-0620(1).

(27) "High efficiency cogeneration facility" means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under normal operating conditions has a useful thermal energy output of no less than 33 percent of the total energy output or:

(a) For an energy facility with a nominal electric generating capacity of 50 megawatts or more, a fuel chargeable to power heat rate of no greater than 5550 Btu per kilowatt-hour (higher heating value);

(b) For an energy facility with a nominal electric generating capacity of less than 50 megawatts, a fuel chargeable to power heat rate of no greater than 6000 Btu per kilowatt-hour (higher heating value).

(28) "Land use approval" means a final quasi-judicial decision or determination made by a local government that:

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;

(d) Applies the statewide planning goals to a proposed facility; or

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.

(29) "Local government" as defined in ORS 469.300.

(30) "Micrositing corridor" means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.

(31) "Mitigation" means taking one or more of the following actions listed in order of priority:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;

(e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or

(f) Implementing other measures approved by the Council.

(32) "Natural gas" means all gas and all other fluid hydrocarbons not defined as oil in ORS 520.005(6), including condensate originally in the gaseous phase in the reservoir.

(33) "Natural gas fired facility" means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate fuel use shall not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.

(34) "Net carbon dioxide emissions" as defined in ORS 469.503(2)(e).

(35) "Net electric power output" means the electric power produced or capacity made available for use. Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.

(36) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder shall determine the new and clean basis:

(a) By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility, unless the Council specifies a different testing period for a non-base load power plant (or power augmentation) or a nongenerating energy facility. A 100-hour test performed for purposes of the certificate holder's commercial acceptance of the facility may suffice in lieu of testing after beginning commercial operation;

(b) With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels unless the Council specifies that the results for a non-base load power plant (or power augmentation) or a nongenerating energy facility be adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate;

(c) Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value); and,

(d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if such fuel use is proposed by the applicant.

(e) Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis shall mean average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.

(37) "Nominal electric generating capacity" as defined in ORS 469.300.

(38) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. The Council shall assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approves a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder shall operate the facility for no longer than the approved operational life or, before the expi-

## ADMINISTRATIVE RULES

ration of the approved operational life, shall request an amendment of the site certificate to extend the operational life.

(39) "Nongenerating facility" as defined in ORS 469.503(2)(e).

(40) "Office of Energy" and "Office" mean the Oregon Office of Energy and the Oregon Department of Energy.

(41) "Offset" as defined in ORS 469.503(2)(e).

(42) "Offset funds" means the amount of funds determined by the Council to satisfy the applicable carbon dioxide emissions standard pursuant to OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2) and (4).

(43) "Owner" means owner or lessee under a capital lease.

(44) "Permit" means any permit, license, certificate or other approval required by state statute, state administrative rule or local government ordinance.

(45) "Person" as defined in ORS 469.300.

(46) "Power augmentation" means technologies that increase the capacity and the heat rate of the plant above the capacity and heat rate of the base load gas plant. These include, but are not limited to, duct burning and some forms of steam augmentation.

(47) "Project order" as defined in ORS 469.300.

(48) "Qualified organization" means an organization that:

(a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(b) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(c) Has in effect articles of incorporation that:

(A) Require that offset funds received under OAR 345-024-0710(3) are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions;

(B) Require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the Council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024-0550, 345-024-590, and 345-024-0620 and the holders of such site certificates; and

(C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under OAR 345-024-0710(3);

(d) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to ORS 469.503 conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(e) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(f) Has to the extent applicable, except for good cause, complied with OAR 345-024-0710(3).

(49) "Related or supporting facilities" as defined in ORS 469.300. The Council interprets the terms "proposed to be built in connection with" as meaning that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be significantly modified solely to serve the energy facility.

(50) "Reviewing agency" means any of the following officers, agencies or tribes:

(a) Department of Environmental Quality.

(b) Water Resources Commission and the Water Resources Director through the Water Resources Department.

(c) Fish and Wildlife Commission through the Department of Fish and Wildlife.

(d) State Geologist.

(e) Department of Forestry.

(f) Public Utility Commission.

(g) Department of Agriculture.

(h) Department of Land Conservation and Development.

(i) Northwest Power Planning Council.

(j) Office of State Fire Marshal.

(k) Department of State Lands.

(l) State Historic Preservation Office.

(m) Any other agency identified by the Department of Energy.

(n) Any tribe identified by the State Commission on Indian Services as affected by the proposed facility.

(o) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services.

(p) Any special advisory group designated by the Council under ORS 469.480.

(q) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.

(51) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

(52) "Site" as defined in ORS 469.300. "Energy facility site" means all land upon which an energy facility is located or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

(53) "Site boundary" means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micro-siting corridors proposed by the applicant.

(54) "Site certificate" as defined in ORS 469.300.

(55) "Special nuclear material" means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.

(56) "Strategic flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

(57) "Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

(a) For impacts to threatened and endangered plant and animal species, 5 miles.

(b) For impacts to scenic resources and to public services, 10 miles.

(c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.

(d) For impacts to recreational opportunities, 5 miles.

(e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.

(f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.

(g) The distances stated in subsections (a), and (d) above do not apply to pipelines or transmission lines.

(58) "Substantial loss of steam host" means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(59) "Substantial loss of fuel use efficiency" means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(60) "Surface facilities related to an underground gas storage reservoir" means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:

(a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;

(b) Pipelines, such as gathering lines and liquid collection lines; and

(c) Roads and road maintenance equipment housing at the reservoir site.

(61) "Thermal power plant" as defined in ORS 469.300.

(62) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(63) "Underground gas storage reservoir" as defined in ORS 469.300.

# ADMINISTRATIVE RULES

(64) "Useful thermal energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(65) "Utility" as defined in ORS 469.300.

(66) "Vice-chair" means the vice-chairman or vice-chairwoman of the Energy Facility Siting Council.

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.300-570, 469.590-619 & 469.992

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 8-1981, f. & ef. 10-29-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0025, 345-100-0025, 345-111-0020 & 345-125-0025; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-001-0020

### Purpose

(1) The purpose of the rules of this chapter is to establish application requirements, review procedures and standards for the siting, construction, operation and retirement of energy facilities, for the transport of radioactive materials, and for the disposal of radioactive waste and uranium mine overburden. These rules are to ensure that the siting, construction, operation and retirement of energy facilities and disposal facilities and the transport of radioactive materials are done consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.

(2) Except as indicated otherwise, the Council shall use the rules of this chapter to determine whether to grant or deny a site certificate and, if the Council grants a site certificate for a facility, to oversee the construction, operation and retirement of the facility. The Council shall use the rules of this chapter in proceedings for amendment, suspension, revocation, transfer or termination of a site certificate.

(3) When the Council deems appropriate, it may adopt additional rules on matters within its jurisdiction. The Council shall adopt any additional rules relating to site certificates sufficiently in advance of the close of testimony in a contested case proceeding on a site certificate to allow parties to address the rule, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the new rule.

Stat. Auth.: ORS 469.470, 469.556, 469.559 & 469.607

Stats. Implemented: ORS 469.310, 469.374, 469.401, 469.501, 469.525 & 469.603-615

Hist.: EFSC 8-1978, f. & ef. 11-17-78; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92, Renumbered from 345-079-0010, 345-080-0010, 345-100-0010, 345-111-0005, 345-115-0010 & 345-125-0010; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-001-0050

### Public Records Availability and Fees for Copying

(1) All public records of the Council that are retained by the Department of Energy are available for public inspection and copying at the Department during usual business hours, except for records that the Department has determined to be exempt or conditionally exempt from disclosure in accordance with ORS Chapter 192. Except as protected under ORS 357.875, any permanent record of the Council kept by the State Archivist can be inspected at the State Archive building, subject to applicable rules of the Secretary of State, Archives Division.

(2) To inspect Council records a person shall submit to the Department a written request containing the following information:

(a) Name, address, e-mail address and telephone number of the person requesting the record.

(b) A specific description of the record requested.

(3) After receiving a request to inspect a Council record, the Department shall notify the requesting person whether the record is stored on or off the premises of the Department or is kept by the State Archivist.

(4) If the requested record is stored on the premises of the Department, the person who requested the record may inspect it on the premises without charge.

(5) If the requested record is stored off the premises of the Department, the Department shall charge for the staff time necessary to make the record available for inspection on the premises of the Department.

(6) To obtain a copy of a requested record, the person who requested the record shall pay, in addition to any charges under section (5), a fee for the reproduction of the record as follows:

(a) A fee of fifteen cents (\$.15) per page if the request does not require significant staff time. If the request requires significant staff time,

photocopying costs may include, in addition to a per-page charge, the cost of staff time at the rate of twenty-five dollars (\$25) per hour.

(b) A fee of five dollars (\$5) for copies of audio tapes or digital media.

(7) The person requesting copies of records shall pay the fees described in section (6) in advance, except that government agencies or parties in proceedings before the Council need not pay before delivery of the copies.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.560

Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-001-0060

### Council Representation at Contested Case Hearings

(1) A Council member, an officer of the Department of Energy, or an employee of the Department may appear, but not make legal argument, on behalf of the Council in a hearing or in a class of contested case hearings in which the Attorney General or the Deputy Attorney General has given written consent to the Council member or to the officer or employee of the Department pursuant to ORS 183.450(7) to represent the Council. Before each contested case hearing in which the Council wishes to appear by a member or by an officer or employee of the Department, the Council shall request written consent from the Attorney General or the Deputy Attorney General for the designated representative to appear on behalf of the Council. The Department and the Department of Justice shall maintain a copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given such consent.

(2) Legal argument as used in this rule has the same meaning as in OAR 137-003-0008(1)(c) and (d).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.450(8) & 469

Hist.: EFSC 1-1988, f. & cert. ef. 5-11-88; EFSC 2-1992, f. & cert. ef. 8-28-92, Renumbered from 345-010-0028; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0005

### Quorum and Rules of Order

(1) Five members of the Council constitute a quorum. The Council may meet to discuss any matter in the absence of a quorum but shall take no formal action on any matter unless a quorum is present.

(2) A majority of the Council members present at a meeting must concur for the Council to act on any matter before it; however, in accordance with ORS 469.370(7), a Council decision to approve or reject an application for a site certificate requires the affirmative vote of at least four members.

(3) The Council shall not vote on any proposed Council action unless a Council member has moved, and another Council member has seconded, the proposed action.

(4) For all Council actions that result in a written order or administrative rule, the Council's action authorizes the Department of Energy to make scrivener's corrections in the written order or administrative rule.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 174.130, 469.370 & 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0010

### Officers

(1) The Council shall annually elect a chair and a vice-chair. The chair and vice-chair shall serve for one year or until their successors are elected. A member may serve successive full terms as chair or vice-chair. The chair or vice-chair may be removed by a unanimous vote of the other Council members.

(2) The chair shall preside over all Council meetings, shall determine, in cooperation with the Council Secretary, the location of the Council meetings, and shall execute all written documents that must be executed in the name of the Council.

(3) The chair may take action on behalf of the Council in emergencies that arise between meetings, subject to ratification by the Council. When practicable, the chair shall advise all members by telephone of any action proposed to be taken in an emergency.

(4) The vice-chair shall act in lieu of the chair when the chair is unable to perform any of his or her responsibilities.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.450

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 2-1985, f. & ef. 2-5-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1987, f. & ef. 4-21-87; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-011-0015

### Meetings

(1) The Council shall meet periodically, as determined by the Council. The Council may vary the locations of its meetings in order to give persons throughout the state an opportunity to observe and participate in its activities. The Council Secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of the Council.

(2) The Governor or the chair may call a special Council meeting to be held at any place in this state. The person calling the meeting shall designate the time and place of the meeting and shall give at least 24 hours' notice of the meeting to each Council member and the public. In the event of an emergency, the Council may hold a meeting upon such notice as is appropriate to the circumstances, and in the minutes for such a meeting, the Council shall describe the emergency justifying less than 24 hours' notice.

(3) The Council may hold meetings by telephone or other electronic communication. If the Council holds a meeting by telephone or other electronic means, the Council shall conduct the meeting in accordance with ORS 192.610 to 192.690.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640, 192.670, 469.460 & 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0020

### Agendas for Regular Meetings

(1) The Council Secretary shall prepare an agenda for each regular Council meeting after consulting with the chair. On the agenda, the Secretary shall specify all matters scheduled to come before the Council at the meeting and shall identify the proponent of agenda items scheduled at the request of a member of the public as described in OAR 345-011-0035.

(2) On the agenda, the Secretary may include a consent calendar, identifying items that the Secretary considers to be routine, such as minutes of previous meetings and personnel recognitions, which will be acted upon without public discussion. However, if a Council member objects to an item on the consent calendar, it will be removed from the consent calendar and placed on the regular agenda for discussion.

(3) The Secretary shall include on each agenda a designated time period reserved for the presentation of concerns by interested citizens who wish to address the Council regarding any item within the Council's jurisdiction. The chair shall establish the duration of this period and may lengthen or shorten it at the Council meeting as the length of the meeting and timing and duration of other Council business dictate.

(4) The Secretary shall mail the agenda, together with minutes of all previous meetings that the Council has not approved, to Council members at least one week before a regular meeting. The Secretary shall send the agenda to each person or organization on the Council's general mailing list. The "general mailing list" is the list of persons who have requested all Council meeting and facility siting mailings.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640, 469.460 & 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0025

### Consideration of Matters Not on Agenda

A Council member or the Council Secretary may, with the approval of a majority of Council members, raise matters at a meeting that the Council Secretary did not place on the agenda. The Council shall not act on a matter not on the agenda unless a majority of the members present agree that the matter is so substantial and of such immediate concern that the Council should not defer action until the next regular Council meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0035

### Requests to Place Items on the Agenda

(1) Any person may request formal Council action on a particular subject (an "action item") by submitting a written request to the Department of Energy. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department. The Council shall treat the matter as an information item at that meeting and may take final action on the matter if a majority of the members present agree that the request is so substantial and of such immediate concern that

the Council should not defer action until a future meeting. Normally, however, the Council will defer action on the matter until a future meeting.

(2) Any person may request Council discussion of an information item by submitting a written request to the Department. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department.

(3) The provisions of section (1) do not apply to petitions requesting the Council to initiate a rulemaking proceeding, as described in OAR 137-001-0070, or petitions requesting the Council to issue a declaratory ruling, as described in OAR 137-002-0010.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640 & 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-011-0040; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0045

### Committees and Subcommittees

(1) The chair may appoint Council members to committees and subcommittees, alter the number of members of such committees and subcommittees, and abolish committees and subcommittees at any time unless disapproved by a majority of the Council. The individuals on such committees and subcommittees need not act as a group nor reach a consensus but may report to the Council individually.

(2) The Council Secretary shall record the membership of the committees and subcommittees appointed by the chair in the minutes of the Council.

(3) The Secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of Council committees and subcommittees.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0050

### Council Files

The Council Secretary shall maintain minutes of all Council meetings, Council committee meetings and other records of the Council at the Department of Energy for at least five years and thereafter shall transfer them to the State Archives. The Council Secretary shall keep a record of the location of all files.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640 & 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-011-0055

### Council Communications

(1) Majority approval by the Council is required before the Council or the Council Secretary issues any correspondence that might materially affect policies or procedures of the Council. Members of the Council shall not communicate in the name of the Council unless authorized by a majority of the Council. In an emergency, when delay may impair the Council's ability to carry out its responsibilities, the chair may take immediate action and report such action at the next meeting of the Council. The Council Secretary shall prepare any letter issued on behalf of the Council and send a copy to each Council member.

(2) The mailing address of the Council is Department of Energy, 625 Marion Street, NE, Salem OR, 97301-3742.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0001

### Purpose and Authority

The rules in this division, authorized by ORS 469.040, 469.470 and 469.440, establish procedures governing Department of Energy and Council review processes, including contested case hearings. The Council shall apply the Attorney General's Uniform and Model Rules, as specified in OAR 345-001-0005, for contested case proceedings and collaborative dispute resolution.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.310-550, 469.040, 469.370, 469.405 & 469.440

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-015-0014

### Contested Case Notices

(1) The Department shall issue notices for Council contested case proceedings as provided in OAR 137-003-0001 and shall include in the notices:

(a) A date by which persons must request party or limited party status.

(b) The time and place of the pre-hearing conference.

(c) The time and place of the hearing.

(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under OAR 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.

(3) The Department shall send a contested case notice to the following persons:

(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who appeared in person or in writing at the public hearing described in OAR 345-015-0220.

(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing in the public hearing on the proposed order as described in OAR 345-015-0320.

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0070, 345-027-0080 or 345-027-0090, to the certificate holder and to all persons who commented on the Department's proposed order on the amendment as described in OAR 345-027-0070(5) or 345-027-0080(5) or who requested a contested case proceeding as described in OAR 345-027-0070(6) or 345-027-0080(5).

(d) For Council contested case proceedings described under OAR 345-029-0070, 345-029-0100 or 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding.

(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant desires to raise in the contested case proceedings described in subsections (3)(a) and (b).

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 183.415, 469.085, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0016

### Requests for Party or Limited Party Status

(1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding shall submit a petition to the hearing officer by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.

(2) Persons who have an interest in the outcome of the Council's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.

(3) Except as described in section (4), only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(4) Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only those persons who have commented in

person or in writing on the record of the public hearing described in OAR 345-015-0320 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(5) In a petition to request party or limited party status, the person requesting such status shall include:

(a) The information required under OAR 137-003-0005(3).

(b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding.

(c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.

(d) A detailed description of the person's interest in the contested case proceeding and how that interest may be affected by the outcome of the proceeding.

(6) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0023

### Duties of Hearing Officer

(1) The Council shall appoint a hearing officer to conduct a contested case proceeding on behalf of the Council or to compile the record and recommend resolution of objections to the record of a local land use proceeding held pursuant to ORS 469.503(2)(a). The Council may appoint a Council member, an employee of the Department of Energy, or some other person or persons as it sees fit.

(2) A hearing officer shall take all necessary action to:

(a) Ensure a full, fair and impartial hearing;

(b) Facilitate presentation of evidence;

(c) Comply with statutory time limits on Council decisions;

(d) Maintain order; and

(e) Assist the Council in making its decision.

(3) At the commencement of a contested case hearing, the hearing officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing officer shall maintain a complete and current record of all motions, rulings, testimony and exhibits during the course of the hearing. The hearing officer shall keep the Council informed regularly on the status of the contested case.

(5) The hearing officer is authorized to carry out the responsibilities assigned in this rule, including but not limited to the authority to:

(a) Administer oaths and affirmations;

(b) Rule on offers of proof and receive evidence;

(c) Order depositions and other discovery to be taken and to issue subpoenas;

(d) Order and control discovery, as provided in OAR 137-003-0025, and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;

(e) Dispose of procedural matters and rule on motions;

(f) Call and examine witnesses;

(g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0035, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case including, for a contested case proceeding on an application for a site certificate, determining those issues that have been raised with sufficient specificity in the public hearing;

(h) Continue the hearing from time to time;

(i) Issue protective orders in accordance with the standards of Rule 36(C) of the Oregon Rules of Civil Procedure.

(j) At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-0062, and with reasonable notice to all parties, reopen the hearing for reception of further

# ADMINISTRATIVE RULES

evidence on issues identified in the notice at any time prior to final decision by the Council;

(k) Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its consideration and disposition;

(l) Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and

(m) Take any other action consistent with the Council's governing statutes and the Council's rules.

(6) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of contested case, the hearing officer shall enter into the record the substance of any significant contact with Department staff or the parties from that point forward concerning facts in the record.

(7) The Council may, on its own motion or upon the motion of a party or limited party, remove a hearing officer if it determines that the hearing officer is not competent to conduct the proceeding, is demonstrably biased for or against any party, or is otherwise unable to conduct the proceeding.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992  
Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-015-0027; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0046

### Evidence: Official Notice

(1) In a contested case proceeding, the hearing officer may take official notice of the following:

(a) All facts of which the courts of the State of Oregon may take judicial notice;

(b) Administrative rulings and reports of the Council and other governmental agencies;

(c) Facts contained in permits and licenses issued by the Council or any other government agency;

(d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and

(e) General, technical or scientific facts within the specialized knowledge of the Council or the Department of Energy.

(2) The hearing officer shall notify parties of facts officially noticed and shall allow parties an opportunity to contest the facts so noticed.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992  
Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0051

### Evidence: Resolutions of Cities, Counties and Tribes

Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992  
Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0080

### Participation by Government Agencies

(1) Any state or local government agency other than the Department of Energy may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. The agency shall submit the request to the hearing officer in writing by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.

(2) The Department of Energy shall participate in all contested case proceedings conducted by the Council and shall have all the rights of a party.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-015-0026; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0083

### Prehearing Conference and Prehearing Order

(1) The hearing officer may cancel or reschedule any previously noticed prehearing conference.

(2) The hearing officer may conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0035. At the conclusion of the conference(s), the hearing officer shall issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220. The hearing officer shall not receive evidence or hear legal argument on issues not identified in the prehearing order.

(3) Failure to raise an issue in the prehearing conference(s) for the contested case hearing constitutes a waiver of that issue.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992  
Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0085

### Hearing Officer's Proposed Contested Case Order

(1) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.

(2) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may present evidence relating to the appropriateness, scope or wording of any other party's proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.

(3) After the hearing in a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact, conclusions of law, and recommended site certificate conditions on the issues in the contested case. The hearing officer shall serve the proposed order on all parties and limited parties. In the proposed order, the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision record for the application but are not part of the Council's order.

(4) After the hearing in a contested case proceeding on any matter other than an application for a site certificate or proposed site certificate amendment, the hearing officer shall issue a proposed order stating the hearing officer's findings of fact and conclusions of law. The hearing officer shall serve the proposed order on all parties and limited parties.

(5) Parties and limited parties may file exceptions to the proposed order within the time set by the hearing officer, not to exceed 30 days after the hearing officer issues the proposed order. A party filing exceptions shall serve a copy of the exceptions on all other parties and limited parties. In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.

(6) Parties and limited parties may file responses to exceptions within the time set by the hearing officer, not to exceed 15 days after the time set for filing exceptions. A party filing responses to exceptions shall serve a copy of the responses to exceptions on all other parties and limited parties.

(7) After the period for filing responses to exceptions, the Council shall issue a final order. The Council may adopt, modify or reject the hearing officer's proposed order.

(8) Following a contested case proceeding on an application for a site certificate, the Council, in its final order, shall either grant or deny issuance of a site certificate. If the Council grants issuance of a site certificate, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the applicant. However, for purpos-

# ADMINISTRATIVE RULES

es of identification, the Department may refer to a site certificate by the date of the Council action.

(9) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate. The amended site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992  
Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-015-0053; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0110

### Public Notice of a Notice of Intent

(1) After receiving a notice of intent (NOI), the Department of Energy shall issue a public notice of the NOI by:

(a) Mailing notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed project;

(b) Mailing notice to the owners of property whose names and addresses the applicant has supplied as required by OAR 345-020-0011;

(c) Except as provided in subsection (d), publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and

(d) If the energy facility is a transmission line or a pipeline or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, publishing notice in one or, if possible, two newspapers of general circulation in the vicinity of the proposed facility.

(2) In the public notice of the NOI, the Department shall include the following information:

(a) A description of the proposed facility.

(b) The location of the site of the proposed facility.

(c) The date when the applicant expects to submit an application for a site certificate.

(d) A brief description of the Council's review process, including an explanation of the difference between the informational meetings described in OAR 345-015-0130 and 345-015-0190(10) and the public hearing described in OAR 345-015-0220.

(e) An explanation that the applicant may choose to meet the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval from the affected local government and that, if the applicant chooses to obtain local land use approval, any person interested in land use issues should participate in that affected local government's land use process if it is not yet complete.

(f) The date, time and location of any informational meeting on the NOI that the Department has scheduled or an explanation of how interested persons may request an informational meeting.

(g) The final date for submission of written comments on the NOI to the Department.

(h) For persons wanting more information about the NOI, the address of the Department.

(i) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI, as required by OAR 345-020-0011(1)(d):

(A) An explanation that the corridor proposed by the applicant in the NOI is subject to change and that the applicant may propose adjustments to the proposed corridor(s) in the application;

(B) An explanation that the applicant may present adjustments to the proposed corridor(s) at the informational meeting; and

(C) An explanation that, in selecting one or more corridors for analysis in the application for a site certificate, the applicant shall consider public comments on the corridor(s) proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.

(3) It is Council policy to encourage public participation in local land use decisions on energy facilities. To that end, the Council encourages the Department to send notice to the Council's mailing list if the Department learns that an applicant has applied for local land use approval.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0120

### Memorandum on a Notice of Intent

The Department of Energy shall prepare a memorandum to accompany the copies of the notice of intent (NOI) distributed by the applicant to the reviewing agencies as defined in OAR 345-001-0010. In the memorandum, the Department shall:

(1) Request comments from the reviewing agency by a specified date.

(2) Request the following information:

(a) The name, address and telephone number of the agency contact person assigned to review the application.

(b) Comments on aspects of the proposed facility that are within the particular responsibility or expertise of the reviewing agency.

(c) Recommendations regarding the size and location of analysis area(s).

(d) A list of studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures.

(e) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by OAR 345-020-0011(1)(d), a discussion of the relative merits of the corridors described in the NOI and recommendations, if any, on the selection of a corridor.

(f) A list of statutes, administrative rules and local government ordinances administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for determining compliance.

(g) A list of any permits administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for reviewing a permit application.

(h) For tribes affected by the proposed facility, a list of tribal codes that the tribe recommends to the Council for its review of the application and specific information regarding the proposed facility or study areas described in the NOI that is necessary for determining compliance with those tribal codes.

(3) State the date, location, agenda and purpose of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0130

### Informational Meeting on a Notice of Intent

(1) After issuing the public notice described in OAR 345-015-0110, the Department of Energy may hold one or more informational meetings on the proposed facility in the vicinity of the site of the proposed facility. The informational meeting is not a contested case hearing.

(2) If the Department holds an informational meeting, the Department shall present an explanation of the notice of intent (NOI) process and the application process, including the means and opportunities for the general public to participate in these processes, and an explanation of the difference between the informational meetings described in OAR 345-015-0130 and 345-015-0190(10) and the public hearing described in OAR 345-015-0220. The Department may present this information orally or by a written hand-out.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0140

### Review by the Department of Energy

The Department of Energy shall review the notice of intent (NOI) and the comments and recommendations received by the final date for submission of comments specified in the public notice described in OAR 345-015-0110 and in the memorandum described in OAR 345-015-0120. The Department shall send copies of any written comments or recommendations to the applicant.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0160

### Project Order

(1) Following the review and any meeting described in OAR 345-015-0140, or, in the case of an expedited review granted under OAR 345-



# ADMINISTRATIVE RULES

015-0300 or 345-015-0310, following receipt of an application for a site certificate, the Department of Energy shall send a project order to the applicant establishing the following:

(a) All state statutes and administrative rules containing standards or criteria that must be met for the Council to issue a site certificate for the proposed facility, including applicable standards of Divisions 22, 23 and 24 of this chapter.

(b) All local government ordinances applicable to the Council's decision on the proposed facility.

(c) All application requirements in OAR 345-021-0010 applicable to the proposed facility.

(d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits.

(e) Any other data and information that must be included in the application for a site certificate to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances.

(f) The analysis area(s) for the proposed facility.

(g) Public concerns that address matters within the jurisdiction of the Council that the applicant shall consider and discuss in the application for a site certificate, based on comments the Department has received.

(h) If the applicant has identified one or more proposed corridors in Exhibit D of the notice of intent as required by OAR 345-020-0011(1)(d), any adjustments to the corridor(s) that the applicant shall evaluate in the corridor selection assessment described in OAR 345-021-0010(1)(b).

(i) If the applicant chooses to demonstrate need for a proposed electric transmission line, natural gas pipeline, or liquefied natural gas storage facility under the economically reasonable rules, OAR 345-023-0030 and 345-023-0040, the alternatives the applicant must evaluate in the application for a site certificate in lieu of construction and operation of the proposed facility in addition to the alternatives described in OAR 345-021-0010(1)(n)(E) or (F), if any.

(j) Except in the case of an expedited review granted under OAR 345-015-0300 or 345-015-0310, the expiration date of the notice of intent, according to OAR 345-020-0060(1).

(2) In determining the application and study requirements to be included in the project order, the Department shall consider the size and type of proposed facility and significant potential impacts of the proposed facility. In the project order, the Department shall note and give the reason for any application or study requirements that the Department has waived or modified under OAR 345-015-0140(3).

(3) The Council or the Department may amend the project order at any time.

(4) The project order is not a final order.

(5) Except in the case of an expedited review granted under OAR 345-015-0300 or 345-015-0310, the Department shall, to the extent practicable, issue the project order within 140 days following the date of submission of the notice of intent.

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.330 & 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0180

### Agency Memorandum on a Site Certificate Application

The Department of Energy shall prepare a memorandum to accompany the copies of the preliminary application distributed by the applicant as described in OAR 345-021-0050. In the memorandum, the Department shall:

(1) Request the recipient to return comments or recommendations described in OAR 345-021-0050(2) to the Department by a specified date;

(2) Describe the matters to be covered in the comments or recommendations as set forth in OAR 345-021-0050(2) and (4);

(3) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;

(4) State that the reviewing agency must comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 to preserve the right to participate in the contested case proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision; and

(5) For any special advisory group designated by the Council under ORS 469.480, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend appli-

cable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350 & 469.504

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0190

### Determination of Completeness

(1) Until the Department determines the application to be complete, it is a preliminary application. Within 60 days after receipt of an application for a site certificate, the Department of Energy shall notify the applicant whether the application is complete. In the notification, the Department shall:

(a) State that the application is complete and state the date of filing;

(b) State that the application is incomplete, describe any information needed to complete the application, to the extent known to the Department at the time of the notification, ask the applicant to submit the needed information by the deadline described in section (4) and estimate the additional time the Department will need to make a determination of completeness; or

(c) Explain the reasons why the Department cannot determine completeness and estimate the additional time the Department will need to make a determination of completeness.

(2) If the Department does not notify the applicant as described in section (1), the application is deemed complete and filed 60 days after receipt of the application. Otherwise, the application is complete as determined under section (5) and the date of filing is the date determined under section (6).

(3) If the Department finds that the applicant did not give adequate consideration to public concerns about the corridors the applicant identified in Exhibit D of the notice of intent or corridor adjustments presented at the informational hearing described in OAR 345-015-0130, the Department may find the application incomplete and notify the applicant as described under section (1)(b).

(4) The Department may specify a date by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

(5) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and 345-021-0010. The Department shall notify the applicant when the Department finds that the application is complete and, if needed, shall request the application supplement described in OAR 345-021-0055.

(6) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

(7) The Department shall inform the public that the application is complete by publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility. In addition, the Department shall mail notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed facility and to the property owners listed in Exhibit F of the application.

(8) In notices described in section (7), the Department shall include the following information:

(a) A description of the proposed facility.

(b) The location of the site of the proposed facility

(c) The date of filing.

(d) A description of the procedure for review of the application, including the date, time and location of any informational meeting that has been scheduled on the application and an explanation of the difference between the informational meeting and the public hearing described in OAR 345-015-0220.

(e) Addresses of locations where the public may review copies of the application.

(f) The name, address and telephone number of the Department of Energy project officer to contact for more information.

# ADMINISTRATIVE RULES

(g) If the applicant has elected to seek local land use approvals pursuant to ORS 469.503(2)(a), a statement of the status of the land use approvals, and the name, address and telephone number of the local governments(s) making or having made the land use determination.

(h) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a statement of the applicant's proposed means of compliance with the applicable carbon dioxide emissions standard.

(9) After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0200

### Notice to Agencies that the Application is Complete

After the date of filing, the Department of Energy shall provide to the applicant the notice described in this rule and a mailing list of persons, including but not limited to those agencies listed in ORS 469.350, to whom the applicant shall send the notice and the application supplement described in OAR 345-021-0055. In the notice, the Department shall:

(1) State the date of filing.

(2) Explain that if a person intends to raise an issue in the contested case, the person must raise the issue in the manner described in OAR 345-015-0016.

(3) State a date by which the Department and the applicant must receive the reports described in sections (4) through (6) below.

(4) Request an agency report containing the following information:

(a) The agency's recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility.

(b) Issues significant to the agency.

(c) The agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency.

(d) A list of site certificate conditions recommended by the agency.

(e) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.

(5) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).

(6) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).

(7) Explain that the reports described in sections (4) through (6) above are part of the decision record for the application for a site certificate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0210

### Draft Proposed Order

(1) Following the deadline for its receipt of agency reports and final land use decisions stated under OAR 345-015-0200, the Department of Energy shall issue a draft proposed order on the application that includes its recommendation to grant with conditions or deny a site certificate for the proposed facility and a discussion of the reasons for that recommendation. The draft proposed order may include, but is not limited to:

(a) Draft proposed findings of fact and conclusions of law concerning the proposed facility's compliance with all state statutes and administrative rules and ordinances applicable to the issuance of a site certificate for the proposed facility;

(b) Draft proposed conditions for inclusion in the site certificate;

(c) Draft proposed monitoring plans to ensure the proposed facility's continued compliance with applicable state statutes and administrative rules and ordinances; and

(d) A description of the status of other applications for state permits and local government land use permits for the proposed facility.

(2) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(a), the Department shall include in the draft proposed order the local government's land use decisions on the proposed

facility, if available, including findings of fact, conclusions of law, and conditions.

(3) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(b), the Department shall include in the draft proposed order the Department's proposed findings of fact, conclusions of law, and proposed conditions under the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations, under the applicable statewide planning goals, or under the exception criteria set forth in ORS 469.504(2).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0220

### Public Hearing on the Draft Proposed Order

(1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer shall conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing.

(2) The Department of Energy shall, at least 20 days before the hearing:

(a) Submit notice for publication in a newspaper of general circulation available in the vicinity of the proposed facility.

(b) Mail notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application as updated by the applicant upon the request of the Department.

(3) In the notices described in subsections (2)(a) and (2)(b), the Department shall include:

(a) The date, time and location of the public hearing(s).

(b) A description of the facility and the facility's general location.

(c) The name, address and telephone number of the Department's project officer to contact for additional information.

(d) A statement that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost.

(e) The deadline for the public to submit written comments to be included in the record of the public hearing and a statement that such comments should be submitted to the presiding officer in care of the Department's project officer.

(f) A statement that to raise an issue on the record of the public hearing, a person must raise the issue in person at the public hearing or in a written comment submitted after the date of the notice and received by the Department before the deadline.

(g) A statement that failure to raise an issue in person or in writing on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(h) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

(4) During the public hearing, the Department shall explain the application process, including the means and opportunities for the general public to participate in the process. The Department may provide this explanation by a written handout.

(5) At the commencement of the hearing, the presiding officer shall state that:

(a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written comment submitted to the Department of Energy before the deadline stated in the notice of the public hearing.

(b) A person who intends to raise any issue that may be the basis for a contested case must raise the issue with sufficient specificity to afford the Council, the Department of Energy and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

(6) Any person may present information regarding the pending application without administration of an oath. The presiding officer shall record all presentations made during the public hearing. The presentations are part of the decision record for the application and may be rebutted in the contested case proceeding.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-015-0230

### Council Review and the Office of Energy's Proposed Order

(1) Following the final public hearing on the draft proposed order conducted under OAR 345-015-0220, the Council shall review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council does not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.

(2) Following the Council's meeting to review of the draft proposed order, the Department of Energy shall issue a proposed order, taking into consideration the comments of the Council, testimony at the public hearing, written comments received by the hearing officer before the close of record at or following the final public hearing on the draft proposed order and agency consultation. In the proposed order, the Department shall recommend either granting a site certificate with conditions or denying a site certificate for the proposed facility.

(3) Following issuance of the proposed order, the Department shall issue a notice of a contested case on the proposed order, as described in OAR 345-015-0014.

(4) After the conclusion of the contested case proceeding, the Council will take final action on the site certificate application, as described in OAR 345-015-0085.

Stat. Auth.: ORS 469.470  
Stats. Implemented: ORS 469.370  
Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0240

### The Decision-Making Record

The decision-making record on an application for a site certificate includes the decision record for the Department of Energy's proposed order and the record of the contested case proceeding.

Stat. Auth.: ORS 469.470  
Stats. Implemented: ORS 469.370  
Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0300

### Request for Expedited Review of Small Capacity Facilities

(1) In accordance with ORS 469.370(10), any person proposing to construct and operate an energy facility with an average electric generating capacity of less than 100 megawatts who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (2) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. If the proposed energy facility has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, the proposed energy facility is not eligible for expedited review.

(2) In the request for expedited review, the applicant shall include:

- (a) A description of the facility and the proposed site;
- (b) The applicant's name and address;
- (c) A schedule stating when the applicant expects to submit an application for a site certificate;
- (d) A list of all statutes, rules and ordinances applicable to the facility;

(e) A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval pursuant to ORS 469.504(1)(a) or by seeking a Council determination pursuant to ORS 469.504(1)(b); and

(f) The reason and justification for any request for exception to an analysis area as provided under section (3).

(3) In an expedited review granted under this rule, the Department shall issue a project order following the applicant's submission of an application for a site certificate. For the purposes of submitting the application, the analysis areas are the study areas as defined in OAR 345-001-0010, unless the applicant requests an exception in the request for expedited review and the Department approves the exception. The Department may, in the project order, modify the analysis areas. The Department may request additional information from the applicant, as provided in OAR 345-015-0190, before determining the application complete. Submission of the site certificate application and the Department's review of the application in all other respects are the same for expedited review as for other site certificate applications.

(4) The Council hereby grants any request for expedited review from an applicant proposing a facility meeting the definition in section (1) if the

Department determines that the request satisfies the requirements of section (2). The Department shall notify the applicant of its determination.

Stat. Auth.: ORS 469.470  
Stats. Implemented: ORS 469.370  
Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0310

### Request for Expedited Review of Special Criteria Facilities

(1) Any person who proposes to construct and operate a special criteria facility, as defined in section (2), and who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (3) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) "Special criteria facility" means a facility that meets the criteria stated in ORS 469.373(1).

(3) In the request for expedited review, the applicant shall provide documentation that the proposed facility is a special criteria facility, as defined in section (2), and:

- (a) A description of the facility and the proposed site.
- (b) The applicant's name and address.
- (c) A schedule stating when the applicant expects to submit an application for a site certificate.
- (d) A list of all statutes, rules and ordinances applicable to the facility.

(4) Within 14 days after receiving the request for expedited review, the Department shall determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and shall notify the applicant. The Department may decide, on a preliminary, non-binding basis, that the proposed location of associated transmission lines or new natural gas pipelines outside of existing rights of way imposes no significant impact. The Department shall provide to the applicant a mailing list of persons including but not limited to the agencies listed in ORS 469.373(4).

(5) After the Department has made the determination described in section (4), the applicant may submit an application for a site certificate, as described in OAR 345-021-0000 and 345-021-0010. The applicant shall submit an original and ten copies of the application to the Department. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) of the application in a non-copy-protected electronic format acceptable to the Department. The applicant shall send a copy of the application to persons on the mailing list described in section (4). The applicant shall provide additional copies of the application to the Department upon request and copies or access to copies to any person requesting copies.

(6) Within 30 days after receiving an application for a site certificate, the Department shall issue a project order. In the project order, the Department may make changes to the analysis areas. The project order is not a final order. The Council or the Department may amend the project order at any time.

(7) Within 30 days after receiving an application for a site certificate, the Department shall either:

- (a) Notify the applicant that the application is complete or
- (b) Notify the applicant that the application is not complete and describe the information needed to complete the application, to the extent known to the Department at the time of the notification.

(8) If additional information is needed to complete the application, the applicant shall submit the information to the Department. The Department may specify a date by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

(9) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and OAR 345-021-0010. The Department shall notify the applicant when the Department finds that the application is complete and, if needed, shall request the application supplement described in OAR 345-021-0055.

(10) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is

## ADMINISTRATIVE RULES

needed, the date the Department notifies the applicant that the application is complete.

(11) After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.

(12) In the notification to the applicant that the application is complete, as described in section (7)(a) or (9), the Department shall instruct the applicant send a copy of the notice described in section (13) and a copy of the application supplement, if any, to specified persons including but not limited to the agencies listed in ORS 469.373(4).

(13) The Department shall prepare a notice that:

(a) States that the application is complete and specifies the date of filing,

(b) Requests the agency reports as described in OAR 345-015-0200,

(c) Includes the statements required by ORS 469.373(4)(a) and (b).

(14) At the time specified in section (15), the Department shall issue a public notice, including but not limited to:

(a) A description of the proposed facility and the general location of the energy facility;

(b) The date, time and location of a public informational meeting on the application;

(c) A statement that the application has been filed;

(d) Addresses of locations where the public may review copies of the application; and

(e) The name of a Department of Energy representative to contact and the telephone number at which people may obtain additional information.

(15) At least 14 days before the meeting described in section (16), the Department shall:

(a) Submit the notice described in section (14) for publication in a newspaper of general circulation available in the vicinity of the proposed facility, and

(b) Mail the notice described in section (14) to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application.

(16) The Department shall hold a public informational meeting on the application.

(17) Within 90 days after the date of filing, the Department shall issue a draft proposed order including, but not limited to:

(a) A description of the proposed facility,

(b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed facility;

(c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed facility, and

(d) Proposed findings regarding compliance with the applicable standards and criteria for approval of a site certificate and specifying conditions that are required for the facility to comply.

(18) The Council shall review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council does not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.

(19) After the Council's review as described in section (18), the Department shall issue a proposed order.

(20) At the time specified in section (21), the Department shall issue a public notice, including but not limited to:

(a) A description of the facility and its general location.

(b) The name of a Department of Energy representative to contact and the telephone number at which people may obtain additional information.

(c) A statement that the Department has issued a proposed order and that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost.

(d) The date, time and location of a public hearing on the proposed order.

(e) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.

(f) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

(g) A statement that the hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(21) At least 20 days before the hearing described in section (22), the Department shall:

(a) Submit the notice described in section (20) for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and

(b) Mail the notice described in section (20) to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application.

(22) The Council shall hold at least one public hearing on the proposed order in the area affected by the proposed facility according to the procedures described in OAR 345-015-0320.

(23) Before the conclusion of the hearing described in section (22), the applicant may either:

(a) Request an opportunity to present additional written evidence, arguments or testimony regarding the application, or

(b) Request a contested case hearing on the application. Not later than 7 days after making a request in the public hearing, the applicant shall submit the request to the Council in writing, including evidence sufficient to show good cause for the contested case hearing.

(24) Except as described in section (27), following the close of the record of the public hearing, the Department shall issue a draft final order for the Council. In preparing the draft final order, the Department shall take into account the entire record, including the summary prepared by the hearing officer described in OAR 345-015-0320.

(25) Except as described in section (27), within six months after the date of filing, the Council shall make its decision on the record and the draft final order. The Council shall:

(a) Grant the site certificate;

(b) Grant the site certificate with conditions;

(c) Deny the site certificate; or

(d) Determine that the proposed facility is not a special criteria facility as defined in section (2) and is not eligible for expedited review under this rule.

(26) The Council shall issue a site certificate for the proposed facility if the Council determines that the proposed facility, with any required conditions to the site certificate, will comply with:

(a) The requirements for expedited review as specified in this rule.

(b) The standards adopted by the Council pursuant to ORS 469.501(1)(a), (c) to (e), (g), (h) and (L) to (o).

(c) The requirements of ORS 469.503(3).

(d) The requirements of ORS 469.504(1)(b).

(27) If the applicant requests a contested case hearing as described in section (23)(b), the Council, after considering the request in a public meeting, may grant the request if the Council finds that the applicant has shown good cause for a contested case hearing.

(28) If the Council grants the request for a contested case hearing, the Department shall issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council shall then consider the application under the same contested case procedures used for a nonexpedited application for a site certificate.

(29) If, as described in section (25), the Council determines that the proposed facility is not a special criteria facility and is not eligible for expedited review under this rule, then the Council shall consider the application under the same review procedures used for a nonexpedited application from the point of the applicant's submission of an application. The Department shall treat the application before the Council at the time of the determination as a preliminary application for the purpose of review under OAR 345-015-0190, except that within 30 days after the Council's determination, the Department shall determine whether the application is complete. The Department shall notify the applicant as described in OAR 345-015-0190(1) and the Department shall issue an amended project order that includes the Council standards that were not applicable under expedited review. For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council shall apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

# ADMINISTRATIVE RULES

(30) The applicant may withdraw its request for expedited review under this rule at any time and request that the Council consider its application under the same review procedures used for a nonexpedited application. After such a request, the Department shall treat the application as a preliminary application for the purpose of review under OAR 345-015-0190 as described in section (29). For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council shall apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 469.373 & 469.470  
Stats. Implemented: ORS 469.370  
Hist.: EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0320

### Public Hearing Procedures for Special Criteria Facilities

(1) The Council shall appoint a hearing officer to conduct the public hearing described in OAR 345-015-0310(22). The Council may appoint a Council member, an employee of the Department of Energy or other person.

- (2) The duties of the hearing officer are to:
  - (a) Ensure a full, fair and impartial hearing.
  - (b) Facilitate presentation of evidence.
  - (c) Comply with statutory time limits on Council decisions.
  - (d) Maintain order.
  - (e) Assist the Council in making its decision.

(f) Prepare a summary of the evidence presented on the record of the public hearing addressing the factual and legal issues raised in the hearing, including findings related to the credibility of witnesses, as necessary. The hearing officer shall submit the summary and the record of the hearing to the Council within 7 days after the close of the record.

(3) During the public hearing, the Department shall present the following information either orally or by written handout:

- (a) A description of the proposed facility.
- (b) A description of the Council standards, including those standards on which the Council may base site certificate conditions.
- (c) An explanation of the application process, including the means and opportunities for the general public to participate in the process.

(4) At the commencement of the public hearing, the hearing officer shall state that:

(a) The record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.

(b) To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

(c) The hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(5) Any person may present information regarding the pending application without administration of an oath.

(6) The hearing officer shall record all presentations made during the public hearing, and the presentations are part of the decision record for the application. The hearing officer shall maintain a record of all exhibits received and any rulings made during the course of the hearing.

(7) If the applicant requests an opportunity to present written evidence, arguments or testimony as described in OAR 345-015-0310, the hearing officer shall leave the record open for that purpose only for a specified period not to exceed 14 days after the date of the hearing or any continuance.

(8) The hearing officer is authorized to carry out the duties assigned in this rule, including but not limited to:

- (a) Adopting special rules of procedure to govern the proceeding.
- (b) Setting reasonable time limits for oral presentations.
- (c) Receiving evidence and ruling on offers of proof.
- (d) Requiring persons to submit written testimony in lieu of oral testimony if the hearing officer determines that a reasonable opportunity for oral presentation has been provided.
- (e) Asking questions of commenters.
- (f) Requiring expert witnesses to submit a statement of qualifications in writing

(g) Continuing the hearing during a period not exceeding 7 days from the commencement of the hearing. Notwithstanding this time limit, the hearing officer shall leave the record open for the purpose described in section (7).

(h) Continuing the hearing beyond any continuance allowed under subsection (g) for the limited purpose of allowing the applicant reasonable time to review written material submitted to the record before making the request described in section (7).

(i) Taking any other action consistent with the statutes governing expedited review of special criteria facilities and the applicable Council's rules.

(9) A request by the applicant for a contested case as provided in OAR 345-015-0310(23)(b) does not suspend the public hearing, and the hearing officer shall continue to accept evidence from interested persons until the close of the hearing.

(10) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of the public hearing, the hearing officer shall enter into the record the substance of any significant contact with the applicant, the Department of Energy staff or a commenter from that point forward concerning facts in the record.

(11) The Council may remove a hearing officer if it determines that the hearing officer is not competent, is biased or is otherwise unable to conduct the proceeding.

(12) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a public hearing or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. If the hearing officer issues an order permanently excluding a person from further participation in a public hearing, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven days after the date of the order.

(13) Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Auth.: ORS 469.373 & 469.470  
Stats. Implemented: ORS 469.370  
Hist.: EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0350

### Council Determination of Exemption

The Council shall, upon request, determine whether a proposed facility or proposed expansion of a facility is exempt from the requirement to obtain a site certificate. A site certificate is not required for:

(1) A facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if the site is not enlarged and:

(a) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993; or

(b) The facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(2) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.

(3) A high efficiency cogeneration facility, as defined in OAR 345-001-0010.

(4) A small generating plant or an expansion to a small generating plant, as defined in OAR 345-001-0210, if the Council finds that the accumulated effects do not have a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more, as described in OAR 345-001-0210(3).

(5) An energy facility as defined in ORS 469.300(11)(a)(G), if the facility meets the requirements of ORS 469.320(2)(f).

(6) A standby generation facility as defined under ORS 469.320.  
Stat. Auth.: ORS 469.470

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 469.320  
Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0360

### Contents of Request for Exemption

(1) Any person wishing to construct and operate a facility exempt from Council jurisdiction shall submit a request for exemption to the Department of Energy before beginning construction. A person shall not construct or expand a facility as defined in OAR 345-001-0010 unless the Council has granted an exemption as described in OAR 345-015-0370 or has issued a site certificate or an amendment to an existing site certificate.

(2) In a request for an exemption under OAR 345-015-0350(1)(a) for a modification of a facility for which no site certificate has been issued that will not increase the ability of the facility to use fuel for electricity production under peak steady state operating conditions to more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993, the person shall provide the following information in support of the request:

- (a) A detailed description of the proposed upgrade or expansion;
- (b) The proposed and current facility fuel use;
- (c) The proposed and current nominal electric generating capacity;
- (d) The proposed and current related or supporting facilities and site boundary;

(e) The proposed and current heat rate; and  
(f) Verification that the facility had operable electric generating equipment on August 2, 1993.

(3) In a request for an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no site certificate has been issued that is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon, the person shall provide the following information in support of the request:

- (a) The information described in subsections (2)(a) through (f) of this rule;
- (b) Identification and discussion of the portion of the short-term plan of action of an energy resource plan that calls for the facility expansion; and
- (c) The Public Utility Commission of Oregon Order acknowledging the plan described in subsection (b).

(4) In a request for an exemption under OAR 345-015-0350(2) for construction or expansion of an interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission, the person shall provide a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission for the proposed pipeline or associated underground natural gas storage facility, or other comparable evidence that the proposed pipeline or storage facility is within that agency's jurisdiction.

(5) In a request for an exemption based on a very efficient use of fuel (high efficiency cogeneration) under OAR 345-015-0350(3), the person shall provide the following information in support of the request:

(a) Detailed information on proposed fuel use, power plant design, steam or heat output to the thermal host and proposed electric output;

(b) Detailed information on the current facility, including fuel to be displaced, current steam or heat use and current electric output if any;

(c) A detailed engineering assessment of fuel efficiency, showing that the proposed facility is a high efficiency cogeneration facility under the definition in OAR 345-001-0010. The person shall provide calculations in sufficient detail to facilitate independent review by the Department. The person shall state the underlying assumptions necessary to support the calculation including assumptions concerning the energy content of fuel displaced; and

(d) A description of the facility, including the thermal host, the proposed energy facility, the location by address as well as township and range and any associated linear equipment needed.

(6) In a request for an exemption of a small generating plant or expansion of a small generating plant, as defined in OAR 345-001-0210, the person shall include the following information:

(a) A description of the proposed small generating plant or proposed expansion to a small generating plant and a description of related or supporting facilities;

(b) Identification of the person or persons who will construct, operate and own the plant;

(c) An analysis of the factors described in OAR 345-001-0210(3); and

(d) Any other information the Department of Energy determines the Council needs to make the finding described in OAR 345-001-0210(3).

(7) In a request for an exemption under OAR 345-015-0350(5) for a plant that converts biomass to a liquid fuel, the person shall include the following information:

(a) A description of the proposed plant, including, but not limited to, the location, acreage and annual production capacity of the proposed plant and the type of liquid fuel the plant will produce;

(b) A description of the feedstock verifying that the facility will use only the types of feedstock described in ORS 469.320(2)(f);

(c) The identity of the affected local government that has given land use approval under the applicable acknowledged comprehensive plan and land use regulations and copies of all land use approval documents the local government has issued;

(d) The statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility and evidence to support a finding by the Council that the facility complies with those goals and rules;

(e) A description of the expected electrical loads and fuel needs of the facility and a statement verifying that the facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate; and

(f) A statement verifying that the plant will produce synthetic fuel, at least 90 percent of which will be used in an industrial or refueling facility located within one mile of the facility or will be transported from the facility by rail or barge and evidence that adequate rail and barge facilities are available to serve the proposed site.

(8) In a request for an exemption under OAR 345-015-0350(7) for a standby generation facility, the person shall include the following information:

(a) A description of the proposed standby generation facility.

(b) Identification of the person or persons who will construct, operate and own the plant.

(c) Verification that the facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and that the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission.

(d) Verification, as described in ORS 469.320(2), that the standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements.

(e) Verification, as described in ORS 469.320(2), that the standby generators are electrically incapable of being interconnected to the transmission grid.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0370

### Consideration of Request for Exemption

(1) Except as described in section (2), within 45 days after receipt of a request for exemption, the Department of Energy shall review the request for exemption for completeness and provide the requestor with either a notice of filing of the request for exemption or a request for additional information. When the Department finds the submitted request for exemption is complete, the Department shall issue a notice of filing. Within 60 days after issuing the notice of filing, the Department shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.

(2) When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Department of Energy and Council relating to the review and decision by the Council.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320, 469.421 & 469.441

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-015-0380

### Loss of Exemption

(1) In accordance with ORS 469.320(6), any person operating a facility for which the Council previously granted an exemption under ORS 469.320(2)(c) and that has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an application for a site certificate within 12 months of the loss.

# ADMINISTRATIVE RULES

(2) Any person proposing to enlarge the site of a facility previously determined to be exempt under 469.320(2)(a) must submit an application for a site certificate.

(3) Any person submitting an application for a site certificate under section (1) or (2) may request expedited review as described in OAR 345-015-0300 or 345-015-0310 if the average electric generating capacity of the energy facility is less than 100 megawatts.

(4) Any person operating a plant that the Council has determined exempt under OAR 345-015-0350(5) must apply for a site certificate before making any change in the operation of the plant such that the plant would no longer meet the requirements of ORS 469.320(2)(f).

Stat. Auth.: ORS 469.373 & 469.470  
Stats. Implemented: ORS 469.320  
Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-020-0006

### Submission of a Notice of Intent

(1) The purpose of the notice of intent (NOI) is to notify the Department of Energy and the Council of a proposed facility and to provide information about the site and the characteristics of the facility sufficient for the preparation of the project order described in OAR 345-015-0160. Any person who intends to apply for a site certificate for a facility shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) Notwithstanding section (1), an applicant granted expedited review under OAR 345-015-0300 or 345-015-0310 need not submit an NOI.

(3) Notwithstanding the definition of "energy facility," a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy. If such person chooses not to request expedited review under OAR 345-015-0300 or if expedited review is not granted, the person shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. An election to obtain a site certificate is final upon submission of the application.

Stat. Auth.: ORS 469.370 & 469.470  
Stats. Implemented: ORS 469.330  
Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 4-1981, f. & ef. 3-25-81; EFSC 2-1991(Temp), f. & cert. ef. 6-5-91; EFSC 1-1992(Temp), f. & cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-020-0011

### Contents of a Notice of Intent

(1) The applicant shall, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant shall describe each alternative separately. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person;

(B) The contact name, address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.

(C) If the applicant is a corporation, it shall give:

(i) The full name, official designation, mailing address and telephone number of the officer responsible for submitting the NOI;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the NOI; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners;

(E) If the person submitting the NOI is an association of citizens, a joint venture or a partnership, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the NOI;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member;

(F) If the applicant is a public or governmental entity, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the NOI; and

(ii) Written authorization from the entity's governing body to submit an NOI;

(G) If the applicant is an individual, the individual shall give his or her mailing address and telephone number;

(b) Exhibit B. Information about the proposed facility, including:

(A) A description of the proposed energy facility, including as applicable:

(i) The nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300.

(ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy.

(iii) Methods for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates, the applicant's plans for disposal of wastewater and storm water, and the location of disposal;

(iii) For thermal power plants:

(I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy.

(II) Methods for disposal of waste heat.

(iv) For transmission lines, approximate transmission line voltage, load carrying capacity and type of current.

(v) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day.

(vi) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors.

(vii) For facilities to store liquefied natural gas, the approximate volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour.

(B) A description of major components, structures and systems of each related or supporting facility.

(C) The approximate dimensions of major facility structures and visible features.

(c) **Exhibit C.** A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility and all areas that might be temporarily disturbed during construction of the facility, including the approximate land area of each.

(d) **Exhibit D.** If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, identification of at least two proposed corridors, as defined in OAR 345-001-0010, or identification of a single proposed corridor with an explanation of why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Council's standards. The applicant shall include an explanation of the basis for selecting the proposed corridor(s) and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (n) and (p) that is available from existing maps, aerial photographs, and a search of readily available literature.

(e) **Exhibit E.** Identification of all federal, state and local government permits needed before construction and operation of the proposed facility, legal citation of the statute, rule or ordinance governing each permit, and

# ADMINISTRATIVE RULES

the name, address and telephone number of the agency or office responsible for each permit.

(f) **Exhibit F.** A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within or adjacent to the site boundary as defined in OAR 345-001-0010. In addition to incorporating the list in the NOI, the applicant shall submit the list to the Department of Energy in electronic format acceptable to the Department for the production of mailing labels. Property adjacent to the site boundary means property that is:

(A) Within 100 feet of the site boundary where the site, corridor or micro-siting corridor is within an urban growth boundary;

(B) Within 250 feet of the site boundary where the site, corridor or micro-siting corridor is outside an urban growth boundary and not within a farm or forest zone; and

(C) Within 500 feet of the site boundary where the site, corridor or micro-siting corridor is within a farm or forest zone;

(g) **Exhibit G.** A map or maps showing:

(A) The proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(C) The study area(s) for the proposed facility as defined in OAR 345-001-0010;

(D) The topography of the study area(s) including streams, rivers, lakes, major roads and contour lines;

(E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas; and

(F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site.

(h) **Exhibit H.** If the proposed facility is a non-generating energy facility for which the applicant must demonstrate need under OAR 345-023-0005, identification of the rule in Division 23 of this chapter under which the applicant intends to demonstrate need and a summary statement of the need and justification for the proposed facility.

(i) **Exhibit I.** A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).

(j) **Exhibit J.** Identification of significant potential environmental impacts of construction and operation of the proposed facility on the study areas, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic and aesthetic areas, recreation, and land use.

(k) **Exhibit K.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the study area to provide the services listed in OAR 345-022-0110.

(L) **Exhibit L.** Information about anticipated water use during construction and operation of the proposed facility, including:

(A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source;

(B) If a new water right is required, the approximate location of the points of diversion and the estimated quantity of water to be taken at each point;

(C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.

(m) **Exhibit M.** If the proposed facility would emit carbon dioxide, an estimate of the gross rate of carbon dioxide emissions, a table listing all the factors that form the basis for calculating the estimate, and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-560, 345-024-600 or 345-024-630.

(n) **Exhibit N.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant shall analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.

(o) **Exhibit O.** A schedule stating when the applicant expects to submit an application for a site certificate.

(p) **Exhibit P.** Evidence of consultation with the State Commission on Indian Services to identify each appropriate tribe to consult with regarding the proposed facility's possible effects on Indian historic and cultural resources.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required by section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the NOI. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the NOI, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the NOI as needed to meet the requirements of section (1) of this rule.

(3) The applicant shall include a table of contents in the NOI identifying the location of each exhibit required by this rule. The applicant shall submit an original and ten copies of the NOI to the Department and shall prepare and distribute additional copies of the NOI as required by OAR 345-020-0040. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) of the NOI in a non-copy-protected electronic format acceptable to the Department.

(4) The applicant or the applicant's representative shall attend all public informational meetings on the NOI as described in OAR 345-015-0130 to discuss the proposed facility and to answer questions from the public. If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by section (1)(d), the applicant may present adjustments to the proposed corridor(s) at any public informational meeting. An adjustment is any change that is outside the boundaries of the corridors proposed in the NOI and may include an entirely new corridor.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 2-1991(Temp), f. & cert. ef. 6-5-91; EFSC 1-1992(Temp), f. & cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1995, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-020-0016

### Amendment of Notice of Intent

(1) The applicant may amend the notice of intent (NOI). The applicant shall submit the original and ten copies of the amended NOI to the Department of Energy. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) of the amended NOI in a non-copy-protected electronic format acceptable to the Department.

(2) The Department shall inform the public, in the manner described in OAR 345-015-0110, of any amendment that:

(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;

(b) Changes the proposed fuel type, significantly increases the generating capacity of the proposed energy facility, increases the voltage of a proposed transmission line, or significantly increases the capacity or operating pressure of a proposed pipeline;

(c) Increases water consumption or disposal by more than 5 percent;

(d) Changes the source of water; or

(e) Significantly changes the means of compliance with the carbon dioxide standard, if applicable.

(3) The applicant shall deliver copies of the amended NOI to the reviewing agencies as defined in OAR 345-001-0010.

(4) Submission of an amended NOI does not extend the expiration date of the NOI. The applicant, however, may petition the Council to extend the duration of the NOI as provided in OAR 345-020-0060.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1995, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-020-0040

### Distribution of a Notice of Intent

(1) As soon as is practical after the submission of the notice of intent (NOI), the applicant shall distribute, by hand delivery or mailing, copies of the NOI to the reviewing agencies as defined in OAR 345-001-0010.



# ADMINISTRATIVE RULES

(2) The applicant shall attach the memorandum from the Department described in OAR 345-015-0120 to the copies of the NOI distributed according to section (1).

(3) The applicant shall provide additional copies of the NOI to the Department upon request and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469.470  
Stats. Implemented: ORS 469.330  
Hist.: EFSC 2-1991(Temp), f. & cert. ef. 6-5-91; EFSC 1-1992(Temp), f. & cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-96; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-020-0060

### Expiration of a Notice of Intent

(1) A notice of intent (NOI) expires two years after the applicant submits the NOI unless, not less than 45 days before the expiration date, the applicant submits a petition to the Council to extend the expiration date. If the Council finds that the petition shows good cause, the Council may extend the expiration date for a period of up to one year. The applicant's submission of a timely petition for an extension under this rule stays the expiration of the NOI until the Council's decision to grant or deny the extension.

(2) If the applicant does not submit an application for a site certificate for the facility described in an NOI before the expiration of the NOI or any extension period granted by the Council, the applicant must submit a new NOI to satisfy ORS 469.330.

Stat. Auth.: ORS 469.470  
Stats. Implemented: ORS 469.330  
Hist.: EFSC 2-1991(Temp), f. & cert. ef. 6-5-91; EFSC 1-1992(Temp), f. & cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-96; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-021-0000

### General Requirements

(1) Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to 345-015-0370 or for which a separate site certificate is not required according to ORS 469.320(5), a person shall not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.

(2) Notwithstanding the definition of "energy facility," a person may elect to apply for a site certificate for an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy.

(3) An applicant shall not submit an application for a site certificate before the Department of Energy has issued a project order for the proposed facility as described in OAR 345-015-0160. The applicant may submit a draft application before the issuance of a project order. The applicant must submit the application before the expiration of the notice of intent.

(4) For an expedited review granted under OAR 345-015-0300 or 345-015-0310, section (3) does not apply and the applicant may submit an application for a site certificate any time after the Department determines the request for expedited review satisfies the requirements for expedited review as described in those rules.

(5) If the applicant submits a written request for waiver or modification of requirements in OAR 345-021-0010 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility.

(6) If there are any state or local government agency permits, licenses or certificates that are subject to the Council's siting decision, the applicant shall include within the site certificate application all information that would otherwise be required by the state or local government agency in an application for such permit, license or certificate.

(7) If there are any federally-delegated permits that apply to the construction or operation of the proposed facility, the applicant shall submit to the Department one copy of each federally-delegated permit application. The applicant may submit the site certificate application before submitting a copy of a federally-delegated permit application if the applicant submits a schedule of the date by which the applicant intends to submit the federally-delegated permit application. The Department may not find the site certificate application to be complete before receiving copies of all federally-delegated permit applications and a letter or other indication from each agency responsible for issuing a federally-delegated permit stating that the agency has received the permit application, identifying any additional information the agency is likely to need from the applicant and estimating the date when the agency will complete its review and issue a permit decision.

(8) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in OAR 345-021-0010, the applicant shall submit to the Department three copies of each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate copies of the plan(s) as part of the application for a site certificate. The applicant shall submit the plan(s) to the Department with the site certificate application. The Department may not find the site certificate application to be complete before receiving copies of the plan(s). The plan or plans described in this section are part of the decision record for the Department's proposed order, described in OAR 345-015-0230.

(9) The applicant shall submit an application for a site certificate to the Department with 25 percent of the fee the Department determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Department of Energy. The applicant shall pay the balance of the fee periodically, as specified by the Department.

(10) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application. For the purpose of determining the applicable substantive criteria under ORS 469.504(1)(b)(A), the date the preliminary application is received by the Department is the date the application is submitted.

Stat. Auth.: ORS 469.373 & 469.470  
Stats. Implemented: ORS 469.350, 469.370 & 469.421  
Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-95; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 2-2001(Temp), f. & cert. ef. 9-17-01 thru 3-10-02; Administrative correction 3-14-02; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-021-0010

### Contents of an Application

(1) The project order described in OAR 345-15-160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant shall include in its application for a site certificate information that addresses each provision of this rule identified in the project order. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the applicant shall include information that addresses all provisions of this rule. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person;

(B) The contact name, address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.

(C) If the applicant is a corporation, it shall give:

(i) The full name, official designation, mailing address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the application; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners;

(E) If the applicant is an association of citizens, a joint venture or a partnership, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the application;

## ADMINISTRATIVE RULES

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member;

(F) If the applicant is a public or governmental entity, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the application; and

(ii) Written authorization from the entity's governing body to submit an application;

(G) If the applicant is an individual, the individual shall give his or her mailing address and telephone number;

(b) **Exhibit B.** Information about the proposed facility, construction schedule and temporary disturbances of the site, including:

(A) A description of the proposed energy facility, including as applicable:

(i) The nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300.

(ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy.

(iii) A site plan and general arrangement of buildings, equipment and structures.

(iv) Fuel and chemical storage facilities, including structures and systems for spill containment

(v) Equipment and systems for fire prevention and control.

(vi) For thermal power plants:

(I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy.

(II) Process flow, including power cycle and steam cycle diagrams to describe the energy flows within the system;

(III) Equipment and systems for disposal of waste heat;

(IV) The fuel chargeable to power heat rate;

(vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors.

(viii) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour.

(B) A description of major components, structures and systems of each related or supporting facility.

(C) The approximate dimensions of major facility structures and visible features.

(D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridor(s) for analysis in the application. In the assessment, the applicant shall evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant shall discuss the reasons for selecting the corridor(s), based upon evaluation of the following factors:

(i) Least disturbance to streams, rivers and wetlands during construction;

(ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;

(iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads, as defined in ORS 368.001, and existing pipeline or transmission line rights-of-way;

(iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;

(v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;

(vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist; and

(vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards;

(viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use;

(E) For any pipeline or transmission line, regardless of size:

(i) The length of the pipeline or transmission line.

(ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened.

(iii) If the proposed corridor follows or includes public right-of-way, a description of where the facility would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a pipeline or transmission line adjacent to but not within the public right-of-way, describe the reasons for locating the facility outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the facility outside the public right-of-way, based on those criteria.

(iv) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline.

(v) For transmission lines, the rated voltage, load carrying capacity, and type of current and a description of transmission line structures and their dimensions.

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The applicant shall describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant shall include an estimate of the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application.

(c) **Exhibit C.** Information about the location of the proposed facility, including:

(A) A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail; and

(B) A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the approximate land area of each. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant shall state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known;

(d) **Exhibit D.** Information about the organizational expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including:

(A) The applicant's previous experience, if any, in constructing and operating similar facilities;

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted;

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The appli-

## ADMINISTRATIVE RULES

cant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise; and

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program;

(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

(e) **Exhibit E.** Information about permits needed for construction and operation of the facility, including:

(A) Identification of all federal, state and local government permits needed before construction and operation of the proposed facility, legal citation of the statute, rule or ordinance governing each permit, and the name, address and telephone number of the agency or office responsible for each permit.

(B) A description of each permit and the reasons the permit is needed for construction or operation of the facility.

(C) For any state or local government agency permits, licenses or certificates that are subject to the Council's siting decision, evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. The applicant may show this evidence:

(i) In **Exhibit J** for permits related to wetlands;

(ii) In **Exhibit O** for permits related to water rights.

(D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision.

(E) If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit; and

(iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard.

(F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the responsible agency has received a permit application; and

(iii) The estimated date when the responsible agency will complete its review and issue a permit decision.

(G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.

(f) **Exhibit F.** A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within or adjacent to the site boundary as defined in OAR 345-001-0010. The applicant shall submit an updated list of property owners as requested by the Department before the Department issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220. In addition to incorporating the list in the application for a site certificate, the applicant shall submit the list to the Department in electronic format acceptable to the Department for the production of mailing labels. Property adjacent to the site boundary means property that is:

(A) Within 100 feet of the site boundary where the site, corridor or micro-siting corridor is within an urban growth boundary;

(B) Within 250 feet of the site boundary where the site, corridor or micro-siting corridor is outside an urban growth boundary and not within a farm or forest zone; and

(C) Within 500 feet of the site boundary where the site, corridor or micro-siting corridor is within a farm or forest zone;

(g) **Exhibit G.** A materials analysis including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation;

(h) Exhibit H. Information from reasonably available sources regarding the geological and soil stability within the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0020, including:

(A) A geologic report meeting the guidance in Oregon Department of Geology and Mineral Industries open file report 00-04 "Guidelines for Engineering Geologic reports and Site-Specific Seismic Hazard Reports."

(B) A description and schedule of site-specific geotechnical work that will be performed before construction for inclusion in the site certificate as conditions.

(C) Evidence of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete.

(D) For all transmission lines, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends, corners, and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction.

(E) For all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings and portions of the proposed alignment where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction.

(F) An assessment of seismic hazards. For the purposes of this assessment, the maximum probable earthquake (MPE) is the maximum earthquake that could occur under the known tectonic framework with a 10 percent chance of being exceeded in a 50 year period. If seismic sources are not mapped sufficiently to identify the ground motions above, the applicant shall provide a probabilistic seismic hazard analysis to identify the peak ground accelerations expected at the site for a 500 year recurrence interval and a 5000 year recurrence interval. In the assessment, the applicant shall include:

(i) Identification of the Maximum Considered Earthquake Ground Motion shown at International Building Code (2003 edition) Section 1615 for the site.

(ii) Identification and characterization of all earthquake sources capable of generating median peak ground accelerations greater than 0.05g on rock at the site. For each earthquake source, the applicant shall assess the magnitude and minimum epicentral distance of the maximum credible earthquake (MCE).

(iii) A description of any recorded earthquakes within 50 miles of the site and of recorded earthquakes greater than 50 miles from the site that caused ground shaking at the site more intense than the Modified Mercalli III intensity. The applicant shall include the date of occurrence and a description of the earthquake that includes its magnitude and highest intensity and its epicenter location or region of highest intensity.

(iv) Assessment of the median ground response spectrum from the MCE and the MPE and identification of the spectral accelerations greater than the design spectrum provided in the Oregon Structural Specialty Code (2004 edition). The applicant shall include a description of the probable behavior of the subsurface materials and amplification by subsurface materials and any topographic or subsurface conditions that could result in expected ground motions greater than those characteristic of the Maximum Considered Earthquake Ground Motion identified above.

(v) An assessment of seismic hazards expected to result from reasonably probable seismic events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, lateral spreading, liquefaction, tsunami inundation, fault displacement and subsidence.

(G) An assessment of soil-related hazards such as landslides, flooding and erosion which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility.

(H) An explanation of how the applicant will design, engineer and construct the facility to avoid dangers to human safety from the seismic hazards identified in paragraph (F). The applicant shall include proposed

# ADMINISTRATIVE RULES

design and engineering features, applicable construction codes, and any monitoring for seismic hazards.

(I) An explanation of how the applicant will design, engineer and construct the facility to adequately avoid dangers to human safety presented by the hazards identified in paragraph (G).

(i) **Exhibit I.** Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types in the analysis area.

(B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils.

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils.

(E) The applicant's proposed monitoring program, if any, for adverse impact to soils during construction and operation.

(j) **Exhibit J.** Information based on literature and field study, as appropriate, about waters of the state or waters of the United States, including:

(A) A description of all areas within the site boundary that might be waters of the state or waters of the United States and a map showing the location of these features.

(B) An analysis of whether construction or operation of the proposed facility would adversely affect any waters of the state, as defined under OAR 141-085-0010, or waters of the United States, as defined under Section 404 of the Clean Water Act.

(C) A description of the significance of potential adverse impacts to each feature identified in (A), including the nature and amount of material the applicant would remove from or place in the waters analyzed in (B).

(D) If the proposed facility would not need a removal-fill authorization as described under OAR 141-085-0018, an explanation of why no such authorization is required for the construction and operation of the proposed facility.

(E) If the proposed facility would need a removal-fill authorization, information to support a determination by the Council that the Oregon Department of State Lands should issue a removal-fill permit, including information in the form required by the Department of State Lands under OAR chapter 141 division 85.

(F) A description of proposed actions to mitigate adverse impacts to the features identified in (A) and the applicant's proposed monitoring program, if any, for such impacts.

(k) **Exhibit K.** Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Notwithstanding OAR 345-021-0090(2), once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant shall:

(A) Include a map showing the comprehensive plan designations and land use zones in the analysis area;

(B) If the applicant elects to obtain local land use approvals:

(i) Identify the affected local government(s) from which land use approvals will be sought;

(ii) Describe the land use approvals required in order to satisfy the Council's land use standard;

(iii) Describe the status of the applicant's application for each land use approval; and

(iv) Provide an estimate of time for issuance of local land use approvals;

(C) If the applicant elects to obtain a Council determination on land use:

(i) Identify the affected local government(s);

(ii) Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations

that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;

(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;

(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals; and

(v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2); and

(D) If the proposed facility will be located on federal land:

(i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;

(ii) Explain any differences between state or local land use requirements and federal land management requirements;

(iii) Describe how the proposed facility complies with the applicable federal land management plan;

(iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;

(v) Provide an estimate of time for issuance of federal land use approvals; and

(vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver;

(L) **Exhibit L.** Information about the proposed facility's impact on protected areas, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

(A) A list of the protected areas within the analysis area showing the distance and direction from the proposed facility and the basis for protection by reference to a specific subsection under OAR 345-022-0040(1).

(B) A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the analysis area.

(C) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

(i) Noise resulting from facility construction or operation;

(ii) Increased traffic resulting from facility construction or operation;

(iii) Water use during facility construction or operation;

(iv) Wastewater disposal resulting from facility construction or operation;

(v) Visual impacts of facility structures or plumes.

(vi) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 Areas as described in OAR 340-204-0050.

(m) **Exhibit M.** Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this subsection shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant shall include:

(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

(B) The type and amount of the applicant's proposed bond or letter of credit to meet the requirements of OAR 345-022-0050; and

(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility;

(n) **Exhibit N.** If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by OAR 345-023-0005, including:

(A) Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need;

(B) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:

## ADMINISTRATIVE RULES

(i) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need;

(ii) The name, address and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i);

(iii) For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:

(I) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or

(II) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Department can obtain a complete copy of the public record;

(iv) Identification of the section(s) of the short-term action plan(s) that call(s) for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility; and

(v) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility is called for in the plan(s);

(C) In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:

(i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B);

(ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence; and

(iii) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan;

(D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (G), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility.

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be served by the proposed facility. The applicant shall separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

(I) Existing federal, state or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant shall list each resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility; and

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant shall include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table. The applicant shall evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(II) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(III) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and

(IV) Adding standard sized smaller or larger transmission line capacity;

(viii) The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates; and

(G) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the proposed facility. In the tables, the applicant shall list flowing supply and storage supply separately;

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant shall separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant shall accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:

(I) Existing federal, state or local building codes and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice;

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled

## ADMINISTRATIVE RULES

and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant shall list each committed resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant shall include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table;

(viii) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(II) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(IV) Adding standard sized smaller or larger pipeline capacity.

(ix) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(II) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;

(III) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(IV) Adding smaller or larger liquefied natural gas storage capacity; and

(x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates;

(o) **Exhibit O.** Information about anticipated water use during construction and operation of the proposed facility. The applicant shall include:

(A) A description of the use of water during construction and operation of the proposed facility.

(B) A description of each source of water and the applicant's estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions.

(C) A description of each avenue of water loss or output from the facility site for the uses described in (A), the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions and the final disposition of all wastewater.

(D) For thermal power plants, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water during operation, based on annual average conditions.

(E) If the proposed facility would not need a groundwater permit, a surface water permit or a water right transfer, an explanation of why no such permit or transfer is required for the construction and operation of the proposed facility.

(F) If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR chapter 690, divisions 310 and 380.

(G) A description of proposed actions to mitigate the adverse impacts of water use on affected resources.

(p) **Exhibit P.** Information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in subsection (q) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant shall include:

(A) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey.

(B) Identification of all fish and wildlife habitat in the analysis area, classified by the habitat categories as set forth in OAR 635-415-0025 and a description of the characteristics and condition of that habitat in the analysis area.

(C) A map showing the locations of the habitat identified in (B).

(D) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW.

(E) A baseline survey of the use of habitat in the analysis area by species identified in (D) performed according to a protocol approved by the Department and ODFW.

(F) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (B) and species identified in (D) that could result from construction, operation and retirement of the proposed facility.

(G) A description of any measures proposed by the applicant to avoid, reduce or mitigate the potential adverse impacts described in (F) in accordance with the ODFW mitigation goals described in OAR 635-415-0025 and a discussion of how the proposed measures would achieve those goals.

(H) A description of the applicant's proposed monitoring plans to evaluate the success of the measures described in (G).

(q) **Exhibit Q.** Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant shall include:

(A) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2), 564.105(2) or 16 USC § 1533 that may be affected by the proposed facility;

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it;

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact;

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3);

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species;

(F) For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(G) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species;

(r) **Exhibit R.** An analysis of significant potential impacts of the proposed facility, if any, on scenic resources identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0080, including:

(A) A list of the local, tribal and federal plans that address lands within the analysis area.

(B) Identification and description of the scenic resources identified as significant or important in the plans listed in (A).

(C) A description of significant potential adverse impacts to the scenic resources identified in (B), including, but not limited to, impacts such as:

## ADMINISTRATIVE RULES

(i) Loss of vegetation or alteration of the landscape as a result of construction or operation; and

(ii) Visual impacts of facility structures or plumes.

(D) The measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts.

(E) A map or maps showing the location of the scenic resources described under (B).

(F) The applicant's proposed monitoring program, if any, for impacts to scenic resources.

(s) Exhibit S. Information about historic, cultural and archaeological resources. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.502(4) or 192.501(11). The applicant shall submit such information separately, clearly marked as "confidential," and shall request that the Department and the Council keep the information confidential to the extent permitted by law. The applicant shall include information in Exhibit S or in confidential submissions providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(A) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places;

(B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those resources that includes at least the following:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in paragraphs (A), (B) and (C).

(ii) The results of the discovery measures described in subparagraph (i), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended.

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subparagraph (i) or discovered during construction.

(iv) A completed copy of any permit applications submitted pursuant to ORS 358.920.

(E) The applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.

(t) Exhibit T. Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

(A) A description of important recreational opportunities in the analysis area considering the criteria in OAR 345-022-0100 including information on the factors listed in OAR 345-022-0100(1).

(B) A description of significant potential adverse impacts to the opportunities identified in (A) including, but not limited to, potential impacts such as:

(i) Direct or indirect loss of an opportunity as a result of construction or operation.

(ii) Noise resulting from facility construction or operation.

(iii) Increased traffic resulting from facility construction or operation.

(iv) Visual impacts of facility structures or plumes.

(C) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate the significant adverse impacts identified in (B).

(D) A map of the analysis area showing the locations of important recreational opportunities identified in (A).

(E) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.

(u) Exhibit U. Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant shall include:

(A) The important assumptions the applicant used to evaluate potential impacts;

(B) Identification of the public and private providers in the analysis area that would likely be affected;

(C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;

(D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;

(v) **Exhibit V.** Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant shall include:

(A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate, including an estimate of the amount of solid waste and wastewater.

(B) A description of any structures, systems and equipment for management and disposal of solid waste, wastewater and storm water.

(C) A discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility.

(D) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A).

(E) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility.

(F) Evidence that adverse impacts described in (D) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts.

(G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

(w) **Exhibit W.** Information about site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0050(1). The applicant shall include:

(A) The estimated useful life of the proposed facility.

(B) Specific actions and tasks to restore the site to a useful, non-hazardous condition.

(C) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition.

(D) A discussion and justification of the methods and assumptions used to estimate site restoration costs.

(E) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.

(x) **Exhibit X.** Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-35-0035. The applicant shall include:

(A) Predicted noise levels resulting from construction and operation of the proposed facility.

(B) An analysis of the proposed facility's compliance with the applicable noise regulations in OAR 340-35-0035, including a discussion and justification of the methods and assumptions used in the analysis.

(C) Any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility.

(D) Any measures the applicant proposes to monitor noise generated by operation of the facility;

(y) **Exhibit Y.** If the facility is a base load gas plant, a non-base load power plant, or a nongenerating energy facility that emits carbon dioxide, a statement of the means by which the applicant elects to comply with the applicable carbon dioxide emissions standard under OAR 345-024-0560, 345-024-0600 or 345-024-0630 and information, showing detailed calculations, about the carbon dioxide emissions of the energy facility. The applicant may present the calculations in tabular form. The applicant shall include the following information and calculations:

(A) Fuel cycle and usage including the maximum hourly fuel use at net electrical power output at average annual conditions for a base load gas plant and the maximum hourly fuel use at nominal electric generating capacity for a non-base load power plant or a base load gas plant with power augmentation technologies, as applicable;

## ADMINISTRATIVE RULES

(B) The gross capacity as estimated at the generator output terminals for each generating unit. For a base load gas plant, gross capacity is based on the average annual ambient conditions for temperature, barometric pressure and relative humidity. For a non-base load plant, gross capacity is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate. For a baseload gas plant with power augmentation, gross capacity in that mode is based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate with power augmentation.

(C) A table showing a reasonable estimate of all on-site electrical loads and losses greater than 50 kilowatts, including losses from on-site transformers, plus a factor for incidental loads, that are required for the normal operation of the plant when the plant is at its designed full power operation.

(D) The maximum number of hours per year and energy content (Btu per year, higher heating value) of alternate fuel use;

(E) The total gross carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or nongenerating energy facility proposes to limit operation to a shorter time;

(F) The gross carbon dioxide emissions rate expressed as:

(i) Pounds of carbon dioxide per kilowatt-hour of net electric power output for a base load gas plant, including operation with or without power augmentation, as appropriate, or for a non-base load power plant;

(ii) Pounds of carbon dioxide per horsepower hour for nongenerating facilities for which the output is ordinarily measured in horsepower; or

(iii) A rate comparable to pounds of carbon dioxide per kilowatt-hour of net electric power output for nongenerating facilities other than those measured in horsepower;

(G) The total excess carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or a nongenerating energy facility proposes to limit operation to a shorter time;

(H) The excess carbon dioxide emissions rate, using the same measure as required for paragraph (F);

(I) The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices;

(J) For a non-base load power plant (or when using power augmentation), the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate, together with a citation of the source and location of the data collection devices;

(K) The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:

(i) For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels;

(ii) For a non-base load power plant, the applicant's proposed annual hours of operation on a new and clean basis, the maximum number of hours annually that the applicant proposes to use alternative fuels and, if the calculation is based on an operational life of fewer than 30 years, the proposed operational life of the facility;

(iii) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time;

(L) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration, consistent with the data supplied in Exhibit B;

(M) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration;

(N) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate, the applicant shall include:

(i) The estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat;

(ii) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use and the basis of such estimates;

(iii) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and a description and an estimate of the fuel displaced by cogeneration, including supporting assumptions;

(iv) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility, supported by fuel use and steam production records or estimates, if the production facility is new;

(v) The efficiency of each boiler that the thermal energy will displace;

(vi) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy;

(vii) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value);

(viii) The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period;

(ix) A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy;

(x) A description of the guarantees of offsets that the applicant shall provide for cogeneration projects, pursuant to OAR 345-024-0560(1) and 345-024-0600(1);

(xi) A proposed monitoring and evaluation plan and an independent verification plan, pursuant to subparagraphs (O)(xix) and (O)(xx);

(xii) A copy of the instrument by which the certificate holder will transfer the offsets to the Council for it to hold in trust;

(O) If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0550(3), 345-024-0560(2), 345-024-0590(3), 345-024-0600(2), 345-024-0620(3) or 345-024-0630(1), the applicant shall include:

(i) A description of each offset project;

(ii) A description of who will implement the offset project, including qualifications and experience;

(iii) Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project;

(iv) For each offset project, an explanation of how the applicant quantified its carbon dioxide estimates to a degree of certainty acceptable to the Council though a transparent and replicable calculation methodology;

(v) For each offset project, evidence that the offset project would not likely have been implemented if not for the applicant's activities or funding;

(vi) For each offset project, a description of a "Baseline" projection that does not include the proposed project and a "Project Case" projection that does. The historic Baseline shall use reliable emissions data or pre-project data available for the most recent three years unless the applicant can demonstrate that a different period more closely represents historical operations or unless it can demonstrate that another method provides a more reasonable estimate. The applicant shall show how the Baseline projection changes over time if changes from business-as-usual could be reasonably anticipated during the project life;

(vii) For each offset project, a description, in a transparent and realistic manner, of the assumptions and methodologies used to quantify the Baseline and the Project Case projections, including a description of key parameters and data sources. This shall include a description of the formulae used to estimate carbon dioxide emissions or sequestration within the project boundary and a net change of carbon dioxide emissions or sequestration that occurs outside of the project boundary that is measurable and attributable to the project activity;

(viii) For projects that avoid conventional electricity generation, a description of a Baseline that calculates the carbon dioxide emissions per kilowatt hour in two steps: (1) for the first five years of operation, a description of the rate based on dispatch data or models or, absent that, a weighted average of all resources in a power pool except zero-fuel-cost or must-run facilities, and (2) a description of the rate for any subsequent years based on a group of similar facilities built within the prior five years or under construction in the electrical distribution region of the project or the three most recent plants built in the region, whichever rate is lower;

(ix) For projects that avoid conventional electricity generation, a description of avoided transmission and distribution losses, using average grid area or national losses;

(x) A description of any guarantee for offsets from projects that the applicant proposes pursuant to OAR 345-024-0560(2), 345-024-0600(2) and 345-024-630(1), if the applicant chooses to offer a guarantee;

(xi) A description of the offset project boundary. The boundary shall encompass all carbon dioxide emissions under the control of the project that are significant and reasonably attributable to the project activity. If the



## ADMINISTRATIVE RULES

project is being conducted by one part of a corporation, the boundary shall include the emissions and reductions of the whole corporate entity and the carbon dioxide emissions resulting from processes and facilities that are related to the project, with identification of subsidiaries that are affected by the project;

(xii) A description of significant risks and risk mitigation strategies, including an estimate of the range of uncertainty around the expected carbon dioxide offsets;

(xiii) For biological sequestration projects, an assessment of the risk of climate change to natural systems that are sequestering the carbon dioxide, including, if appropriate, the risks from forest fires, pest and other unplanned releases of carbon from sequestration;

(xiv) A description of whether the offset project will permanently avoid or displace emissions of carbon dioxide. If a project only temporarily sequesters carbon, an indication of the duration of sequestration or storage;

(xv) A description of the amount of funding the applicant will provide for each offset project it proposes;

(xvi) If the applicant anticipates that a project will have funding sources in addition to itself, identification of the sources of those funds, the amount of other funding that is required to implement a project, the amount of funds other parties have committed, and the risks of other funds not being available;

(xvii) If the applicant proposes that a project will have funding sources in addition to itself, a description of how ownership of the offsets will be allocated among the several funding sources;

(xviii) A copy of the instrument by which the certificate holder will transfer all the offsets to the Council for it to hold in trust;

(xix) A description of a transparent and replicable methodology for the applicant's monitoring and evaluation plan and for an independent verification plan, including (1) procedures the applicant and the independent entity will employ, (2) how the applicant will assure funds for ongoing monitoring, evaluation and verification, (3) the time frame and frequency over which the applicant will conduct monitoring and evaluation and over which the independent entity will conduct verification, including the frequency of site visits, if applicable, (4) the reporting procedures and guidelines for the plans, and (5) whether the applicant has identified the independent entity that will perform the verification;

(xx) The monitoring and evaluation plan and the verification plan shall identify the data needs and data quality with regard to accuracy, comparability, completeness and validity. It shall include methodologies to be used for data collection, monitoring, storage, reporting and management, including quality assurance and quality control provisions. It shall provide complete calculations used to calculate and estimate carbon dioxide emissions from activity within the project boundary. It shall show any formulae and assumptions the applicant used to calculate offset project leakage;

(xxi) A description of reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project; and

(P) If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2), the applicant shall include:

(i) A statement of the applicant's election to use the monetary path;

(ii) The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path;

(iii) The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant shall include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council shall not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996; and

(iv) A statement of whether the applicant intends to provide a bond or letter of credit to secure the funds it must provide to the qualified organization or whether it requests the option of providing either a bond or a letter of credit.

(z) **Exhibit Z.** If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

(A) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact;

(B) The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of signifi-

cant potential adverse impacts, including, but not limited to, traffic hazards on public roads;

(C) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses;

(D) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift;

(E) The assumptions and methods used in the plume analysis; and

(F) The applicant's proposed monitoring program, if any, for cooling tower plume impacts;

(aa) **Exhibit AA.** If the proposed facility includes an electric transmission line:

(A) Information about the expected electric and magnetic fields, including:

(i) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;

(ii) The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, day-care centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line;

(iii) The approximate distance in feet from the proposed center line to each structure identified in (A);

(iv) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;

(v) Any measures the applicant proposes to reduce electric or magnetic field levels;

(vi) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line; and

(vii) The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels; and

(B) An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways;

(bb) **Exhibit BB.** Any other information that the Department requests in the project order or in a notification regarding expedited review;

(cc) **Exhibit CC.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant shall identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant shall include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(dd) **Exhibit DD.** If the proposed facility is a facility for which the Council has adopted specific standards, information about the facility providing evidence to support findings by the Council as required by the following rules:

(A) For wind energy facilities, OAR 345-024-0010 and -0015.

(B) For surface facilities related to underground gas storage reservoirs, OAR 345-024-0030, including information required by OAR 345-021-0020.

(C) For any transmission line under Council jurisdiction, OAR 345-024-0090.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

(3) The applicant shall include a table of contents in the application identifying the location of each exhibit required by this rule. The applicant shall submit an original and ten copies of the application to the Department and shall prepare and distribute additional copies of the application as required by OAR 345-021-0050. In addition to the printed copies, the appli-

# ADMINISTRATIVE RULES

cant shall submit the text (including appendices and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department.

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.350, 469.370, 469.501, 469.503 & 469.504

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0140, 345-080-0090, 345-100-0055, 345-111-0075, 345-115-0055 & 345-125-0100; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-021-0050

### Distribution of a Preliminary Application

(1) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application. When the applicant submits a preliminary application to the Department of Energy, the applicant shall send a copy of the preliminary application to the reviewing agencies as defined in OAR 345-001-0010 accompanied by a memorandum from the Department as described in OAR 345-015-0180. If the applicant obtains written consent from the reviewing agency and provides a copy of that written consent to the Department, the applicant may send specified parts of the preliminary application or an electronic copy of all or specified parts of the preliminary application to the reviewing agency instead of sending a full printed copy.

(2) Upon receipt of the preliminary application, each reviewing agency shall submit written comments or recommendations to the Department that:

(a) State whether the reviewing agency needs any additional information from the applicant to review the application under the statutes, administrative rules or ordinances administered by the reviewing agency and describe such information; and

(b) Describe the status of applications for permits, if any, that the applicant has submitted to the reviewing agency and that are necessary for the construction and operation of the proposed facility.

(3) The Department shall, as soon as practicable, send the applicant copies of all comments submitted under section (2) that identify a need for additional information.

(4)(a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Department under section (2), describe the status of the local land use proceedings and state the date when the local government expects to issue a final land use decision.

(b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Department under section (2), include:

(A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding;

(B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);

(C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations; and

(D) An assessment of the accuracy and completeness of the applicable substantive criteria the applicant identified in the site certificate application;

(c) The local government may submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.

(5) The applicant shall provide additional copies of the preliminary application to the Department upon request, and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-021-0055

### Distribution of a Complete Application

(1) After receiving notification from the Department of Energy that the application is complete, the applicant shall prepare an application supplement that includes all amendments to the preliminary application and all additional information requested by the Department before the determination of completeness. The supplement may consist of a total revision of the application when necessary to provide a clear presentation of new information. The applicant shall submit an original and ten copies of the application supplement to the Department. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department. Except as described in OAR 345-015-0310, the applicant shall send a copy of the supplement to persons on a mailing list provided by the Department, accompanied by the notice from the Department described in OAR 345-015-0200. If the applicant obtains written consent from a person named on the mailing list and provides a copy of that written consent to the Department, the applicant may send specified parts of the supplement or an electronic copy of all or specified parts of the supplement to that person instead of sending a full printed copy.

(3) A "complete application" consists of the preliminary application together with the supplement described in section (1).

(4) The applicant shall provide additional copies of the complete application to the Department upon request and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-021-0080

### Agency Coordination

Each agency with legal authority to implement or enforce state statutes, state administrative rules or local government ordinances that must be satisfied in order for the Council to issue a site certificate for a proposed facility is encouraged to conduct its review of the application for a site certificate and other permit applications for the proposed facility filed with the agency on a time line and in a manner that enables the agency to:

(1) Make recommendations to the Department of Energy and Council about compliance of the applications with the state statutes, administrative rules or ordinances administered by the agency.

(2) Recommend conditions for inclusion in the site certificate that will ensure compliance with such statutes, rules and ordinances.

(3) Present testimony and evidence at the contested case hearing on the site certificate application.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-021-0090

### Amendment of an Application

(1) When the applicant is preparing to submit an amended application, the applicant shall notify the Department of Energy.

(2) The applicant may amend a preliminary application at any time.

(3) If the applicant submits an amended application after the date of filing as determined under OAR 345-015-0190 or 345-015-0310, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.

(4) If the applicant submits an amended application after issuance of a contested case notice under OAR 345-015-0014, the Department may, by motion, request that the contested case proceeding be terminated and the Council's hearing officer may issue an order terminating the proceeding. Upon issuance of the order, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.

(5) The applicant shall submit the original and ten copies of the amended application to the Department. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department.

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-021-0100

### Contested Case Proceeding on the Application — Burden of Proof

(1) After the issuance of a notice of contested case as described in OAR 345-015-0230, the hearing officer shall conduct a contested case proceeding on the application according to the provisions of OAR chapter 345, division 15.

(2) The applicant has the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-022-0000

### General Standard of Review

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet as described in section (2);

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(2) The Council may issue or amend a site certificate for a facility that does not meet one or more of the standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet. The Council shall make this balancing determination only when the applicant has shown that the proposed facility cannot meet Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the Council standards through mitigation or avoidance of the damage to the protected resources. The applicant has the burden to show that the overall public benefits outweigh the damage to the resources, and the burden increases proportionately with the degree of damage to the resources. The Council shall weigh overall public benefits and damage to the resources as follows:

(a) The Council shall evaluate the damage to the resources by considering factors including, but not limited to, the following:

(A) The uniqueness and significance of the resource that would be affected;

(B) The degree to which current or future development may damage the resource, if the proposed facility is not built;

(C) Proposed measures to reduce the damage by avoidance of impacts;

(D) The magnitude of the anticipated damage to the resource, taking into account any proposed mitigation.

(b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following:

(A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effects;

(B) The degree to which the proposed facility promotes Oregon energy policy as described in ORS 469.010 by demonstrating or advancing new efficiency or renewable technology or by expanding electric generating capacity from renewable energy sources;

(C) Recommendations from any special advisory group designated by the Council under ORS 469.480;

(D) Evidence that the benefits are likely to occur only if the proposed facility is built;

(E) For facilities that are subject to a need standard, evidence underlying the Council's decision on compliance with the rules in OAR 345, division 23, except that the Council shall not find that need for a facility is

sufficient, by itself, to outweigh damage to resources affected by the proposed facility.

(3) Notwithstanding section (2) of this rule, the Council shall not apply the balancing determination to the following standards:

(a) The organizational expertise standard described in OAR 345-022-0010;

(b) The land use standard described in OAR 345-022-0030;

(c) The retirement and financial assurance standard described in OAR 345-022-0050;

(d) The need standards described in OAR 345-023-0005;

(e) The standards for energy facilities that emit carbon dioxide described in OAR 345-024-0500 through 345-024-0720; or

(f) The protected areas standard described in OAR 345-022-0040, if the statutes or administrative rules governing the management of the protected area prohibit location of the proposed facility in that area.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501, 469.503, 469.504 & 469.505

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0080, 345-080-0075, 345-100-0052, 345-011-0055, 345-115-0052 & 345-125-0070(8); EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-022-0020

### Structural Standard

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:

(a) The applicant, through appropriate site-specific study, has adequately characterized the site as to Maximum Considered Earthquake Ground Motion identified at International Building Code (2003 edition) Section 1615 and maximum probable ground motion, taking into account ground failure and amplification for the site specific soil profile under the maximum credible and maximum probable seismic events; and

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from maximum probable ground motion events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and

(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in subsection (c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0060, 345-100-0040, 345-111-0035; 345-115-0040 & 345-125-0070; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-022-0022

### Soil Protection

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-022-0040

### Protected Areas

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility located in the areas listed below. To issue a site certificate for a proposed facility located outside the areas listed below, the Council must find that, taking into account mitigation, the design, construction and operation of the facility are not likely to result in significant adverse impact to the areas listed below. References in this rule to protected areas designated under federal or state statutes or regulations are to the designations in effect as of May 11, 2007:

(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, 16 U.S.C. 1131 et seq. and areas recommended for designation as wilderness areas pursuant to 43 U.S.C. 1782;

(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;

(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;

(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;

(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR chapter 142;

(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to 16 U.S.C. 1271 et seq., and those waterways and rivers listed as potentials for designation;

(L) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:

Coastal Oregon Marine Experiment Station, Astoria  
Mid-Columbia Agriculture Research and Extension Center, Hood River  
Agriculture Research and Extension Center, Hermiston  
Columbia Basin Agriculture Research Center, Pendleton  
Columbia Basin Agriculture Research Center, Moro  
North Willamette Research and Extension Center, Aurora  
East Oregon Agriculture Research Center, Union  
Malheur Experiment Station, Ontario  
Eastern Oregon Agriculture Research Center, Burns  
Eastern Oregon Agriculture Research Center, Squaw Butte  
Central Oregon Experiment Station, Madras  
Central Oregon Experiment Station, Powell Butte  
Central Oregon Experiment Station, Redmond  
Central Station, Corvallis  
Coastal Oregon Marine Experiment Station, Newport  
Southern Oregon Experiment Station, Medford  
Klamath Experiment Station, Klamath Falls;

(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;

(p) State wildlife areas and management areas identified in OAR chapter 635, division 8.

(2) Notwithstanding section (1), the Council may issue a site certificate for a transmission line or a natural gas pipeline or for a facility located outside a protected area that includes a transmission line or natural gas or water pipeline as a related or supporting facility located in a protected area identified in section (1), if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1), the Council may issue a site certificate for surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.

(3) The provisions of section (1) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher or containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0030, 345-080-0060, 345-100-0040, 345-111-0035, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-022-0060

### Fish and Wildlife Habitat

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025 in effect as of September 1, 2000..

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-026-0045, 345-080-0060, 345-100-0040, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-022-0070

### Threatened and Endangered Species

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0075, 345-079-0085, 345-80-0060(6), 345-100-0040, 345-111-0035, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-022-0080

### Scenic Resources

(1) Except for facilities described in section (2), to issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to scenic resources and values identified as significant or important in local land use plans, tribal land management plans and federal land management plans for any lands located within the analysis area described in the project order.

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0065; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-022-0090

### Historic, Cultural and Archaeological Resources

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-026-0135, 345-079-0095, 345-080-0060(7), 345-111-0050, 345-115-0051 & 345-125-0072; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-022-0120

### Waste Minimization

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1981, f. & ef. 1-19-81; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-111-0040; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999,

f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-023-0005

### Need for a Facility

This division applies to nongenerating facilities as defined in OAR 345-001-0010, except nongenerating facilities that are related or supporting facilities. To issue a site certificate for a facility described in sections (1) through (3), the Council must find that the applicant has demonstrated the need for the facility. The Council may adopt need standards for other nongenerating facilities. This division describes the methods the applicant shall use to demonstrate need. In accordance with ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-effectiveness for generating facilities. The applicant shall demonstrate need:

(1) For electric transmission lines under the least-cost plan rule, OAR 345-023-0020(1), or the system reliability rule for transmission lines, OAR 345-023-0030, or by demonstrating that the transmission line is proposed to be located within a "National Interest Electric Transmission Corridor" designated by the U.S. Department of Energy under Section 216 of the Federal Power Act;

(2) For natural gas pipelines under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for natural gas pipelines, OAR 345-023-0040;

(3) For storage facilities for liquefied natural gas with storage capacity of three million gallons or greater under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for liquefied natural gas storage facilities, OAR 345-023-0040.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501 & 469.503

Hist.: EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02

## 345-023-0020

### Least-Cost Plan Rule

(1) The Council shall find that the applicant has demonstrated need for the facility if the capacity of the proposed facility or a facility substantially similar to the proposed facility, as defined by OAR 345-001-0010, is identified for acquisition in the short-term plan of action of an energy resource plan or combination of plans adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative, other governmental body that makes or implements energy policy, or electric transmission system operator that has a governance that is independent of owners and users of the system and if the energy resource plan or combination of plans:

(a) Includes a range of forecasts of firm energy and capacity demands and committed firm energy and capacity resources, as defined in OAR 345-001-0010, over the planning period using a reasonable method of forecasting;

(b) Considers and evaluates a reasonable range of practicable demand and supply resource alternatives over the planning period on a consistent and comparable basis. Practicable alternatives are those that are demonstrated to be technically and economically achievable within the time frame considered to meet potential energy or capacity needs;

(c) Uses financial assumptions, including discount rates and treatment of resource lifetimes and end effects that are consistent and comparable between resources;

(d) For electric transmission line facilities, considers alternatives that include but are not limited to:

(A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(B) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(C) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and

(D) Adding standard sized smaller or larger transmission line capacity;

(e) For natural gas pipeline facilities, considers alternatives that include but are not limited to:

(A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(B) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;

# ADMINISTRATIVE RULES

(C) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(D) Adding standard sized smaller or larger pipeline capacity;

(f) For storage facilities for liquefied natural gas, considers alternatives that include, but are not limited, to:

(A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(B) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;

(C) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(D) Adding smaller or larger liquefied natural gas storage capacity;

(g) Includes the development and evaluation of alternative resource plans to meet forecast energy or capacity needs over the planning time period;

(h) Analyzes the uncertainties associated with alternative resource plans or strategies. The range of uncertainties about the future must be sufficient to test the performance of each alternative resource strategy. The criteria used to evaluate performance of alternative resource strategies must be broad enough to judge the merits of a strategy from a societal perspective;

(i) Aims to minimize long-run total resource costs while taking into account reliability, compatibility with the energy system, strategic flexibility, as defined in OAR 345-001-0010, and external environmental costs and benefits. The value provided by reliability, compatibility with the energy system, strategic flexibility and external environmental costs and benefits may justify actions that increase the total resource cost of the plan. The Council finds that the goals of a least-cost plan are to minimize expected total resource costs for society and the variance in those costs due to uncertainty about future conditions;

(j) Includes a short-term plan of action;

(k) Is consistent with the energy policy of the state as set forth in ORS 469.010. An energy resource plan is consistent with the energy policy of the state if its short-term plan of action describes actions that must be taken within a two to three year time frame to provide a reasonable assurance that future energy or capacity demands can be met while aiming to minimize total resource cost; and

(L) Was adopted, approved or acknowledged after a full, fair and open public participation and comment process. Such a process is one in which the public has reasonable and timely access to the decision-maker and to information and records legally available to the public.

(2) The Council shall find that a least-cost plan meets the criteria of an energy resource plan described in section (1) if the Public Utility Commission of Oregon has acknowledged the least cost plan.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1981, f. & ef. 1-19-81; EFSC 5-1981(Temp), f. & ef. 4-27-81; EFSC 7-1981, f. & ef. 6-29-81; EFSC 1-1983(Temp), f. & ef. 5-3-83; EFSC 1-1984, f. & ef. 8-7-84; EFSC 2-1986, f. & ef. 2-21-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-079-0105 & 345-111-0025; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1998, f. & cert. ef. 6-2-98; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0010

### Public Health and Safety Standards for Wind Energy Facilities

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

(1) Can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment.

(2) Can design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-115-0020 & 345-115-0030; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0015

### Siting Standards for Wind Energy Facilities

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant can design and construct the facility to

reduce cumulative adverse environmental effects in the vicinity by practicable measures including, but not limited to, the following:

(1) Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts.

(2) Using underground transmission lines and combining transmission routes.

(3) Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations.

(4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment.

(5) Designing the components of the facility to minimize adverse visual features.

(6) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0030

### Public Health and Safety Standards for Surface Facilities Related to Underground Gas Storage Reservoirs

To issue a site certificate for a proposed surface facility related to an underground gas storage reservoir, the Council must make the following findings:

(1) The proposed facility is located at distances in accordance with the schedule below from any existing permanent habitable dwelling:

(a) Major facilities, such as compressor stations, stripping plants and main line dehydration stations — 700 feet.

(b) Minor facilities, such as offices, warehouses, equipment shops and odorant storage and injection equipment — 50 feet.

(c) Compressors rated less than 1,000 horsepower — 350 feet.

(d) Roads and road maintenance equipment housing — 50 feet.

(2) The applicant has developed a program using technology that is both practicable and reliable to monitor the facility to ensure the public health and safety.

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

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 1-1993, f. & cert. ef. 1-15-93, Renumbered from 345-100-0036; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0090

### Siting Standards for Transmission Lines

To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:

(1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;

(2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-080-0055; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0550

### Standard for Base Load Gas Plants

To issue a site certificate for a base load gas plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power or augmentation technology as defined in OAR 345-001-0010, the Council shall apply the standard for a non-base load power plant, as described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. The Council shall determine whether the base load carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed

# ADMINISTRATIVE RULES

design of the energy facility. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis;

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0560, or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0560(2), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria and as provided in OAR 345-024-0680:

(a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of a gas turbine vendor and shall submit a written design information report to the Department sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. In the report, the certificate holder shall include the proposed limits on the annual average number of hours of facility operation on distillate fuel oil, if applicable. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0560.

Stat. Auth.: ORS 469.470 & 469.503

Stats. Implemented: ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0580

### Monetary Offset Rate

The monetary offset rate is \$1.27 per ton of carbon dioxide emissions. After two years from June 1, 2007, the Council may by rule increase or decrease the monetary offset rate, subject to the requirements of ORS 469.503.

Stat. Auth.: ORS 469.470 & 469.503

Stats. Implemented: ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 3-2000, f. & cert. ef. 9-17-01; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0590

### Standard for Non-Base Load Power Plants

To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power augmentation technology as defined in OAR 345-001-0010, the Council shall apply this standard to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility, the limitation on the hours of generation for each fuel type and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is

intended to operate. For a base load gas plant designed with power augmentation technology, the Council shall base its determination of the incremental carbon dioxide emissions on the proposed design of the facility, the proposed limitation on the hours of generation using the power augmentation technology and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate with power augmentation technology. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis; however, the Council may modify the parameters of the new and clean basis to accommodate average conditions at the times when the facility is intended to operate and technical limitations, including operational considerations, of a non-base load power plant or power augmentation technology or for other cause;

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0600 or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0600(2), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria and as provided in OAR 345-024-0680:

(a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of an equipment vendor and shall submit a written design information report to the Department sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. For a base load gas plant designed with power augmentation technology, the certificate holder shall include in the report information sufficient to verify the facility's designed new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the nominal electric generating capacity at average site conditions during the intended use for each fuel type from the operation of the proposed facility using the power augmentation technology. The certificate holder shall include the proposed limit on the annual average number of hours for each fuel used, if applicable. The certificate holder shall include the proposed total number of hours of operation for all fuels, subject to the limitation that the total annual average number of hours of operation per year is not more than 6,600 hours. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the gross carbon dioxide emissions from the facility and the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0600;

(5) Every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual annual hours of operation by fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate and the actual hours of operation on each fuel during the five-year period, exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council.

(6) For a base load gas plant designed with power augmentation technology, every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual hours of oper-

# ADMINISTRATIVE RULES

ation using the power augmentations technology for each fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the actual hours of operation using the power augmentation technology on each fuel during the five-year period exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council.

Stat. Auth.: ORS 469.470 & 469.503

Stats. Implemented: ORS 469.501 & 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0600

### Means of Compliance for Non-Base Load Power Plants

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for non-base load power plants or for the incremental carbon dioxide emissions from the operation of a base load gas plant with power augmentation technology:

(1) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions from fossil fuels that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;

(2) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(3) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(4) Notwithstanding sections (1), (2) or (3), if the certificate holder exceeds the projected gross carbon dioxide emissions calculated under OAR 345-024-0590(4) during any five-year reporting period described in OAR 345-024-0590(5) and (6), the certificate holder shall offset excess emissions for the specific reporting period according to subsection (a) and shall offset the estimated future excess emissions according to subsection (b). The certificate holder shall offset excess emissions using the monetary path as described in subsection (c) and OAR 345-024-0710 or as approved by the Council;

(a) In determining the excess carbon dioxide emissions that the certificate holder must offset for a five-year period, the Council shall credit the certificate holder with offsets equal to the difference between the carbon dioxide emissions allowed by the site certificate in previous periods and actual emissions, if actual emissions were lower than allowed. Once a certificate holder has used a credit, the certificate holder shall not use it again.

(b) The Council shall specify in the site certificate a methodology for estimating future excess carbon dioxide emissions. The Department of Energy shall calculate estimated future excess emissions. To estimate excess emissions for the remaining period of the deemed life of the facility, the Department shall use the annual average number of hours of operation during the five-year period in which the certificate holder exceeded the estimated gross carbon dioxide emissions described in OAR 345-024-0590(5) and the new and clean heat rate and capacity for the facility, adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. If the annual average hours exceed 6,600, the Department shall estimate emissions at 100 percent capacity for the remaining period of a deemed 30-year life of the facility. At the request of the certificate holder, the Council may, by amendment of the site certificate, use an alternative methodology to estimate future excess carbon dioxide emissions;

(c) The certificate holder shall pay for the net excess carbon dioxide emissions calculated pursuant to subsections (a) and (b) at the monetary path offset rate in real dollars for the quarter and year in which the Council issued the final order that applied the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the real dollar value of the monetary offset rate. The Department shall calculate the net excess carbon dioxide emissions and notify the certificate holder of the amount of the monetary path payment required to offset them. The certificate holder shall pay fully the required amount to the qualified organization within 60 days of notification by the Department of the amount. The certificate holder shall not be eligible for a refund of any monetary path payments due to the calculations in this rule.

(5) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(6) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (2) or (5) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of sections (3) and (4) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Auth.: ORS 469.470 & 469.503

Stats. Implemented: ORS 469.501 & 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 3-2001, f. & cert. ef. 9-17-01; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0620

### Standard for Nongenerating Energy Facilities

To issue a site certificate for a nongenerating energy facility that emits carbon dioxide, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.504 pounds of carbon dioxide per horsepower hour. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. In determining gross carbon dioxide emissions for a nongenerating facility, the Council shall calculate carbon dioxide emissions for a 30-year period unless the applicant requests, and the Council adopts in the site certificate, a different period. The Council shall determine gross carbon dioxide emissions based on its findings of the reasonably likely operation of the energy facility. The Council shall use a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if the applicant proposes to use such fuel. If the applicant proposes to use any other fossil fuel, the Council shall adopt by rule an appropriate carbon dioxide content rate for the fuel;

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0630 or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0630(1), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria and as provided in OAR 345-024-0680:

(a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of an equipment manufacturer and shall submit a written design information report to the



# ADMINISTRATIVE RULES

Department sufficient to verify the facility's designed rate of fuel use and its nominal capacity for each fuel type. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0630;

(5) In the site certificate, the Council shall specify the schedule by which the certificate holder shall provide carbon dioxide emission offsets. In the schedule, the Council shall specify the amount and timing of offsets the certificate holder must provide to a carbon dioxide emissions offset credit account. In determining the amount and timing of offsets, the Council may consider the estimate of total offsets that may be required for the facility and the minimum amount of offsets needed for effective offset projects. The Department shall maintain the record of the offset credit account.

Stat. Auth.: ORS 469.470 & 469.501  
Stats. Implemented: ORS 469.501 & 469.503  
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0630

### Means of Compliance for Nongenerating Energy Facilities

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for nongenerating energy facilities:

(1) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(2) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard according to the schedule set forth pursuant to OAR 345-024-0620(5). The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(3) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(4) Each year after beginning commercial operation, the certificate holder shall report to the Department of Energy data showing the amount and type of fossil fuels used by the facility and its horsepower-hours of operation. The Council shall specify in the site certificate how the Department shall use those data to calculate the gross carbon dioxide emissions from the facility during the report year and the net emissions in excess of the carbon dioxide emissions standard. The Department shall then subtract excess emissions from the carbon dioxide emissions offset credit account. The Council shall specify in the site certificate the minimum amount of carbon dioxide offset credits that a certificate holder shall provide to establish the offset credit account. The Council may specify an amount of offset credits equal to the total offsets required for the facility. The Council shall specify the minimum amount of carbon dioxide offset credits that a certificate holder must maintain in the account and the minimum amount of carbon dioxide offset credits the certificate holder shall provide to replenish the account. The Department shall notify the certificate holder when it must replenish its offset credit account according to the conditions in the site certificate. The certificate holder shall maintain a positive balance in the offset credit account for 30 years, unless the Council specifies a different period in the site certificate;

(5) If the certificate holder is replenishing its offset credit account by meeting the monetary path payment requirement described in OAR 345-024-0710, the certificate holder may replenish its offset credit account without amending the site certificate by using the calculation methodology detailed in conditions that the Council adopts in the site certificate;

(6) If the certificate holder proposes to replenish the offset credit account under OAR 345-024-0630(1), the Council may amend the site certificate conditions to ensure that the proposed offset projects are implemented;

(7) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (3) or (6) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of section (2) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Auth.: ORS 469.470 & 469.501  
Stats. Implemented: ORS 469.501 & 469.503  
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 3-2001, f. & cert. ef. 9-17-01; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0680

### Carbon Dioxide Offset Projects

This rule applies if the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0550(3), 345-024-0560(2), 345-024-0590(3), 345-024-0600(2), 345-024-0620(3), or 345-024-0630(1).

(1) Types of offset projects include, but are not limited to: energy efficiency, including demand-side management measures for electricity and natural gas; electricity generation from renewable energy; fuel switching; carbon dioxide sequestration through afforestation, reforestation, forest management and forest conservation; flue gas carbon dioxide sequestration; electricity generation from landfill and biogas methane (animal waste and waste water) or from fugitive methane emissions from existing or abandoned coal mines; and, vehicle carbon dioxide emissions reductions.

(2) In order to approve an offset project, the Council must find that:

(a) The offset project is likely to result in an avoidance, reduction or displacement of actual carbon dioxide emissions from fossil fuels or the sequestration of carbon dioxide emissions resulting from a specific and identifiable action(s);

(b) The Council can quantify the amount of carbon dioxide offsets, taking into consideration any proposed measurement, monitoring, evaluation and verification of offset project measure performance;

(c) The offsets are not susceptible to double-counting. For offsets from demand-side management measures reducing use of utility-provided electricity or natural gas, it may suffice that the certificate holder or its agent notify the utility that the certificate holder claims ownership of the carbon dioxide reductions;

(d) The applicant will own all carbon dioxide offsets that it proposes to provide;

(e) The applicant has provided a form of the instrument, satisfactory to the Council, through which the applicant will transfer all offsets from a project that an applicant will own to the Council for the Council to hold in trust;

(f) The applicant has the financial and institutional capability to deliver the project for its duration; and

(g) The applicant has provided an adequate monitoring and evaluation plan and an adequate plan for independent verification of the offsets. The monitoring and evaluation plan and the verification plan shall detail the record-keeping, data collection, data storage, data management program, and reporting guidelines and procedures.

(3) If the applicant proposes to implement a project in partnership with other parties or through contracts with other parties, the Council must find that:

(a) The other parties have the financial and institutional capability to deliver the project; and

(b) The applicant has a firm commitment from the other parties to participate in the project.

(4) If the applicant is proposing an offset project in another country, the Council must find that the host country has approved the transfer of the ownership carbon dioxide offsets to the applicant for the Council to hold in trust.

(5) The Council shall adjust its estimates of offsets to account for leakage, which is the extent to which events occurring outside the offset project boundary affect an offset project's total carbon dioxide emissions.

(6) The Council shall not consider any offsets related to nuclear power.

(7) The Council shall consider reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project that the applicant proposes.

(8) The applicant may propose offset projects that provide offsets for up to 30 years after beginning commercial operation of a facility, or if an applicant proposes to provide offsets for more than 30 years after the beginning of commercial operation of a facility, the Council must find that:

(a) There will be a viable organization that will continue to manage an offset project for a longer period than the duration of the site certificate;

# ADMINISTRATIVE RULES

(b) The Council can maintain oversight of the project and hold the responsible organization to the requirements of the site certificate; and

(c) The responsible organization will transfer offsets to the Council after the certificate holder retires the energy facility.

(9) The certificate holder shall begin implementation of projects approved in the site certificate before beginning construction of its facility, and:

(a) The certificate holder shall provide the Council copies of executed contracts or binding agreements with offset providers, including steam hosts for cogeneration if proposed, before beginning construction of its facility, and

(b) The certificate holder shall ensure that offset project implementation begins immediately upon execution of a contract or binding agreement with an offset provider and that the measures are fully implemented within five years, unless the Council approves a longer implementation period through a site certificate condition.

(10) The certificate holder shall not sell or trade its carbon dioxide offsets or allow any other entity to report or use the offsets.

(11) The Council shall hold the offsets in trust for the benefit of the State of Oregon.

(12) If the Council approves, a certificate holder may use offsets in a future national regulatory regimen if the Council determines that such use does not undermine the integrity of the Council's carbon dioxide standard. Such approval shall not require an amendment of the site certificate.

(13) The site certificate holder shall report to the Council annually on the performance of offset projects, pursuant to the monitoring and evaluation plan and to the verification plan, and shall explain changes from the offset benefits projected in the Council's analysis of the offset projects.

(14) The certificate holder shall provide copies of all monitoring and evaluation reports and any verification reports from the independent entity to the Department of Energy.

(15) The certificate holder shall provide any raw data upon the request of the Department.

(16) The site certificate holder shall make its offset project financial records available for the life of the facility for auditing by the Council or by a party that the Council designates.

Stat. Auth.: ORS 469.470 & 469.501

Stats. Implemented: ORS 469.501 & 469.503

Hist.: EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-024-0720

### Qualified Organization

(1) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), 345-024-0600(3) and (4), or 345-024-0630(2), (4) and (5), the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996.

(2) If the Council finds there is no qualified organization, the certificate holder shall disburse the offset funds according to one or more contracts for implementation of offsets as determined by the following process:

(a) The Council shall establish criteria for selection of offsets, based on the reduction of net carbon dioxide emissions and the criteria set forth in OAR 345-024-0550(3) for base load plants, OAR 345-024-0590(3) for non-base load power plants and OAR 345-024-0620(3) for nongenerating facilities. The Council may consider the costs of particular types of offsets in relation to the expected benefits of such offsets. In establishing criteria, the Council shall not require the certificate holder to select particular offsets and shall allow the certificate holder a reasonable range of choices in selecting offsets;

(b) Based on the criteria established by the Council, the certificate holder shall select one or more offsets. The certificate holder shall give written notice of its selections to the Council and to any person requesting notice. For the purposes of this rule, the date of notice is the date the certificate holder places the notice in the United States mail, with first-class postage prepaid;

(c) On petition by the Department of Energy or by any person adversely affected or aggrieved by the certificate holder's selection of offsets, or on the Council's own motion, the Council may review the selection. The petition must be received by the Council within 30 days of the date of notice;

(d) The Council shall approve the certificate holder's selection unless it finds that the selection is not consistent with criteria established under subsection (a);

(e) The certificate holder shall execute one or more contracts to implement the selected offsets within 18 months after commencing construction of the facility unless the Council allows additional time based on a showing of good cause by the certificate holder. If a certificate holder would have made a payment to a qualified organization as described in OAR 345-024-0600(4) or 345-024-0630(4) or (5), the certificate holder shall instead execute one or more contracts to implement the selected offsets, by a method acceptable to the Council, within 18 months after reporting to the Council as described in OAR 345-024-0590(5) or within 18 months after the Department notifies the certificate holder that the certificate holder must replenish the offset credit account as described in OAR 345-024-0630(4). The certificate holder shall, under such contracts, obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. The certificate holder may spend no more than 15 percent of the offset funds on monitoring, evaluation and enforcement of such contracts;

(f) Notwithstanding any provision to the contrary, the certificate holder shall have no financial liability for implementation, monitoring, evaluation and enforcement of offsets under this section beyond the amount contractually obligated and the amount of any remaining offset funds not already contractually obligated. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the person or persons implementing, monitoring or evaluating the selected offsets.

(3) Every qualified organization that has received funds under this rule shall, at five-year intervals beginning on the date of receipt of such funds, provide the Council with the information the Council requests about the qualified organization's performance. The Council shall evaluate the information requested and, based on such information, may make recommendations to the Legislative Assembly.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-026-0005

### Purpose

The purpose of the rules in this division is to ensure that the construction, operation and retirement of facilities are accomplished in a manner consistent with the protection of the public health, safety and welfare and the protection of the environment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.430 & 469.507

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-026-0010

### Legislative Authority

(1) Under ORS 469.430, the Council has continuing authority over the site for which a site certificate is issued and may inspect, direct the Department of Energy to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the certificate holder is operating the facility in compliance with the terms and conditions of the site certificate.

(2) For facilities subject to ORS 469.410 as having been built prior to July 2, 1975, the Council has continuing authority over the site for which a site certificate is issued and may inspect, or direct the Department to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the facility is being operated in compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

(3) According to ORS 469.410, the Council shall establish programs for monitoring the environmental and ecological effects of the operation and decommissioning of energy facilities subject to site certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.430 & 469.507

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-026-0048

### Compliance Plans

Following receipt of a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. As a part of the compliance plan, to verify compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the Department of Energy when construction begins. Construction is defined in OAR 345-001-0010. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. The certificate holder shall document the compliance plan and maintain it for inspection by the Department or the Council.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.430 & 469.507

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-026-0050

### Inspections

(1) General provisions:

(a) Each certificate holder shall allow properly identified representatives of the Council or Department of Energy to inspect the facility during construction, operation and retirement, including all materials, activities, related or supporting facilities, premises and records pertaining to design, construction, operation or retirement of the facility at any time.

(b) The certificate holder's representative may accompany Council or Department inspectors during an inspection.

(c) Council or Department inspectors may refuse to permit any individual who deliberately interferes with a fair and orderly inspection to be present during an inspection.

(d) The Department shall maintain written records of facility inspections. If the inspector finds any potential violations of state, federal or local law, Council rules, a Council order or site certificate conditions, the inspector shall promptly notify the certificate holder's onsite manager or designee.

(e) If the inspector finds any actual or potential violations of state, federal or local law, Council rules, a Council order, or site certificate conditions or warranties, the inspector shall notify the Council secretary, the Council and the certificate holder. The Council secretary shall be responsible for reporting all pertinent findings to the Council at its next scheduled meeting.

(2) Requests for inspections:

(a) Any person may request Department inspection of a facility if the requestor believes:

(A) That a violation of a Council order or a site certificate condition or warranty has occurred or may imminently occur; or

(B) A situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions.

(b) The person submitting a request for inspection shall describe, in writing, the specific grounds for the request. The requestor shall submit the request to the Department, or, during an inspection, to the Department's representative. A requestor who is employed directly or indirectly by the certificate holder may ask that his or her name not be disclosed in any manner except where disclosure is required by law.

(c) The Department shall promptly notify the certificate holder of the request and nature of the alleged violation or other basis for the inspection.

(d) If the request concerns matters of state, federal or local law or rule not administered by the Council, the Department shall forward the request to the appropriate agency.

(e) The Department shall make a prompt evaluation of allegations related to matters under Council jurisdiction. If the Department concludes that there are reasonable grounds to believe that the alleged violation has occurred or is imminent or that a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or to unsafe or dangerous conditions, the Department shall cause an inspection to be made as soon as practicable.

(f) If the Department determines that an inspection is not warranted, it shall give written notice of that conclusion to the requestor, stating its reasons. The requestor may then submit a written request for review to the Council. The Council shall send a copy of the request to the certificate holder by certified mail. The certificate holder may submit a written state-

ment of its position to the Council, and the Council shall provide a copy of the statement, if any, to the requestor by certified mail. At its discretion, the Council may hold an informal conference to discuss the merits of the request. The Council shall affirm, modify or reverse the determination made by the Department. The Council shall send written notification of its decision and reasoning to the requestor and the certificate holder.

(g) Inspections conducted under subsection (e) need not be limited to matters referred to in the request for inspection.

(h) No certificate holder shall discharge or in any manner discriminate against any employee because he or she submitted a request for inspection, provided information to a Council or Department representative or otherwise exercised options afforded to the worker under these rules.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.430 & 469.507

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-026-0080

### Reporting Requirements for Energy Facilities

(1) General reporting obligation for energy facilities under construction or operating:

(a) Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the Department of Energy. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall include such information related to construction as specified in the site certificate. When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule.

(b) By April 30 of each year after beginning construction, the certificate holder shall submit an annual report to the Department addressing the subjects listed in this rule. The Council Secretary and the certificate holder may, by mutual agreement, change the reporting date.

(c) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, the certificate holder may submit excerpts from such other reports to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.

(2) In the annual report, the certificate holder shall include the following information for the calendar year preceding the date of the report:

(a) Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in operation. In this section of the annual report, the certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility.

(b) Reliability and Efficiency of Power Production: For electric power plants, the plant availability and capacity factors for the reporting year. The certificate holder shall describe any equipment failures or plant breakdowns that had a significant impact on those factors and shall describe any actions taken to prevent the recurrence of such problems.

(c) Fuel Use: For thermal power plants:

(A) The efficiency with which the power plant converts fuel into electric energy. If the fuel chargeable to power heat rate was evaluated when the facility was sited, the certificate holder shall calculate efficiency using the same formula and assumptions, but using actual data; and

(B) The facility's annual hours of operation by fuel type and, every five years after beginning operation, a summary of the annual hours of operation by fuel type as described in OAR 345-024-0590(5).

(d) Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period.

(e) Monitoring Report: A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with site certificate terms and conditions, a summary of the results of those activities and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes.

(f) Compliance Report: A description of all instances of noncompliance with a site certificate condition. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate.

# ADMINISTRATIVE RULES

(g) Facility Modification Report: A summary of changes to the facility that the certificate holder has determined do not require a site certificate amendment in accordance with OAR 345-027-0050.

(h) Nongenerating Facility Carbon Dioxide Emissions: For nongenerating facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual hours of operation of the carbon dioxide emitting equipment as described in OAR 345-024-0630(4).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.430, 469.501 & 469.507

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-026-0105

### Correspondence With Other State or Federal Agencies

The certificate holder and the Department of Energy shall exchange copies of all correspondence or summaries of correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. The certificate holder may submit abstracts of reports in place of full reports; however, the certificate holder shall provide full copies of abstracted reports and any summarized correspondence at the request of the Department..

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, 469.410, 469.430 & 469.507

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-026-0390

### Spent Nuclear Fuel Storage

(1) Purpose:

(a) Storage of spent nuclear fuel and related radioactive material and waste at a nuclear installation is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;

(b) The purpose of this rule is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

(2) Capacity and Safety Standards: The certificate holder may store a maximum of 791 complete and partial fuel assemblies and storage of containers with nuclear fuel materials. Storage of spent nuclear fuel and related radioactive material and waste at the site of a nuclear installation by a certificate holder who has executed a contract with the United States of America pursuant to the Nuclear Waste Policy Act, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:

(a) Storage facilities are designed to maintain discharges within the limits specified in applicable licenses authorized under the Atomic Energy Act of 1954, as amended, and any applicable permits issued under the National Pollutant Discharge Elimination System;

(b) Storage facilities are designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions; and

(c) The facility is not used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the former Trojan Nuclear Plant.

(3) The certificate holder shall perform activities related to transfer, storage and handling of fuel and other radioactive waste in accordance with a radiation protection program that complies with 10 CFR 20, including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in 10 CFR 20.

(4) Except as required for accident mitigation as described in the Safety Analysis Report, the certificate holder shall not transfer spent fuel from an interim spent fuel storage installation to new casks or shipping containers without approval by the Council prior to the transfer.

(5) Reporting Requirements: The operator of an interim spent fuel storage facility shall submit every ten years and, in addition, no later than September 3, 2038, a report containing the actual or expected date when the Federal government will accept the High Level Waste and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent nuclear fuel from the facility will be accepted prior to September 3, 2043.

(6) The Council approves the plan, as may be amended under Part (c) below, for an Independent Spent Fuel Storage Installation (ISFSI) as described in the ISFSI Safety Analysis Report (SAR) (PGE-1069), Revision 2. In addition to the criteria in OAR 345-026-0390(2)(a), (b), and (c), and (3) and (4), the plan is subject to the following criteria:

(a) Programs: Portland General Electric (PGE) shall establish and maintain programs for Temperature Monitoring and Air Vent Inspection and Structural Inspection that are consistent with maintaining exposures to ionizing radiation As Low As Reasonably Achievable (ALARA) and with the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002.

(b) Contingency Plans: PGE shall establish and maintain a plan for maintaining equipment onsite and having equipment available within a reasonable time period to respond to credible accident scenarios and a plan for construction of new concrete casks.

(c) Changes to Commitments: PGE may make changes to the ISFSI as described in the Safety Analysis Report without prior Council approval if such changes do not reduce commitments or change the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002. If proposed changes would reduce commitments or change the assumptions or conclusions of the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, PGE shall obtain prior approval from the Department. Prior Department approval is not required when the proposed change would not have the above effects, is required for compliance with the regulations or orders of the U.S. Nuclear Regulatory Commission or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior Department approval.

(d) Reporting requirements: In lieu of the requirements described in OAR 345-026-0080, within one year of the first cask loading and biennially thereafter, PGE shall provide a written report to the Council on the status of the ISFSI. The report shall include, at a minimum, the results of radiation monitoring programs, a summary of personnel exposure related to ISFSI storage operations, a statement of expenses related to ISFSI storage operations, a statement of the estimated costs of continuing ISFSI storage operations through decommissioning and the estimated costs of decommissioning, including a discussion of the methods and assumptions used to estimate operations and decommissioning costs, an estimate of funds available for continuing ISFSI storage operations through decommissioning and funds available for ISFSI decommissioning, and a statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility.

(e) Frequency of Temperature Monitoring and Air Vent Inspection: The Temperature Monitoring and Air Vent Inspection Program established by PGE pursuant to Section (6)(a) of this rule shall include daily readings of Concrete Cask air outlet and ambient temperatures. The program shall include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program shall also include a requirement to check air inlet and outlet vents for blockage weekly. PGE may reduce these surveillance frequencies with Department approval. PGE may apply extensions of up to 25 percent of individual surveillance intervals to accommodate minor variations in work scheduling.

(f) Contractors: PGE shall require contractors who perform portions of the ISFSI storage or transporting operations to adhere to all applicable provisions of OAR 345-026-0390.

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & 469.501

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1995, f. & cert. ef. 11-3-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 3-1999, f. & cert. ef. 4-21-99; EFSC 2-2002, f. & cert. ef. 12-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2005, f. & cert. ef. 5-23-05; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0000

### Certificate Expiration

If the certificate holder does not begin construction of the facility, the site certificate expires on the construction beginning date specified by the Council in the site certificate or in an amendment of the site certificate granted according to the rules of this division.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370 & 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-027-0020

### Mandatory Conditions in Site Certificates

The Council shall impose the following conditions in every site certificate. The Council may impose additional conditions.

(1) The Council shall not change the conditions of the site certificate except as provided for in this division.

(2) The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identifies the outer boundaries that contain all parts of the facility.

(3) The certificate holder shall design, construct, operate and retire the facility:

(a) Substantially as described in the site certificate;

(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and

(c) In compliance with all applicable permit requirements of other state agencies.

(4) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.

(5) Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For wind energy facilities, transmission lines or pipelines, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and:

(a) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line or pipeline occurs during the certificate holder's negotiations to acquire construction rights on another part of the site; or

(b) The certificate holder would construct and operate part of a wind energy facility on that part of the site even if other parts of the facility were modified by amendment of the site certificate or were not built.

(6) If the Council requires mitigation based on an affirmative finding under any standards of division 22 or division 24 of this chapter, the certificate holder shall consult with affected state agencies and local governments designated by the Council and shall develop specific mitigation plans consistent with Council findings under the relevant standards. The certificate holder must submit the mitigation plans to the Office and receive Office approval before beginning construction or, as appropriate, operation of the facility.

(7) The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.

(8) Before beginning construction of the facility, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility.

(9) The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.

(10) The Council shall include as conditions in the site certificate all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.

(11) Upon completion of construction, the certificate holder shall restore vegetation to the extent practicable and shall landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder shall remove all temporary structures not required for facility operation and dis-

pose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.

(12) The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement and subsidence.

(13) The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division and to propose mitigation actions.

(14) The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.

(15) Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer of the site certificate.

(16) If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Office within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in section (8) to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR chapter 345, division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401 & 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-026-0035, 345-026-0040, 345-026-0130, 345-026-0180; 345-079-0011, 345-100-0011, 345-111-0010, 345-115-0040, 345-125-0060 & 345-125-0065; EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0023

### Site-Specific Conditions

The Council may include the following conditions, as appropriate, in the site certificate:

(1) If the facility uses coal, the certificate holder shall take all necessary steps to ensure that surface and groundwater are not contaminated by run-off or seepage associated with coal or ash storage, transport or disposal. The certificate holder shall handle coal and ash so as to minimize the likelihood of coal dust and ash being windblown and causing an environmental or public health problem. If the certificate holder permanently disposes of ash on the facility site, the certificate holder shall cover the ash with a layer of topsoil and revegetate the area.

(2) If the energy facility or related or supporting facility is a natural gas pipeline, the certificate holder shall submit to the Department copies of all incident reports involving the pipeline required under 49 CFR §191.15.

(3) If the facility includes any pipeline under Council jurisdiction:

(a) The certificate holder shall design, construct and operate the pipeline in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192, in effect as of the date of this rule; and

(b) The certificate holder shall develop and implement a program using the best available practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.

# ADMINISTRATIVE RULES

(4) If the facility includes any transmission line under Council jurisdiction:

(a) The certificate holder shall design, construct and operate the transmission line in accordance with the requirements of the **National Electrical Safety Code** (American National Standards Institute, Section C2, 1997 Edition); and

(b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line.

(5) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor.

(6) If the facility is a surface facility related to an underground gas storage reservoir, the Council shall, in the site certificate, specify the site boundary and total permitted daily throughput of the facility.

(7) If the facility is subject to a carbon dioxide emissions standard adopted by the Council or enacted by statute, the Council shall include in the site certificate appropriate conditions as described in OAR 345-024-0550, 345-024-0560, 345-024-0590, 345-024-0600, 345-024-0620, 345-024-0630 and 345-024-0710.

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401, 469.501 & 469.503

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0028

### Monitoring Conditions

In the site certificate, the Council shall identify the monitoring programs appropriate to the facility and shall include the following monitoring conditions:

(1) The certificate holder shall consult with affected state agencies, local governments and tribes and shall develop specific monitoring programs for impacts to resources protected by the standards of Divisions 22 and 24 of this chapter and resources addressed by applicable statutes, administrative rules and local ordinances. The certificate holder must submit the monitoring programs to the Department of Energy and receive Department approval before beginning construction or, as appropriate, operation of the facility.

(2) The certificate holder shall implement the approved monitoring programs described in section (1) and monitoring programs required by permitting agencies and local governments.

(3) For each monitoring program described in sections (1) and (2), the certificate holder shall have quality assurance measures approved by the Department before beginning construction or, as appropriate, before beginning commercial operation.

(4) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401, 469.501, 469.503 & 469.507

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0030

### Amendment to Extend Construction Beginning and Completion Deadlines

(1) The certificate holder may request an amendment to extend the deadlines for beginning or completing construction of the facility that the Council has specified in a site certificate or an amended site certificate. The certificate holder shall submit a request that conforms to the requirements of 345-027-0060 no later than six months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the request, no later than the applicable deadline.

(2) A request within the time allowed in section (1) to extend the deadlines for beginning or completing construction suspends those deadlines until the Council acts on the request.

(3) The Council shall review the request for amendment as described in OAR 345-027-0070.

(4) If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are not more than two years from the deadlines in effect before the Council grants the amendment.

(5) To grant an amendment extending the deadline for beginning or completing construction of an energy facility subject to OAR 345-024-0550, 345-024-0590, or 345-024-0620, the Council must find that the facility complies with the carbon dioxide standard in effect at the time of the Council's order on the amendment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370, 469.405 & 469.503

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0050

### When an Amendment is Required

(1) Except as allowed under sections (2) and (6), the certificate holder must submit a request to amend the site certificate to design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards;

(b) Could impair the certificate holder's ability to comply with a site certificate condition; or

(c) Could require a new condition or a change to a condition in the site certificate.

(2) A site certificate amendment is not required if a proposed change in the design, construction or operation of a facility is in substantial compliance with the terms and conditions of the site certificate and is a change:

(a) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;

(b) To the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or enlarge the facility site;

(c) To the number, size or location of pipelines for a geothermal energy facility that would not enlarge the facility site;

(d) To a pipeline or transmission line that is a related or supporting facility that would extend or modify the pipeline or transmission line or expand the right-of-way, when the change is to serve customers other than the energy facility; or

(e) To an aspect or feature of the facility, operating procedures or management structures not addressed in the site certificate.

(3) If the certificate holder concludes that a site certificate amendment is not required based on the criteria in section (2), the certificate holder shall, nevertheless, complete an investigation sufficient to demonstrate that the proposed change in the design, construction or operation of the facility would comply with applicable Council standards. The certificate holder shall complete the investigation before implementing the proposed change. The certificate holder shall prepare a written evaluation describing the investigation and shall make the evaluation available to the Department for inspection at any time.

(4) In the annual report required by OAR 345-026-0080, the certificate holder shall describe all significant changes made to the design, construction and operation of the facility without an amendment of the site certificate. The certificate holder shall keep a written record of the basis for concluding that an amendment of the site certificate was not required. The Department, at any time, may inspect the changes made to the facility and may inspect the certificate holder's written record of the basis for concluding that an amendment of the site certificate was not required.

(5) A certificate holder may ask the Department to determine whether a proposed change requires a site certificate amendment by submitting a written description of the proposed change, the certificate holder's analysis of the proposed change under sections (1) and (2) and the written evaluation described in section (3). The Department shall respond in writing as promptly as possible. The Department may refer its determination to the Council for concurrence, modification or rejection. At the request of the certificate holder or a Council member, the Department must refer its determination to the Council for concurrence, modification or rejection.

(6) A site certificate amendment is not required for the construction of a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas

# ADMINISTRATIVE RULES

storage reservoir. If the proposed pipeline would connect to a surface facility related to an underground gas storage reservoir for which the Council has issued a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the Department for the construction, operation and retirement of the proposed pipeline. To obtain Department approval, the certificate holder shall submit a request as described in OAR 345-027-0210 through 345-027-0240.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0060

### Request to Amend Certificate

(1) To request an amendment of a site certificate, the certificate holder shall submit a written request to the Department of Energy that includes the information described in section (2) and the following:

(a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request.

(b) A description of the facility including its location and other information relevant to the proposed change.

(c) A detailed description of the proposed change and the certificate holder's analysis of the proposed change under the criteria of OAR 345-027-0050(1).

(d) The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an amendment.

(e) A list of the Council standards relevant to the proposed change.

(f) An analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested. For the purpose of this rule, a law, rule or ordinance is "applicable" if the Council would apply or consider the law, rule or ordinance under OAR 345-027-0070(10).

(g) If the amendment would change the site boundary, extend the deadlines for beginning or completing construction or change the legal description of the facility, an updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).

(2) In a request to amend a site certificate, the certificate holder shall provide the information described in applicable subsections of OAR 345-021-0010(1). The certificate holder may incorporate by reference relevant information that the certificate holder has previously submitted to the Department or that is otherwise included in the Department's administrative record on the facility.

(3) Before submitting a request to amend a site certificate, the certificate holder may prepare a draft request and may confer with the Department about the content of the request. Although the Council does not require the certificate holder to prepare a draft request and confer with the Department, the Council recommends that the certificate holder follow this procedure.

(4) The certificate holder shall submit an original and ten copies of the amendment request to the Department. In addition to the printed copies, the certificate holder shall submit the text (including appendices and graphical information to the extent practical) of the amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall provide additional copies of the amendment request to the Department upon request and copies or access to copies to any person requesting copies. If requested by the Department, the certificate holder shall send copies of the request to persons on a mailing list provided by the Department.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0070

### Review of a Request for Amendment

Except as specified in OAR 345-027-0080, the Council shall review a request for amendment of a site certificate as follows:

(1) Within 15 days after receiving a request to amend a site certificate, the Department of Energy shall determine whether the amendment requires extended review based on the criteria in section (2) and:

(a) Send copies of the request, or instruct the certificate holder to send copies of the request, to the reviewing agencies as defined in OAR 345-001-0010 and ask those agencies to comment on the request by a specified date;

(b) Send a notice of the amendment request to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners or the updated list supplied by the certificate holder under OAR 345-027-0060(1)(g) and specify a date by which comments on the request are due; and

(c) Send a notice to the certificate holder specifying a date for issuance of a proposed order. The Department shall specify a date that is no later than 60 days after the date of the notice unless the Department has determined that the amendment requires extended review. For extended review, the Department shall explain the basis of its determination and specify a date that is not more than 180 days after the date of the notice. Within 10 days after the Department sends notification that an amendment requires extended review, the certificate holder may request Council review of the determination. Upon a request for Council review, the Department shall refer its determination to the Council for concurrence, modification or rejection.

(2) The Department may determine that an amendment requires extended review if:

(a) The certificate holder requests extended review;

(b) The Department finds that the amendment request does not contain the information required by OAR 345-027-0060 or does not contain information sufficient for the Department to prepare a proposed order;

(c) The Department needs to hire a consultant to assist in reviewing the request;

(d) The amendment:

(A) Would require construction on land zoned residential or exclusive farm use;

(B) Would require construction in a zone for which the use is not permitted;

(C) Would require construction on land that may qualify as Habitat Category 1 or 2 land as described in OAR 635-415-0025;

(D) Would result in incremental carbon dioxide emissions that the certificate holder elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a means other than by payments described under OAR 345-024-0560(3), 345-024-0600(3) and (4) or 345-024-0630(2), (4) and (5); or

(E) Could require the Council to determine, according to OAR 345-022-0000(2), that the overall public benefits of the facility outweigh the damage to the resource that is protected by a standard the facility would not meet if the amendment is approved; or

(e) The Department anticipates a high volume of public comment.

(3) The Office may hold one or more public meetings during the review of a request for amendment of the site certificate.

(4) Except as otherwise provided in this section, no later than the date the Department has specified in the notice described in subsection (1)(c), the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department needs additional time to prepare the proposed order, the Department may issue the proposed order at a later date, but the Department shall, no later than the date the Department has specified in the notice, notify the certificate holder in writing of the circumstances that justify the delay.

(5) After issuing the proposed order, the Department shall send a notice of the proposed order to the persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners or the updated list supplied by the certificate holder under OAR 345-027-0060(1)(g). In the notice, the Department shall specify a deadline for submission of written public comments that is at least 30 days from the date of the notice.

(6) Any person may, by written request submitted to the Department no later than the deadline described in section (5), ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address.

(7) To determine that an issue justifies a contested case proceeding under section (8), the Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets an applicable

# ADMINISTRATIVE RULES

standard. If the Council finds that the request would not affect the Council's determination if the alleged facts were found to be true but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

(8) The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding, and:

(a) If the Council finds that the request identifies one or more issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0085 limited to the issues that the Council found sufficient to justify the proceeding.

(b) If the Council finds that the request identifies one or more issues that an amendment of the proposed order would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Department to amend the proposed order and send a notice of the amended proposed order to the persons described in section (5). Any person may, by written request submitted to the Department within 30 days after the Department issues the notice of the amended proposed order, ask the Council to hold a contested case proceeding limited to issues raised by the amendment to the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address. As described in this section, the Council shall determine whether any issue identified in the request for a contested case proceeding justifies a contested case proceeding.

(c) If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(9) If there is no request for a contested case proceeding as described in section (6) or subsection (8)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(10) In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision. The Council shall consider the following:

(a) For an amendment that would change the site boundary or the legal description of the site, the Council shall consider, for the area added to the site by the amendment, whether the facility complies with all Council standards;

(b) For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:

(A) Whether the Council has previously granted an extension of the deadline;

(B) Whether there has been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and

(C) Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:

(i) The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;

(ii) The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;

(iii) The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and

(iv) The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment;

(c) For any amendment not described above, the Council shall consider whether the amendment would affect any finding made by the Council in an earlier order.

(d) For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 2-2000, f. & cert. ef. 11-20-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0080

### Review of a Request by a Certificate Holder for Expedited Amendment

(1) A certificate holder may ask the Council Chair to grant expedited review of an amendment request. The certificate holder shall submit a request for expedited review to the Department of Energy in writing and, in addition, the certificate holder shall submit the text (including appendices and graphical information to the extent practical) of the amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall include in the request:

(a) The information listed in OAR 345-027-0060(1) and (2), and

(b) Reasons why the certificate holder needs expedited review of its request and an explanation of why the need for expedited review arose and could not have reasonably been foreseen by the certificate holder.

(2) The Chair may grant a request for expedited review if a delay would unduly harm the certificate holder and if the facility, with the proposed change, would not likely result in a significant adverse impact. If the Chair decides not to grant the request for expedited review, the Chair shall issue a written decision as soon as is reasonably practicable. In a written decision denying the request, the Chair shall give an explanation of the reasons for the denial.

(3) Within 7 days after the Chair grants expedited review, the Department shall:

(a) Send copies of the amendment request to the reviewing agencies as defined in OAR 345-001-0010 and ask those agencies to comment on the request within not more than 21 days after the date of the notice.

(b) Send a notice of the amendment request to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners specifying a date, not more than 21 days after the date of the notice, by which comments are due.

(4) Within 60 days after the Chair grants expedited review, the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department recommends approval, the Department shall include in the proposed order any new or modified conditions it recommends and shall explain why expedited Council action was warranted.

(5) The Department shall send a notice of the proposed order to the persons on the Council's general mailing list, to any special list established for the facility and to the most recently received list of property owners. In the notice, the Department shall include information on the availability of the proposed order, the date of the Council meeting when the Council will consider the proposed order and issue a temporary order as described in section (5), a date by which comments on the proposed order are due and the deadline for any person to request a contested case proceeding on the Council's temporary order.

(6) After considering the proposed order, the Council may issue an order temporarily amending the site certificate. In making a decision whether to issue a temporary order under this rule, the Council shall consider the factors listed in OAR 345-027-0070(10). The Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council issues the temporary order.

(7) Before implementing any change approved by the Council's temporary order, the certificate holder must submit an authorized acknowledgement that the certificate holder accepts all terms and conditions of the temporary order. The acknowledgement may be submitted to the Department by fax if the certificate holder promptly submits a signed original to the Department by mail or hand delivery.

(8) Any person may, by written request submitted to the Department within 15 days after the date the Council issues the temporary order described in section (5), ask the Council to hold a contested case proceeding on the temporary order. For the purpose of this rule, the request is sub-



# ADMINISTRATIVE RULES

mitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address.

(9) The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding.

(a) If the Council finds that the request identifies one or more issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0085 limited to the issues that the Council found sufficient to justify the proceeding.

(b) If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall adopt the temporary order as a final order. In the final order, the Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(10) If there is no request for a contested case proceeding as described in section (8), the Council shall adopt the temporary order as a final order. In the final order, the Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(11) The certificate holder shall not abuse this rule by failing to make timely application for an amendment and thus creating the need for expedited review.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0090

### Request by Any Person for Amendment to Apply Subsequent Laws or Rules

(1) Any person may submit to the Department of Energy a request for an amendment of a site certificate to apply a local government ordinance, statute or Council rule adopted after the date the site certificate was executed. The Department itself may initiate such a request.

(2) In an amendment request under this rule, the person shall include the following:

(a) The name and address of the person submitting the request;

(b) The name and address of the certificate holder;

(c) Identification of the facility for which the site certificate in question was granted and its location;

(d) Identification of the local government ordinance, statute or Council rule that the person seeks to apply to the facility;

(e) The particular facts that the person believes demonstrate that failure to apply the ordinance, statute or rule identified in subsection (d) presents a significant threat to the public health or safety or to the environment; and

(f) The specific language of the site certificate that the person proposes to change, delete or add by an amendment.

(3) If the Department receives a request to amend a site certificate as described in this rule from any person other than the certificate holder, the Department shall send a copy of the request to the certificate holder with a notice stating the date by which the certificate holder must submit a response.

(4) The Council shall review the request for amendment as described in OAR 345-027-0070, except that:

(a) After receiving the certificate holder's response as requested under (3), the Department may ask the Council to determine whether the request demonstrates that failure to apply the ordinance, statute or rule identified in subsection (2)(d) presents a significant threat to the public health or safety or to the environment. If the Council determines that applying the ordinance, statute or rule is not justified by a significant threat to the public health or safety or to the environment, then the Council may deny the amendment request.

(b) Within 15 days after receiving the certificate holder's response as requested under (3) or within 15 days after a Council determination under (a) that applying the ordinance, statute or rule is justified by a significant

threat to the public health or safety or to the environment, the Department shall determine whether the amendment request requires expedited review, based on the criteria in OAR 345-027-0070(2), and shall send the notices described in OAR 345-027-0070(1)(a), (b) and (c).

(c) If the Department recommends approval or modification of the requested amendment, the Department shall include in the proposed order described in OAR 345-027-0070(4) any new or modified site certificate conditions necessary to assure compliance with the statutes, Council rules, and local government ordinances applied to the facility under the proposed order;

(d) Notwithstanding OAR 345-027-0070(7)(c), if the Department in its proposed order recommends approval or modification of the requested amendment, the certificate holder may, by written request submitted to the Department within 30 days after the Department issues the proposed order, ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the certificate holder shall provide a description of the issues to be contested and a statement of the facts believed to be at issue. If the site certificate holder requests a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0085 limited to the issues stated by the certificate holder; and

(e) The Council shall include new conditions in a site certificate amended under this rule only if the certificate holder agrees to the new conditions or the Council finds that the conditions are necessary based upon a clear showing of a significant threat to the public health, safety or the environment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401 & 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0100

### Transfer of a Site Certificate

(1) For the purpose of this rule:

(a) A transfer of ownership requires a transfer of the site certificate when the person who will have the legal right to possession and control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility;

(b) "Transferee" means the person who will become the new applicant and site certificate holder.

(2) When a certificate holder has knowledge that any transfer of ownership of the facility that requires a transfer of the site certificate is or may be pending, the certificate holder shall notify the Department of Energy. In the notice, the certificate holder shall include, if known, the name, mailing address and telephone number of the transferee and the date of the transfer of ownership. If possible, the certificate holder shall notify the Department at least 60 days before the date of the transfer of ownership.

(3) The transferee is not allowed to construct or operate the facility until an amended site certificate as described in section (10) or a temporary amended site certificate as described in section (11) becomes effective.

(4) To request a transfer of the site certificate, the transferee shall submit a written request to the Department that includes the information described in OAR 345-021-0010(1)(a), (d) and (m), a certification that the transferee agrees to abide by all terms and conditions of the site certificate currently in effect and, if known, the date of the transfer of ownership. If applicable, the transferee shall include in the request the information described in OAR 345-021-0010(1)(y)(O)(iv).

(5) The Department may require the transferee to submit a written statement from the current certificate holder, or a certified copy of an order or judgment of a court of competent jurisdiction, verifying the transferee's right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession of the site or the facility.

(6) Within 15 days after receiving a request to transfer a site certificate, the Department shall mail a notice of the request to the reviewing agencies as defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners. In the notice, the Department shall describe the transfer request, specify a date by which comments are due and specify the date of the Council's informational hearing.

(7) Before acting on the transfer request, the Council shall hold an informational hearing. The informational hearing is not a contested case hearing.

# ADMINISTRATIVE RULES

(8) At the conclusion of the informational hearing or at a later meeting, the Council may issue an order approving the transfer request if the Council finds that:

(a) The transferee complies with the standards described in OAR 345-022-0010, 345-022-0050 and, if applicable, OAR 345-024-0710(1); and

(b) The transferee is lawfully entitled to possession or control of the site or the facility described in the site certificate.

(9) Except as described in section (12), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the transfer request.

(10) Upon issuing the order described in section (8), the Council shall issue an amended site certificate that names the transferee as the new certificate holder. The amended site certificate is effective upon execution by the Council chair and the transferee.

(11) If the Council chair determines that special circumstances justify emergency action, the Council chair may, upon a written request from the transferee that includes a showing that the transferee can meet the requirements of section (8), issue a temporary amended site certificate that names the transferee as the new certificate holder. The temporary amended site certificate is effective upon execution by the Council chair and the transferee. The temporary amended site certificate expires when an amended site certificate as described in section (10) becomes effective or as the Council otherwise orders.

(12) The Council may act concurrently on a request to transfer a site certificate and any other amendment request subject to the procedures described in this rule for the transfer request and:

(a) The procedures described in OAR 345-027-0030 for an amendment to extend construction beginning and completion deadlines.

(b) The procedures described in OAR 345-027-0090 for an amendment to apply subsequent laws or rules.

(c) The procedures described in OAR 345-027-0060 and 345-027-0070 for any amendment request not described in (a) or (b).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401 & 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0110

### Termination of a Site Certificate

(1) A certificate holder may apply to the Council to terminate a site certificate at any time, subject to the requirements of this rule.

(2) A certificate holder must apply to the Council to terminate a site certificate within two years following cessation of construction or operation of the facility.

(3) If the certificate holder fails to apply to the Council to terminate the site certificate and the Council finds that the certificate holder has permanently ceased construction or operation of the facility, then the Council may terminate the site certificate according to the procedure described in OAR 345-027-0020(16).

(4) In an application for termination of the site certificate, the certificate holder shall include a proposed final retirement plan for the facility and site.

(5) In the proposed final retirement plan, the certificate holder shall include:

(a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment;

(b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process;

(c) A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement.

(6) Within 15 days after receiving an application for termination of a site certificate, the Department of Energy shall mail a notice of the application to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners specifying a date by which comments on the application are due. The Department shall send copies of the application for termination to the reviewing agencies as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified date.

(7) The Council shall review the proposed final retirement plan and shall consider any comments received from the public and the reviewing agencies. The Council may approve the proposed final retirement plan or modify the plan to comply with the rules of this chapter and applicable conditions in the site certificate. The Council shall issue an order authorizing

retirement according to the approved or modified final retirement plan and subject any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480.

(8) When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council shall issue an order terminating the site certificate.

(9) When the Council finds that the site certificate has expired as described in OAR 345-027-0000, the Council shall issue an order terminating the site certificate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405 & 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0210

### General

(1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the Council certified facility to which the pipeline would connect obtains, before construction, the approval of the Department of Energy for the construction, operation and retirement of the proposed pipeline.

(2) For the purposes of OAR 345-027-0210 through 345-027-0240:

(a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less than 16 inches in diameter and less than five miles in length, that is used to test or maintain an underground gas storage reservoir and that would connect to a Council certified facility if the storage reservoir proves feasible for operational use;

(b) "Temporary pipeline" means a pipeline that has no potential for operational use;

(c) "Council certified facility" means an energy facility for which the Council has issued a site certificate that is either a surface facility related to an underground gas storage reservoir or a gas pipeline;

(d) "Connect" means join for the purpose of operational use;

(e) "Test or maintain" means transporting gas to an underground gas storage reservoir for the purposes of determining whether the reservoir is feasible for operational use or maintaining the gas storage capacity of the reservoir but does not include operational use;

(f) "Operational use" means transporting gas to an underground gas storage reservoir for the purpose of storing gas until it is needed for sale or for withdrawing gas from an underground gas storage reservoir for the purpose of sale;

(g) "Council substantive standards" means the following standards:

(A) Structural Standard, OAR 345-022-0020;

(B) Soil Protection, OAR 345-022-0022;

(C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);

(D) Retirement and Financial Assurance, OAR 345-022-0050;

(E) Fish and Wildlife Habitat, OAR 345-022-0060;

(F) Threatened and Endangered Species, OAR 345-022-0070

(G) Scenic Resources, OAR 345-022-0080;

(H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;

(I) Recreation, 345-022-0100;

(J) Public Services, OAR 345-022-0110;

(K) Waste Minimization, OAR 345-022-0120; and

(L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);

(h) "Information requirements" means information that would support the findings described in OAR 345-024-0030(2) and the information described in OAR 345-021-0010(1)(h), (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

Stat. Auth.: ORS 469.405

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0220

### Request for Approval

(1) Before submitting a request for approval to construct, operate and retire a gas storage testing pipeline, the certificate holder shall:

(a) Inform the Department of Energy of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure; and

(b) Provide to the Department a map showing the location of the proposed pipeline.

(2) After receiving the information described in section (1), the Department shall confer with the certificate holder about the Council substantive standards and information requirements that might apply to the proposed pipeline and any extraordinary circumstances that might affect

# ADMINISTRATIVE RULES

the time requirements for completing the approval process. Within 7 days after conferring with the certificate holder, the Department shall send a letter to the certificate holder that includes the following:

- (a) Identification of the Council substantive standards that are applicable to the request for approval of the proposed pipeline;
- (b) Identification of the information requirements that are applicable to the request for approval of the proposed pipeline;
- (c) The time requirements for the approval process, if different from the time requirements described in OAR 345-027-0230.

(3) The certificate holder shall submit to the Department a written request for approval to construct, operate and retire a gas storage testing pipeline with the fee required by the fee schedule established under ORS 469.441. The certificate holder shall submit the original request and seven copies to the Department. The certificate holder shall provide additional copies to the Department upon request and copies or access to copies to any person requesting copies. In addition to the printed copies of the request for approval, the certificate holder shall submit the text (and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department.

(4) In a request for approval, the certificate holder shall include:

(a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request;

(b) A description of the purpose and operation of the proposed pipeline and a discussion of whether the use of the gas storage testing pipeline for reservoir testing or maintenance will require an increase in the compression available in the Council certified facility to which the proposed pipeline would connect in addition to the compression that is permitted under the site certificate;

(c) Identification of the Council certified facility to which the proposed pipeline would connect;

(d) A description of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure;

(e) A map showing the location of the proposed pipeline;

(f) A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment role, of property where the proposed pipeline is located and within 500 feet of the location of the proposed pipeline;

(g) The information that the Department has identified in the letter described in section (2); and

(h) Any other information that the Department requests as needed to make the findings described in the applicable standards.

Stat. Auth.: ORS 469.405

Stats. Implemented: ORS 469.405, 469.421 & 469.441

Hist.: EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0230

### Review of a Request for Approval

(1) Within 7 days after receiving a request for approval to construct, operate and retire a gas storage testing pipeline, the Department of Energy shall:

(a) Send copies of the request to the following agencies with a notice asking the agencies to submit written comments on the request within 14 days from the date of the notice:

- (A) Oregon Department of Fish and Wildlife;
- (B) Oregon Department of Geology and Mineral Industries;
- (C) Oregon Public Utility Commission;
- (D) Oregon Department of Agriculture;
- (E) Division of State Lands; and
- (F) State Historic Preservation Office;

(b) Send a notice of the request, including a map showing the location of the proposed pipeline, to the following stating that the agencies and planning authority may submit written comments on the request within 14 days from the date of the notice:

- (A) Oregon Department of Forestry;
- (B) Oregon Department of Environmental Quality; and

(c) The planning authority of the county or counties where the proposed pipeline is located;

(c) Send a notice of the request, including a map showing the location of the proposed pipeline, to the property owners the certificate holder has listed in the request stating that property owners may submit written comments on the request within 14 days from the date of the notice.

(2) Within 21 days from the deadline for comments described in section (1) or such longer period as the Department has specified in the letter described in OAR 345-027-0220(2), the Department shall issue a final order stating its findings on the applicable Council substantive standards

and its approval or disapproval of the request. In an order approving a request, the Department shall include conditions that the Department finds necessary to ensure compliance with the applicable standards and conditions required by OAR 345-027-0240.

(3) The Department shall send a notice of the final order to the certificate holder, to the property owners the certificate holder listed in the request and to any person who commented on the request. In the notice, the Department shall state that judicial review of the order is as provided in ORS 469.403.

(4) The Department may amend an order approving the construction, operation and retirement of a gas storage testing pipeline.

(5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for compliance with other state standards.

(6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the Department does not bind any state or local agency.

Stat. Auth.: ORS 469.405

Stats. Implemented: ORS 469.405 & 469.992

Hist.: EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-027-0240

### Conditions

In an order approving the construction, operation and retirement of a gas storage testing pipeline, the Department may impose conditions it finds necessary to ensure compliance with the Council substantive standards it identified as applicable in the letter described in OAR 345-027-0220(2). In addition, the Department shall impose the following conditions:

(1) The certificate holder shall design, construct, operate and retire the gas storage testing pipeline in compliance with applicable Council rules and applicable federal, state and local laws, rules and ordinances in effect at the time the Department issues the order;

(2) The certificate holder shall design, construct, operate and retire the gas storage testing pipeline substantially as described in representations in the request for approval and supporting record that the Department finds to be binding commitments made by the certificate holder;

(3) The certificate holder shall prevent the development of any conditions in the area of the gas storage testing pipeline that would preclude restoration of the area to a useful, non-hazardous condition to the extent that prevention of such conditions is within the control of the certificate holder;

(4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all refuse and remove all temporary structures not needed to test or maintain an underground gas storage reservoir;

(5) The certificate holder shall notify the Department of Energy, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if investigations or trenching in the area of the pipeline reveal soil or geological conditions that differ significantly from those described in the request for approval;

(6) The certificate holder shall submit to the Department copies of all incident reports involving the gas storage testing pipeline required under 49 CFR §191.15;

(7) The certificate holder shall allow properly identified representatives of the Council or Department of Energy to inspect the pipeline at any time, including all materials, activities, premises and records pertaining to design, construction, operation or retirement of the pipeline;

(8) The certificate holder shall notify the Department when it begins construction, shall keep the Department informed of construction progress and any unusual events or circumstances and shall notify the Department when it begins to use the pipeline for reservoir testing or maintenance;

(9) The certificate holder shall notify the Department if it terminates use of the gas storage testing pipeline; and

(10) If the certificate holder decides to convert the gas storage testing pipeline to operational use, the certificate holder shall notify the Department and, if required under OAR 345-027-0050, submit a request to amend the site certificate.

Stat. Auth.: ORS 469.405

Stats. Implemented: ORS 469.405 & 469.992

Hist.: EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0000

### Policy

(1) The purpose of the Council enforcement program is to protect the health and safety of the public and the environment by ensuring compliance with the terms and conditions of site certificates, Department of Energy orders as described in OAR 345-027-0230, Radioactive Materials Transport Permits and applicable statutes, rules and orders of the Council

# ADMINISTRATIVE RULES

and by obtaining prompt correction of violations. The Department of Energy or the Council may impose a sanction for:

(a) A violation of any term or condition of a site certificate or a Radioactive Materials Transport permit;

(b) A violation of any applicable provision of ORS Chapter 469, any rule promulgated or administered by the Council, or any order of the Council;

(c) A violation of a Department of Energy order as described in OAR 345-027-0230; or

(d) A history of non-compliance by the certificate holder with applicable rules or license requirements of more than one other state agency having enforcement jurisdiction.

(2) The Council secretary has discretion to issue a notice of violation, except that the Council may instruct the secretary to issue a notice of violation. Factors the Council or Council secretary shall consider in deciding whether conditions or circumstances warrant issuing a notice of violation are:

(a) Did the responsible party report the conditions or circumstances in a timely manner?

(b) Are the conditions or circumstances limited to the possible violation of a reporting requirement?

(c) Are the conditions or circumstances the result of ambiguous language in the requirement in question?

(d) Are the conditions or circumstances the result of a change to the design, construction, operation or retirement of a facility for which a site certificate has been issued, and did the certificate holder decide that no amendment of the site certificate was required, based on a reasonable analysis of the criteria in OAR 345-027-0050(2)?

(e) Has the violation in question been cited by any other state agency having jurisdiction?

(f) Are the conditions or circumstances within the control of the responsible party?

Stat. Auth.: ORS 469.470, 469.607 & 469.992

Stats. Implemented: ORS 469.085, 469.470, 469.607 & 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0005

### Definitions

As used in this division, the following definitions apply:

(1) "Responsible party" means:

(a) A certificate holder;

(b) A radioactive materials transport permit holder;

(c) A person to whom the Council has granted an exemption from the site certificate requirement under OAR 345-015-0350 to 345-015-0370; or

(d) Any person otherwise subject to the requirements of this chapter.

(2) "Compliance audit" means a program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, site certificate conditions or Radioactive Materials Transport Permit requirements.

Stat. Auth.: ORS 469.470 & 469.605

Stats. Implemented: ORS 469.085 & 469.440

Hist.: EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0010

### Report by a Responsible Party

The responsible party shall make reports as specified in these rules and in the site certificate or Radioactive Materials Transport Permit. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms or conditions of a site certificate, the terms or conditions of any order of the Council, the terms or conditions of a Department of Energy order as described in OAR 345-027-0230, the requirements of OAR 345 division 50 or the requirements of a Radioactive Materials Transport Permit, the responsible party shall:

(1) As soon as reasonably possible, notify the Department of the conditions or circumstances that may constitute a violation, giving all pertinent facts including an estimate of how long the conditions or circumstances have existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit.

(2) As soon as reasonably possible, initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence.

(3) Submit to the Department a written report within 30 days of discovery. The report shall contain:

(a) A discussion of the cause of the reported conditions or circumstances;

(b) The date of discovery of the conditions or circumstances by the responsible party;

(c) A description of immediate actions taken to correct the reported conditions or circumstances;

(d) A description of actions taken or planned to minimize the possibility of recurrence; and

(e) For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of divisions 22 and 24 of this chapter as a result of the reported conditions or circumstances.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.440

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0020

### Notice of Violation

(1) If the Department of Energy determines upon inspection as provided for in OAR 345-026-0050 or 345-060-0007, upon receipt of a report from the responsible party under OAR 345-029-0010 or by other means that there has been a violation for which sanctions may be imposed as described in OAR 345-029-0000, the Department may serve a notice of violation upon the responsible party. The Department shall serve the notice of violation by personal service or by first class, certified or registered mail.

(2) In the notice of violation, the Department shall include:

(a) A reference to the statute, administrative rule, Council order, Department of Energy order, or term or condition of a site certificate or Radioactive Material Transport Permit violated as determined by the Department;

(b) A statement of the facts upon which the Department based its determination that a violation occurred, including the date of discovery;

(c) A requirement for the responsible party to provide a written response to the notice of violation within 30 days or other specified time;

(d) A statement of the responsible party's right to a hearing as provided for in OAR 345-029-0070 if the Department later issues a notice of assessment of civil penalty as described under OAR 345-029-0060; and

(e) The Department of Energy's classification of the violation, including a statement of the consideration given to the following factors:

(A) The performance of the responsible party in taking necessary or appropriate action to correct or prevent the violation;

(B) Any similar or related violations by the certificate holder or Radioactive Material Transport Permit holder in the previous 36 months;

(C) Any adverse impact of the violation on public health and safety; and

(D) For a violation of the terms or conditions of a site certificate, any adverse impact of the violation on resources protected by Council standards or site certificate conditions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085, 469.440 & 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0030

### Classification of Violations

The Department of Energy shall determine the classification of a violation based upon severity and considering the guidelines in this rule. The Department may issue a notice of violation for Class I or Class II violations. The Department may, if special circumstances warrant, determine a classification at variance from the guidelines listed below:

(1) In general, the following violations are classified as Class I violations:

(a) Violation of a term or condition of a site certificate or Radioactive Material Transport Permit;

(b) Violation of an order of the Council;

(c) Violation of any applicable rule in divisions 22 through 60 of this chapter;

(d) Violation of a Department of Energy order as described in OAR 345-027-0230; or

(e) Violation of any applicable provision of ORS Chapter 469.

(2) In general, the Department may escalate any Class I violation to a Class II violation. Factors the Department may consider in escalating a Class I violation to Class II include whether the responsible party reported the conditions or circumstances of the violation, the duration of the violation, whether the responsible party implemented prompt and effective

# ADMINISTRATIVE RULES

corrective actions, the impact on public health and safety or on resources protected by Council standards, and the past performance of the responsible party. To escalate a violation to Class II, the Department must find that the violation meets one of the following criteria:

(a) It is a repeated violation. The Department shall consider whether the successive violation could reasonably have been prevented by the responsible party by taking appropriate corrective actions for a prior violation;

(b) It resulted from the same underlying cause or problem as a prior violation;

(c) It is a willful violation; or

(d) The violation results in a significant adverse impact on the health and safety of the public or on the environment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085, 469.440 & 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0050

### Enforcement Conference

(1) After issuing a notice of violation for a Class II violation, the Department of Energy shall provide the responsible party an opportunity for an enforcement conference to discuss the cause and consequences of the violation and to describe the corrective actions taken. The Department may use information discussed at the conference in determining the appropriate enforcement action.

(2) Following the enforcement conference, if any, the Department shall confirm or amend the classification of the violation and shall issue an amended notice of violation, if appropriate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085, 469.440 & 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0060

### Civil Penalties

(1) Following the responsible party's response to the notice of violation described under OAR 345-029-0040, and any enforcement conference, the Department of Energy may assess a civil penalty for a Class II violation. The Department shall determine the amount of the civil penalty, if any, as follows:

(a) Base amount:

(A) \$1000 per day from the date of discovery for a violation of site certificate terms or conditions or violation of a Department of Energy order as described in OAR 345-027-0230, or \$2000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months; or

(B) \$100 per day from the date of discovery of a violation of a Radioactive Material Transport Permit or of the rules of divisions 50 and 60 of this Chapter; or

(C) \$2000 per day from the date of discovery for a violation of an enforcement order of the Council, or \$5000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months;

(b) The Department may multiply the base amount by a factor of:

(A) 3.0 if the Department finds the violation was intentional or reckless; or

(B) 5.0 if the Department finds the violation was intentional or reckless and the violation involved a requirement relating to public health, safety or the environment;

(c) The Department may multiply the base amount by either or both of the following factors:

(A) 0.75 if the responsible party corrected the violation within the time required to respond to the notice of violation and the responsible party has submitted a plan adequate to minimize the possibility of recurrence; and

(B) 0.8 if the responsible party reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program; and

(d) The Department shall not reduce the base amount under subsection (c) above if the Department determines an increase in the base amount is warranted under subsection (b).

(2) In a notice of assessment of the civil penalty, the Department shall include:

(a) An analysis of the violation(s) in light of the criteria described in section (1);

(b) The amount of the assessment;

(c) A proposed order assessing the civil penalty; and

(d) A statement of the responsible party's right to a contested case proceeding as provided for in OAR 345-029-0070.

(3) The Department shall serve the notice of assessment of civil penalty by personal service and by certified or registered mail.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085 & 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0070

### Contested Case Proceeding

(1) Within 20 days after the date of mailing of the notice of assessment of a civil penalty, the responsible party may submit to the Department of Energy a written request for a contested case proceeding. For the purpose of this rule, the request is submitted when it is received by the Department.

(2) If the responsible party requests a contested case proceeding within the time stated in section (1), the Council shall conduct the proceeding under the provisions of OAR 345-015-0002 to 345-015-0085.

(3) If the responsible party does not request a contested case proceeding within the time stated in section (1), the Department of Energy's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), automatically becomes final.

(4) If the responsible party requests a contested case proceeding but fails to appear, the Department of Energy's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), becomes final upon a prima facie case made on the record of the Department.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, 469.085 & 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-029-0100

### Revocation or Suspension of Site Certificate

The Council may revoke or suspend any site certificate after conducting a contested case proceeding on the revocation or suspension under the provisions of OAR 345-015-0012 through 0085. A majority vote of the Council or a request from the Department of Energy initiates a contested case proceeding on a revocation or suspension. The Council shall base revocation or suspension on any of the following grounds:

(1) The certificate holder made a material false statement in an application for a site certificate or in supplemental or additional statements of fact or studies required of an applicant when a true answer would have warranted denial of a site certificate by the Council;

(2) The certificate holder failed to comply with a term or condition of the site certificate;

(3) The certificate holder violated a Department of Energy order as described in OAR 345-027-0230;

(4) The certificate holder violated any provision of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, any administrative rule adopted under those statutes, including but not limited to rules contained in OAR chapter 345, or any order of the Council; or

(5) For a site certificate subject to ORS 469.410, having been executed prior to July 2, 1975, the certificate holder violated any the provision of ORS 469.300 to 469.520 or failed to comply with applicable health or safety standards.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.440

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-030-0005

### General

This rule applies to each research or other reactor in the State of Oregon that is designed to produce less than 200,000 thermal kilowatts. The intent of the rule is to ensure that the Energy Facility Siting Council is advised of the operation of such reactors.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.300 & 469.470

Hist.: NTEC 4, f. 10-4-72, ef. 10-15-72; NTEC 5, f. 1-19-73, ef. 2-1-73; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-030-0010

### Reports Required

(1) Annual Reports of Environmental Effects. By August 1 of each calendar year, the operator of any reactor described in OAR 345-030-0005 shall submit a report to the Council that contains the following information on reactor operation during the previous calendar year:

# ADMINISTRATIVE RULES

(a) The total amounts (measured or calculated) of radioactivity released to the environment in gaseous, liquid or solid effluents.

(b) The radionuclides present in these effluents and the quantities of principal radionuclides.

(c) The location and magnitude of the maximum measured or calculated direct radiation level in unrestricted areas from:

(A) Direct radiation from the facility;

(B) Direct radiation from facility effluents.

(d) A description of the general methods and the results of environmental monitoring.

(2) Notification of Incidents

(a) The operator of any reactor described in OAR 345-030-0005 shall promptly notify the Council by telephone of the occurrence of any incident or condition relating to the operation of the reactor that could have prevented a nuclear system from performing its safety functions as described in the Technical Specifications, as set forth at 10 CFR 50.36 in effect January 2006, or in the Safety Analysis Report, as required by 10 CFR 50.34, in effect January 2006. In addition, the operator shall submit a written report within 10 days after the occurrence.

(b) The operator of any reactor described in OAR 345-030-0005 shall notify the Council in writing within 30 days after the occurrence of any substantial variance from performance specifications contained in the Technical Specifications or Safety Analysis Report.

(3) Reports of Overexposures (from the reactor and its effluents) and Excessive Levels or Concentrations

(a) The operator of any reactor described in OAR 345-030-0005 shall promptly notify the Council by telephone if any of the following events occur:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 25 rems or more of radiation; exposure of the skin of the whole body of any individual of 150 rems or more; or exposure of the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation.

(B) The release of radioactive material in concentrations that, if averaged over a period of 24 hours, would exceed 5,000 times the applicable limits specified for such material in the Technical Specifications for effluents under 10 CFR 50.36a or personnel exposure regulations under 10 CFR 20.

(b) The operator of any reactor described in OAR 345-030-0005 shall notify the Council by telephone within 24 hours if any of the following events occur:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 5 rems or more of radiation; exposure of the skin of the whole body of any individual to 30 rems or more of radiation; or exposure of the feet, ankles, hand, or forearms to 75 rems or more of radiation.

(B) The release of radioactive material in concentrations that, if averaged over a period of 24 hours, would exceed 500 times the applicable limits specified for such materials in the Technical Specifications for effluents under 10 CFR 50.36a or personnel exposure regulations under 10 CFR 20.

(c) The operator of any reactor described in OAR 345-030-0005 shall notify the Council in writing within 30 days after occurrence of the events described in subsections (A) and (B) below. Each report required shall describe the extent of exposure of persons to radiation or to radioactive material, including estimates of each individual's exposure; the levels of radiation and concentrations of radioactive material involved; the cause of the exposure, levels or concentrations; and the corrective steps taken or planned to ensure against a recurrence.

(A) Exposure (from the reactor or its effluents) of an individual to radiation or concentrations of radioactive material in excess of any applicable limits specified in U.S. Nuclear Regulatory Commission regulations or in the reactor operating license required under 10 CFR 50.10.

(B) Levels of radiation or concentrations of radioactive material (not involving excessive exposure of any individual) in an unrestricted area in excess of ten times any applicable limit specified in U.S. Nuclear Regulatory Commission regulations or in the operating license for the reactor.

(4) Correspondence with Other State or Federal Agencies. The operator of any reactor described in OAR 345-030-0005 shall provide to the Council a copy of each report related to reactor operations that the operator submits to a state or federal agency, except for material withheld from public disclosure under **10 CFR, Part 2, Section 790**.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: NTEC 4, f. 10-4-72, ef. 10-15-72; NTEC 5, f. 1-19-73, ef. 2-1-73; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0010

### Purpose and Applicability

(1) Because virtually all materials contain some radioactivity, the purpose of the rules in this division is to identify those materials that present such small health hazards that they are exempt from the provisions of ORS 469.525 and may be disposed of within the state.

(2) The rules in this division establish standards for the siting of facilities for disposal of wastes that were generated before June 1, 1981, through industrial or manufacturing processes and that contain naturally occurring radioactive isotopes. These rules implement the requirements of ORS 469.375, 469.470 and 469.501 to 469.559 for such waste disposal facilities. Except as provided in OAR 345-050-0060, these rules do not apply to uranium mine overburden or uranium mill tailings, mill wastes or mill by-product material that are subject to OAR chapter 345, divisions 92 and 95.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0030

### Specific Exemptions

In addition to the exemptions under OAR 345-050-0020 and 345-050-0025, the following materials are exempt from the provisions of rule 345-050-0006:

(1) Radioactive material that has been incorporated into a consumer product manufactured under a license issued by the Nuclear Regulatory Commission (NRC) or by an Agreement State, if the NRC or the Agreement State that issued the license has determined that the possession, use, transfer and disposal of such consumer product are exempt from regulatory requirements. An "Agreement State" is a state to which the NRC has delegated its authority to license and regulate byproduct materials (radioisotopes), source materials (uranium and thorium) and certain quantities of special nuclear materials in accordance with section 274b of the Atomic Energy Act.

(2) Radium-bearing materials containing less than 5 picocuries of radium-226 per gram of solid, regardless of quantity.

(3) Radium-bearing material containing a total radium-226 activity of less than 10 microcuries, regardless of concentration.

(4) Thorium-bearing materials containing less than 20 picocuries of radium-228 per gram of solid, if the radium-228 is present with the parent thorium-232, regardless of quantity.

(5) Thorium-bearing materials containing a total radium-228 activity of less than 100 microcuries, if the radium-228 is present with the parent thorium-232, regardless of concentration in the solid.

(6) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses that are disposed of or treated at a hazardous waste disposal facility licensed by the U.S. Environmental Protection Agency (U.S. EPA), by the Oregon Department of Environmental Quality, or by another state delegated the responsibility to regulate the disposal or treatment of hazardous waste by the U.S. EPA.

(7) Wastes generated before June 1, 1981, through industrial or manufacturing processes that contain only naturally occurring radioactive isotopes, if such wastes are disposed of at a facility for which the Council has issued a site certificate in accordance with ORS 469.375 and OAR 345-050-0040 through 345-050-0130.

(8) Maintenance of radioactive coal ash at the site of a thermal power plant for which the Council has issued a site certificate.

(9) Wastes containing only naturally occurring radioactive isotopes other than those in the uranium and thorium decay series, as long as the isotopes exist in their naturally occurring isotopic concentrations.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0035

### Pathway Exemption

Naturally occurring radioactive materials are exempt from the provisions of OAR 345-050-0006 if the Council or the Department of Energy finds that accumulation of material cannot result in exposures exceeding 500 millirem of external gamma radiation per year, nor in the release of effluents to air and water in annual average concentrations exceeding the values in **Table 3**. The Council or the Department shall base its finding on

# ADMINISTRATIVE RULES

an evaluation of potential radiation exposures and effluent releases performed under the following conditions:

(1) The evaluation considers material in the form in which it exists when it is removed from the users' equipment, systems, or settling ponds prior to any dilution or remedial action designed to reduce radiation levels.

(2) The evaluation does not consider any ameliorating effects of land use restrictions, maintenance operations, or cover material at the disposal site.

(3) The evaluation covers accumulations of material over the reasonably projected period of waste generation.

(4) The evaluation bases external gamma radiation exposures on actual measurement with allowance for the degree of equilibrium and for self-shielding.

(5) The evaluation uses the following premises in computing radon concentrations in the air above a disposal site containing radium-226:

(a) The evaluation assumes that any house built on ground contaminated with radium-226 has an 8-foot high ceiling on the first floor, has one complete air change per hour, and has a foundation constructed so as to meet the **Structural Specialty Code** (State of Oregon Uniform Building Code) in effect on March 1, 1979 without allowance for any special construction or treatments designed to reduce radon diffusion into the structure;

(b) The evaluation bases the relation between radon-emanation rate and radium concentration upon experimental measurements on material intended for disposal.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0036

### Gamma Pathway Exemption Interpretive Rule

(1) In determining compliance with OAR 345-050-0035 when considering external gamma radiation exposure, the Council or the Department of Energy must find that the disposal in Oregon of waste materials containing naturally-occurring radioactive materials (NORM) cannot result in doses to individuals greater than 500 millirem (mrem) per year. If doses could exceed this limit, the Council or the Department shall find that the waste material is radioactive and requires disposal in a licensed radioactive waste disposal site. To find the waste materials exempt, the Council or the Department must find that the waste materials meet air and water (including radon and leaching) pathway exemptions in OAR 345-050-0035. To determine compliance with the gamma pathway exemption in OAR 345-050-0035, the following conditions apply:

(a) "Waste material" means the annual solid waste stream leaving a site for landfill disposal.

(b) Actual field gamma radiation exposures are measured. The exposure readings are compared with the levels given in section (2) of this rule. The levels given in section (2) correspond to a potential 500 mrem dose per year. They are based on the dose a person might receive being 90 percent of the time in a house built on a homogeneous, semi-infinite plane (slab) of NORM assuming the house has a two-inch wooden floor over a two-foot crawl space and assuming exposure is measured at three feet above the floor. Computer modeling was used to correlate the radiation levels measured in the house to radiation from NORM in two container geometries — a standard 55-gallon steel drum and a box measuring 1.5 x 1 x 2 feet (H x W x L).

(c) Readings are in microRoentgen per hour (uR/hr) using a detection system that is sensitive enough to determine compliance with the gamma radiation levels in section (2). Systems are calibrated according to National Institute of Standards and Technology (NIST) procedures with an NIST-traceable source, or equivalent calibration as judged by the Council Secretary. Measurements are made at a distance of one foot from the waste container. The contents of the container are proportional in composition to the average waste material. The highest reading measured around the container is used.

(2) The following readings correspond to a potential dose of 500 millirem per year for the respective container geometries. Long-lived radionuclides are assumed to be in secular equilibrium. If measurements as described in subsection (1)(c) of this rule produce readings below the following levels, the Council or the Department shall find the waste material is exempt based on the gamma pathway only:

(a) Standard 55-gallon steel drum: 18 uR/hr (above background) at one foot;

(b) Box (1.5H x 1W x 2L feet): 18 uR/hr (above background) at one foot.

(3) The Department may approve the use of exemption levels corresponding to container types other than those in section (2) to determine compliance if:

(a) The exemption levels for other container types are derived by the same computer model and assumptions used to calculate the exemption levels for the drum and the box in section (2);

(b) Measurements are made in compliance with subsections (1)(b) and (c);

(c) The contents of containers larger than a box or drum are uniformly mixed before readings are taken to determine compliance.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 2-1993, f. & cert. ef. 3-19-93, EFSC 3-1993, f. & cert. ef. 3-22-93; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0038

### Water Pathway Exemption Interpretive Rule

(1) In determining compliance with OAR 345-050-0035 when considering release of effluents to water, the Council or the Department of Energy must find that the disposal in Oregon of waste materials containing naturally occurring radioactive materials (NORM) cannot result in effluents with annual average concentrations exceeding the values in **Table 3** of this division. If effluent concentrations could exceed this limit, the Council or the Department shall find that the waste material is radioactive and require disposal in a licensed radioactive waste disposal site. To find the waste materials exempt, the Council or the Department must also find that the waste materials meet air and gamma (including radon release) pathway exemptions in OAR 345-050-0035. To determine compliance with the water pathway exemption in OAR 345-050-0035, the following conditions apply:

(a) "Waste material" means the annual solid waste stream leaving a site for landfill disposal.

(b) At least four representative samples of the waste stream being evaluated must be tested using EPA Method 1312, "Synthetic precipitation leaching procedure" (SPLP). The resultant extractant must be analyzed for the radioactive constituents in the waste by a procedure of suitable accuracy and specificity that is approved by the Department.

(c) The results of the analysis of the extractant samples shall be compared to the values for concentrations in water above natural background shown in **Table 3** of this division.

(2) The statistical results of the analyses of the SPLP extractants shall be reported to the Department.

(a) If the mean of the analytical results from the first sample set multiplied by a factor of 20 is greater than 50 percent of the value for the most restrictive isotope in **Table 3** and the coefficient of variation (the standard deviation of the sample divided by the mean of the sample set) is greater than 0.25, an additional set of samples must be analyzed to better characterize the waste stream. This statistical evaluation and, if indicated, reanalysis must be made after each set of analyses. No more than 20 analyses are required to characterize the waste stream, but it must be shown that a good faith effort was made to analyze representative samples.

(b) If the mean of the analytical results from the first sample set multiplied by a factor of 20 is less than 50 percent of the value for the most restrictive isotope in **Table 3**, no further analyses are required.

(3) If the mean value from the analyses of the SPLP extractants for a single isotope multiplied by a factor of 20 exceeds the value in **Table 3**, the waste material is radioactive waste under Oregon law. If more than one radioactive isotope is present and the sum of the ratios of the individual concentrations of those isotopes multiplied by a factor of 20 to the values in **Table 3** for those isotopes is greater than 1, the waste material is radioactive waste under Oregon law. See Note 1 in **Table 3**.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0050

### Definitions

The definitions set out in ORS 469.300 apply in interpreting these standards, unless the context requires otherwise or unless a term is specifically defined in this rule. Additional definitions are:

(1) "Area" means all locations adjacent to a facility determined by the Council to be directly affected by a force of nature to the eventual detriment of site integrity.

(2) "500-year flood plain" means the extent of a 500-year flood.

# ADMINISTRATIVE RULES

(3) "Active fault" means a fracture along which rocks or soil on one side have been displaced with respect to rocks or soil on the other side in Holocene time (i.e., the most recent epoch of the Quaternary period, extending from the end of Pleistocene to the present). "Active fault zone" means an area of one or more active faults.

(4) "Mass movement" means ground surface instabilities that result in land sliding, flow, creep or any other instabilities found by the Council to threaten the integrity of the facility.

(5) "Director" means the Director of the Oregon Department of Energy.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 4-1995, f. & cert. ef. 11-28-95; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0070

### Alternate Site

A person shall not locate a waste disposal facility at a site unless there is no available alternative site for disposal of such wastes:

(1) A site outside of Oregon is not available unless appropriate local, state and federal regulatory agencies have issued the necessary permits to allow present commercial use of the site for disposal of wastes of the nature produced by the applicant.

(2) A site is not available unless the Council finds it to be the best site reasonably available for the disposal of such wastes. In making this finding, the Council may rely on a report of possible sites provided by the applicant. If the Director or the Council finds the list to be deficient, the Council may consider additional sites. The applicant may either perform the additional site evaluations itself or elect to have the Director perform them. The applicant shall reimburse the Director for all costs of site evaluations done by the Director.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-050-0120

### Bonding and Financial Ability

(1) A person shall not locate a waste disposal facility at a site unless, if federal funding for remedial actions is not available, the applicant provides a surety bond in the name of the state in an amount determined by the Oregon Department of Energy to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate condition.

(2) The applicant shall estimate the cost of closing the site, including the cost of the effort to comply with the site suitability requirements of OAR 345-050-0060 and the radioactive release limits of OAR 345-050-0100. To determine the cost of monitoring the site, providing for its security after closure and, in the case of a facility with a site certificate, ensuring performance of site certificate conditions, the applicant shall base the estimate on the amount of investment principal that would be required to produce proceeds sufficient to provide for the cost of quarterly visits to the plant site by state regulatory agencies for inspections and environmental sampling.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-060-0001

### Definitions

(1) The definitions set out in ORS 469.300 are the definitions to be used in interpreting the rules in this division, unless the context requires otherwise or unless a term is specifically defined in this rule. Terms not otherwise defined are defined as found in 10 CFR 71 and 49 CFR 171 through 178 in effect as of the date of this rule.

(2) "Radioactive material" is as defined in 49 CFR 173.403 in effect as of the date of this rule.

(3) "Radioactive material shipments" include but are not limited to any number of truck trailers, automobiles, vans or barges, moved by one or interconnected power sources.

(4) "Radiopharmaceuticals" are radioactive materials used in the medical testing or treatment of animals or humans.

(5) "Radiographic materials" include any sealed radioactive source fastened or contained in any instrument used for the examination of the macroscopic structure of materials by nondestructive methods using the source.

(6) "Well-logging radioactive materials" are radioactive sources used in measuring devices or tools used to obtain information about wells or the adjacent soil or geologic formations.

Stat. Auth.: ORS 469.470, 469.605 & 469.607

Stats. Implemented: ORS 469.603 - 469.615

Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-060-0003

### Applicability and Scope

(1) These rules apply to the transportation of radioactive material by means other than railcars in the State of Oregon. The rules contained in OAR 345-060-0001 to 345-060-0055 are auxiliary to and supplemental to the rules of OAR 740-110-0060 to 740-110-0090 for highway transport.

(2) Transport by or under the direction of an agency of the federal government in federal vehicles is exempt. This section does not exempt other shipments:

(a) That are subject to federal physical security requirements;

(b) That originate from or are destined for a federal facility; or

(c) That include material owned by the federal government.

(3) In accordance with ORS 469.603 and 469.607, it is the intent of these rules to be consistent with the United States Department of Transportation and Nuclear Regulatory Commission rules.

Stat. Auth.: ORS 469.470, 469.605 & 469.607

Stats. Implemented: ORS 469.603 - 469.615

Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-060-0004

### Permits

(1) Persons must obtain an "Oregon Radioactive Material Transport" permit from the Oregon Department of Transportation (ODOT) Motor Carrier Transportation Division (MCTD) prior to transport in the State of Oregon of radioactive material that requires a placard on the vehicle according to 49 CFR 172(f) in effect as of the date of this rule.

(2) A carrier shall submit a permit application annually to ODOT MCTD, 550 Capitol Street NE, Salem, Oregon 97301. A carrier applying for the first time shall submit the application at least 30 days prior to transporting any materials specified in section (1).

(3) ODOT may issue a permit on an emergency basis by telephone when the carrier cannot comply with the 30 day requirement of section (2) as a result of conditions beyond the carrier's control. A carrier acquiring a permit under this section shall provide the information contained in subsections (4)(a) through (d) and (f) of this rule and the name of its insurance company, policy number, minimum levels of coverage and date of policy expiration or verification of self insurance.

(4) In the permit application, the carrier shall include:

(a) The name and address of the carrier;

(b) The telephone numbers of the carrier that will be answered at any time for emergencies and a statement that the carrier has a 24-hour telephone number for contacting all shippers;

(c) A description of the material to be transported, number of shipments and estimated radioactivity per shipment. Precise information is not necessary if unavailable;

(d) A description of the route or routes to be taken and approximate schedule. Precise information is not necessary if unavailable;

(e) A description of any violations by the applicant of any local, state or federal regulations within the past two years related to radioactive material transportation. The carrier may satisfy this requirement by submitting copies of the most recent federal or state motor carrier safety or hazardous material audit and inspection reports that include descriptions of those violations, if any;

(f) ODOT Operating Authority Identification Number, U.S. Department of Transportation Number, and U.S. Environmental Protection Agency Identification Number, when appropriate; and

(g) Proof of insurance including minimum levels of coverage and policy expiration date or verification of self-insurance.

(5) ODOT shall issue a regular permit if the applicant's record of violations of federal and state motor carrier safety and hazardous material requirements indicate that its practices have not and will not create an undue risk to public health, safety, or the environment.

(6) ODOT shall issue a conditional permit, which requires pre-trip notification to arrange for inspection, to any carrier who has a "conditional" safety fitness rating pursuant to the authority of Title 49 CFR 385.1 in effect as of the date of this rule.



# ADMINISTRATIVE RULES

(7) ODOT shall not issue an Oregon Radioactive Material Transport permit if the carrier has an "unsatisfactory" safety fitness rating pursuant to the authority of Title 49 CFR 385.1 in effect as of the date of this rule.

(8) For all shipments requiring an Oregon Radioactive Material Transport Permit, the carrier shall have a copy of the permit in the vehicle during shipment.

(9) Any person who has been denied a permit under this rule may submit to the Department of Energy a written request for a contested case proceeding. In the request, the person shall describe the issues to be contested, state the facts believed to be at issue, and include the person's mailing address. The Council shall conduct the proceeding under the provisions of OAR 345-015-0012 to 345-015-0085. After the hearing in the contested case proceeding, the Council, in its final order, shall grant or deny the permit.

(10) Once issued, permits remain valid for one year from the date of issuance unless revoked or suspended under section (11).

(11) ODOT or the Department of Energy may revoke or suspend permits for failure to comply with the conditions named on the permit or violations of the motor carrier safety requirements or hazardous or radioactive materials requirements.

(12) For reinstatement of a permit revoked or suspended under section (11) of this rule, the carrier shall submit a new application and evidence that the carrier has taken remedial actions to prevent recurrence of the violation(s).

Stat. Auth.: ORS 469.470 & 469.607  
Stats. Implemented: ORS 469.603, 469.605, 469.607 & 469.615  
Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 3-1983, f. & ef. 11-4-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91, Prior sections (5)-(10) renumbered to 345-060-0006(1)-(5); EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-060-0005

### Notification for Inspection

(1) For shipments of irradiated reactor fuel, the shipper shall submit notification pursuant to Nuclear Regulatory Commission rules found in 10 CFR 71.97 and 10 CFR 73.37(f) in effect as of the date of this rule to: Secretary, Energy Facility Siting Council, 625 Marion St., NE., Salem, Oregon 97301-3737, Telephone: (503) 378-4040.

(2) The carrier shall submit notice to the Oregon Department of Transportation and make arrangements for inspection for all spent nuclear reactor fuel shipments, Highway Route Controlled Quantity Shipments and shipments that require notice and inspection under a conditional Oregon Radioactive Material Transport Permit. The carrier shall submit notice for inspection as follows:

(a) As soon as practicable but no later than 48 hours before time of shipment in Oregon;

(b) When, as a result of conditions beyond the control of the carrier, the carrier cannot comply with the 48-hour minimum notification, then the carrier shall give notice immediately by telephone or in any event not later than on the next working day and shall explain why the carrier could not comply with the 48-hour requirement;

(c) When an inspection has been scheduled, the carrier shall give additional notice if the shipper or carrier cancels the shipment or if the carrier will arrive at the inspection location early or late by two or more hours;

(d) The carrier shall make all notice for inspection and schedule changes in writing or by telephone between 8 a.m. and 5 p.m. (Pacific time) to ODOT MCTD, 550 Capitol Street NE Salem, Oregon 97301, Telephone: (503) 378-5916;

(e) In a notice for inspection, the carrier shall include the following information:

(A) The carrier's name, address, telephone number and ODOT MCTC Field Number;

(B) The shipper's and receiver's names, addresses and telephone numbers;

(C) A description of the material that shall include proper shipping name, hazard class, hazardous material identification number and total quantity by weight or volume and number of curies;

(D) A description of the route and approximate schedule; and

(E) A description of the transport vehicle(s) and name(s) of driver(s).

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

Stat. Auth.: ORS 469.470 & 469.607  
Stats. Implemented: ORS 469.603, 469.605 & 469.607  
Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-060-0006

### Fees

(1) Except as provided in section (2) through (5) of this rule, the carrier shall submit a \$70 fee to the Oregon Department of Energy, 625 Marion St., N.E., Salem, Oregon 97301-3737 for each placarded shipment. The Department invoices motor carriers each three months for shipments recorded at Oregon Ports of Entry in the previous quarter. The Department may establish with carriers special invoice procedures for shipments that do not regularly pass through an Oregon Port of Entry.

(2) For placarded shipments of well-logging material, radiographic material and radiopharmaceuticals, the carrier shall submit an annual fee of \$500 or \$70 per shipment, whichever is less.

(3) No additional fee will be charged for shipments for which:

(a) The cargo is transferred from a previous vehicle for which a fee has been assessed, or

(b) The vehicle has a number of stops before unloading the radioactive cargo for which a fee has been assessed.

(4) Radioactive material carriers may petition for an alternative fee schedule. The secretary of the Council may grant such a request based on evaluation of whether:

(a) The carrier demonstrates that the applicable fee schedule severely impacts the cost of the product;

(b) Other payments or services to the Department support applicable safety programs of the State of Oregon;

(c) The shipment of the material involves a single radioactive source and frequent movement between sites where the source is used; or

(d) The carrier is a public university or research organization using the material for public benefit.

(5) The carrier shall pay a \$100 fee for each shipment traveling under a temporary permit, unless the carrier applies for a permit from the Oregon Department of Transportation within two weeks after the carrier first gives notice of the need for a permit.

Stat. Auth.: ORS 469.470 & 469.607  
Stats. Implemented: ORS 469.603, 469.605, 469.607 & 469.611  
Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 3-1983, f. & ef. 11-4-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91, Renumbered from 345-060-0004(5)-(10); EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-060-0007

### Inspections

The State of Oregon or its agents may inspect shipments under these rules for compliance with applicable rules and regulations. The State shall inspect all irradiated reactor fuel (defined in 10 CFR 73.37 in effect as of the date of this rule) and highway route controlled quantity shipments (defined in 49 CFR 173.403 in effect as of the date of this rule). The state may choose to waive inspection if the shipment is carrying a valid Commercial Vehicle Safety Alliance inspection sticker from another state. The state may inspect samplings of other shipments. The State may inspect highway shipments made under conditional permits described in OAR 345-060-0004(6). The State shall make arrangements for inspection when the carrier gives notice for inspection, as described in OAR 345-060-0005.

Stat. Auth.: ORS 469.470, 469.605 & 469.607  
Stats. Implemented: ORS 469.603 - 469.615  
Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-060-0045

### Financial Assurances

(1) If required by the Price-Anderson Act (42 USC Section 2210, in effect as of the date of this rule), the carrier or shipper shall maintain insurance on shipments of spent nuclear reactor fuel.

(2) Carriers of radioactive materials shall comply with applicable federal and Oregon insurance requirements (see Oregon Administrative Rules, chapter 740, division 40, Oregon Department of Transportation rules and Title 49 CFR, Part 387, in effect as of the date of this rule).

(3) Carriers of radioactive material shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during transportation and pay for the cost of response to an accident.

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

Stat. Auth.: ORS 469.470 & 469.607  
Stats. Implemented: ORS 469.603, 469.605, 469.607 & 469.615  
Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-060-0055

### Enforcement

(1) The Director of the Oregon Department of Energy may issue an order to halt the transport of radioactive material if he or she believes there is a clear and immediate danger to public health or safety. The Director may serve the order without prior hearing or notice.

(2) In accordance with Division 29 of this chapter, the Department of Energy may issue a notice of violation and may assess a civil penalty for violations of the rules of this division or applicable provisions of ORS Chapter 469.

Stat. Auth.: ORS 469.470 & 469.607  
Stats. Implemented: ORS 469.603 - 469.615  
Hist.: EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-070-0005

### Purpose

The purpose of these rules is to protect the confidentiality of information submitted to the Energy Facility Siting Council and the Secretary regarding security programs for nuclear-fueled power plants, nuclear installations and the transportation of radioactive materials to and from such facilities.

Stat. Auth.: ORS 469.530  
Stats. Implemented: ORS 469.530  
Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-070-0010

### Legislative Authority

These rules are promulgated concurrently by the Council and the Director pursuant to their respective rulemaking authorities contained in ORS Chapter 183, ORS 469.470, 469.501 to, 469.507, 469.530, 469.560 and ORS 192.500, in order to implement their joint responsibility under ORS 469.530.

Stat. Auth.: ORS 469.530  
Stats. Implemented: ORS 469.530  
Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-070-0015

### Definitions

(1) "Nuclear installation" is defined in ORS 469.300.

(2) "Security program" means any plan or procedure the primary function of which is to protect nuclear power plants, nuclear installations, transportation and storage of new or irradiated nuclear fuel elements or transportation and storage of fissile material against any deliberate act that could directly endanger the public health and safety including exposure to radiation, including, but not limited to, plans or procedures for:

(a) Controlling entry to the site or portions of the site of fixed installations;

(b) Deterring or discouraging penetrations of sites or carriers by unauthorized persons;

(c) Detecting such penetrations in the event they occur;

(d) Apprehending in a timely manner unauthorized persons or authorized persons acting in a manner constituting a threat of sabotage or theft;

(e) Providing for appropriate authorities to take custody of violators.

(3) "Fissile material" means fissile plutonium, uranium-233, and uranium-235 in any combination sufficient to cause (gm Pu/200 gm) + (gm U-233/200 gm) + (gm U-235 contained in uranium enriched to more than 20 percent in U-235)/350gm to be greater than unity.

(4) "Safeguards information (SI)" means information that specifically identifies:

(a) Detailed security measures for the protection of special nuclear material; or

(b) Detailed security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

Stat. Auth.: ORS 469.470  
Stats. Implemented: ORS 469.530  
Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-070-0020

### Confidential Treatment Required

The Council and the Director shall receive, and maintain as confidential, information submitted by any person pursuant to ORS 469.530 for review and approval to the extent the information falls within the definitions of "security program" or "safeguards information" in OAR 345-070-0015. The Council and Director shall take all reasonable precautions to:

(1) Limit the number of persons within the Department of Energy having access to such information; and

(2) Physically safeguard such information.

Stat. Auth.: ORS 469.530  
Stats. Implemented: ORS 469.530  
Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-070-0025

### Releases of Non-Confidential Information

In reviewing information submitted to them under ORS 469.530, the Council and Director shall jointly determine whether specific portions of such information are not within the definition of "security program" in OAR 345-070-0015 and shall promptly arrange for the physical segregation and public availability of all information not entitled to confidential treatment.

Stat. Auth.: ORS 469.530  
Stats. Implemented: ORS 469.530  
Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-070-0030

### Public Statements on the Security Program

(1) Upon completing their review and approval of a security program and modifications to the program, the Council and Director shall promptly issue a joint statement that describes, without directly or indirectly breaching the confidentiality of the security program:

(a) The nature and scope of the review conducted;

(b) The adequacy of the security program; and

(c) A general description of the security measures.

(2) In the event of discovery of noncompliance with approved security programs, the Council and Director will issue a joint statement describing the general nature of the noncompliance without directly or indirectly breaching the confidentiality of the security program.

Stat. Auth.: ORS 469.530  
Stats. Implemented: ORS 469.530  
Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-076-0010

### Purpose

The rules in this division supplement the general standards in OAR chapter 345, division 22, for the siting of energy facilities and apply to any nuclear-fueled thermal power plant or nuclear power plant, as defined in ORS 469.300 and their related and supporting facilities.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.470  
Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-076-0012

### Rules That Apply to Nuclear Power Facilities

(1) The rules in this division apply to site certificate applications for nuclear-fueled thermal power plants and nuclear power plants and their related and supporting facilities.

(2) In addition to these rules, the General Standards for Siting Facilities contained in OAR chapter 345, division 22, apply to a decision whether to grant or deny issuance of a site certificate for a nuclear power facility.

(3) The Council may adopt siting standards for nuclear power facilities if the Department receives a notice of intent to apply for a site certificate for such a facility.

(4) The Council shall not issue a site certificate for a nuclear-fueled thermal power plant until the electors of this state have approved the issuance of the certificate as required under ORS 469.597.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.300, 469.597  
Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-076-0020

### Definitions

In this division, the following definitions apply:

(1) The term "operation of the nuclear power facility" includes its normal operation and the accumulation and storage of wastes generated thereby.

(2) The term "nuclear power facility" means a nuclear-fueled thermal power plant or a nuclear power plant as defined in ORS 469.300 and their related or supporting facilities.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.300

# ADMINISTRATIVE RULES

Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 1-1978(Temp), f. & ef. 1-5-78; EFSC 3-1978, f. & ef. 2-21-78; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-076-0050

### Federal Waste Depository

To issue a site certificate for a nuclear power facility, the Council must find that there is an adequate federal repository for the disposal of high-level radioactive waste as described in ORS 469.595.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.300  
Hist.: EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0010

### Purpose

The purpose of these rules is to establish standards for uranium mills and related and supporting facilities. The Council will apply these standards in reaching a decision for or against issuance of a site certificate for the construction and operation of a uranium mill and its related or supporting facilities, as defined in OAR 345-092-0025. The Council may adopt additional standards.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0012

### Applicability and Statutory Authority

(1) In addition to the standards in OAR chapter 345, divisions 22, 23 and 24, the standards in this Division are applicable to a site certificate application for a uranium mill and its related or supporting facilities as those terms are defined in OAR 345-092-0025.

(2) These standards are authorized under ORS 469.553, 469.556 and ORS 183 and should be interpreted so as to carry out the fundamental policy of 469.310.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0014

### Mandatory Site Certificate Conditions

In addition to any other site certificate conditions that the Council may impose, the Council shall impose a site certificate condition that requires the certificate holder to design, build, operate and retire a uranium mill in accordance with the design standards contained in OAR 345-092-0031(1), (5) and (6), 345-092-0040(1), (2) and (3)(c) and 345-092-0050 and in accordance with any representations made in satisfaction of OAR 345-092-0031(6) and (7) and 345-092-0040(3)(a) and (d).

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553  
Hist.: EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0025

### Definitions

(1) The definitions set out in ORS 469.300 apply in interpreting rules in this division, unless the context requires otherwise or unless a term is specifically defined in this rule.

(2) "Uranium mill" means a site at which ore is milled primarily for the recovery of uranium by conventional methods, which involve the crushing, grinding and leaching (acid or alkaline) of the ore, followed by chemical separation and concentration of uranium. As used in this division, "uranium mill" does not include facilities for the extraction of uranium by in situ mining or heap leaching.

(3) "Mill tailings" means the residues remaining after extraction of uranium from its ore at a uranium mill.

(4) "Related or supporting facilities" means, in addition to related or supporting facilities as defined in ORS 469.300, structures adjacent to and associated with a uranium mill including areas from which ore is mined to produce feed material for the mill, ponds designed for the storage of mill tailings or other materials and any sites for the permanent disposal of mill tailings and mine overburden.

(5) The term "facility" means a uranium mill and its related or supporting facilities.

(6) "Facility boundary" means the boundary within which the applicant or site certificate holder has the legal right to control the access of individuals.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0031

### Standards Relating to Public Health and Safety of Uranium Mill Operation, Decommissioning and Waste Disposal

In determining whether a proposed facility satisfies the requirements of this rule, the Council will accept, where applicable, the assumptions and methods used or approved by the federal Nuclear Regulatory Commission (NRC) or the Environment Protection Agency (EPA) in evaluating compliance with their respective regulations, in the absence of clear and convincing evidence that the use of such assumptions and methods will not adequately protect the health and safety of the public. To issue a site certificate for a uranium mill, the Council must find that:

(1) The facility can be designed, constructed and operated such that there is reasonable assurance that:

(a) During normal operations of the facility, the annual radiation dose equivalent to any member of the public will not exceed the limits specified in OAR 345-095-0090(1).

(b) The release of airborne effluents will not result in ambient levels exceeding the limits in OAR 345-095-0090(2).

(c) The facility shall be located at a remote site. To be considered remote, the calculated population doses within a 50-mile radius of the mill resulting from all exposure pathways will not exceed:

(A) Whole Body — 50 person rem/year;

(B) Lung — 500 person rem/year;

(C) Bone — 1250 person rem/year.

(2)(a) The site selected for final disposal is suitable for disposal of uranium mill tailings and wastes from decommissioning the uranium mill and the proposed amount thereof intended for disposal at the site. In order for the Council to find the site to be suitable, the Council must find that the applicant has evaluated reasonable disposal methods for the site including, but not limited to, below ground disposal, fixation of tailings with asphalt or cement, single tailings dam and multiple dams or dikes.

(b) In the evaluation required under (a), the applicant must provide the data needed to determine the effect of the alternate disposal method on the economic viability of the facility. The applicant must demonstrate that reasonably expected wind and water erosion will not uncover uranium mill tailings and wastes from decommissioning the uranium mill and that surface and ground waters will not become contaminated with chemicals or radioactivity in excess of those levels specified in OAR 345-092-0040(4). The applicant must demonstrate that water contamination will not occur by use of a transport model that uses the existing aquifer boundaries, hydrogeologic flow rates, soil absorption phenomena (e.g., filtration, ion exchange, precipitation, etc.) and the leachability of materials from the uranium mill tailings under reasonably expected natural conditions at the site. The applicant must consider perturbations caused by reasonably expected hydrogeologic changes at the site.

(3) The amount of uranium mill tailings and waste that would result from decommissioning the uranium mill must be disposed of at the site in Oregon, rather than permitting their uncontrolled abandonment, to protect the environment and the health, safety and welfare of the people of the state from such wastes.

(4) There is no available, economically feasible alternative to the applicant's proposal for disposal of uranium mill tailings and wastes from decommissioning the uranium mill, in the proposed amounts, inside or outside of the state. The applicant must evaluate alternatives including, but not limited to return of tailings to the mine, creation of a regional disposal facility, disposal in an out-of-state commercial disposal site and at least 2 alternative sites within 20 miles. The Council will not consider an alternative to be available unless such alternative provides superior protection to the public health and safety than the proposed site.

(5) The proposed amount of uranium mill tailings and wastes from decommissioning the uranium mill can be disposed of at the site in a manner compatible with the regulatory programs of the federal government in existence on the date of adoption of these standards for disposal of such wastes.

(6) The proposed amount of uranium mill tailings and wastes from decommissioning the uranium mill can be disposed of at the site in a manner that is coordinated with the regulatory programs of adjacent states in existence on the date of adoption of these standards for disposal of such wastes. To support a Council finding that the manner of disposal can be coordinated with regulatory programs of adjacent states, the applicant must demonstrate that radiological impacts in adjacent states from disposal of uranium mill tailings and wastes from decommissioning the uranium mill are not likely to exceed the applicable standards for disposal of these wastes that are in effect in the adjacent state on the effective date of this standard.

# ADMINISTRATIVE RULES

(7) After disposal of uranium mill tailings and wastes from decommissioning the uranium mill, the calculated radon emanation rates at the site are likely to be no greater than 2 picocuries per square meter per second above natural background levels that existed at the site prior to disposal of any wastes, and calculated gamma radiation levels are not likely to be statistically different from background levels that existed at the site prior to disposal of any wastes.

(8) The applicant has identified all reasonably expected loads, including but not limited to seismic events and liquefaction, hydrostatic, flood, wind and ice loads expected to be placed on any dike or dams associated with the facility, and the applicant has demonstrated that such dikes and dams can withstand these loads without failure.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0040

### Standards Relating to Environmental Impacts of Uranium Mill Operation

To issue a site certificate for a uranium mill, the Council must find that:

(1) Release of airborne particulates from the facility can be controlled through the use of baghouses or equivalent methods to the maximum extent consistent with existing milling technology and without increasing occupational health and safety risks.

(2) All mill ponds used for the collection and storage of mill tailings and chemical agents can be designed or sited in such a manner as to preclude seepage into any groundwater aquifers to the maximum extent consistent with existing impoundment technology.

(3) Studies have been performed characterizing the relative abundance and diversity of the plant and animal species at the proposed site of the facility and:

(a) The proposed facility is not likely to jeopardize the continued wildlife use of deer, elk and antelope wintering ranges or migration routes of migratory wildlife.

(b) The above ground portions of the proposed facility are not located on antelope fawning areas, sage grouse strutting and nesting areas or waterfowl nesting and rearing areas that are necessary to sustain the existing local or migratory populations of such species.

(c) Areas within the boundary of the facility site with unstable or fragile soils have been satisfactorily identified and available construction techniques can be employed to reduce adverse impacts such as erosion and compaction.

(d) The bird species using the area affected by the proposed facility have been identified, and the facility is not likely to jeopardize the continued existence of local or migratory populations of such bird species.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0050

### Standards Relating to Beneficial Use of Wastes

To issue a site certificate for a uranium mill and related and supporting facilities, the Council must find that liquids from the facility can be recycled consistent with existing and economic technology and process requirements.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-092-0110

### Applications and Site Certificate Conditions

(1) Any person who intends to apply for a site certificate for a uranium mill shall submit a notice of intent subject to the requirements and procedures described in OAR chapter 345, division 20.

(2) An applicant for a site certificate shall submit an application subject to the requirements and procedures of OAR chapter 345, division 21.

(3) The Department of Energy shall apply the requirements and procedures described in OAR chapter 345, division 15, for review of the notice of intent and an application for a site certificate for a uranium mill.

(4) The holder of a site certificate for a uranium mill is subject to the requirements of OAR 345-026-0005 through 345-026-0170 and OAR chapter 345, divisions 27 and 29.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.553

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0005

### Purpose

It is the purpose of these rules to ensure that the construction, operation, and decommissioning of uranium mills and related and supporting facilities are accomplished in a manner consistent with ORS 469.310.

Stat. Auth.: ORS 469  
Stats. Implemented: ORS 469.310, 469.501 & 469.556  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0015

### Scope and Construction

(1) The rules in this Division apply to all uranium mills that use conventional alkaline or acid leach technologies, together with their related and supporting facilities, for which the Council has issued a site certificate.

(2) If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose requirements inconsistent with the rules in this Division, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.556, 469.505  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0020

### Definitions

All definitions in OAR 345-092-0025 apply to the rules in this Division.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.470 & 469.556  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0040

### Rules that Apply to Construction

The following rules apply to any ground disturbance activity on the site of a uranium mill:

(1) The certificate holder shall remove native topsoil before excavation for the mine, mill buildings, ponds and tailings disposal sites and shall stockpile the topsoil for later use in site reclamation. The certificate holder shall contour topsoil storage areas to prevent erosion and shall protect the topsoil to retain nutrients needed for subsequent use of the topsoil as a growth medium.

(2) The certificate holder shall not divert or rechannel any perennial streams.

(3) The site certificate holder shall keep the Council informed of drilling or trenching projects conducted to define hydrologic or geologic parameters related to building foundation designs, tailings retention system design, reclamation planning or environmental monitoring. The certificate holder shall notify the Council if site investigations, drillings, trenchings or construction projects including mine development reveal geologic conditions different from those described in the site certificate application. The certificate holder shall provide the information described in this rule to the Department of Energy, the Department of Geology and Mineral Industries and the Department of Water Resources on a timely basis so that the Council and other state agencies may inspect the projects.

(4) The certificate holder shall not use radioactive tailings in the construction of tailings dams.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.470 & 469.556  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0045

### Construction Reports

(1) Prior to the initial production of yellowcake, the site certificate holder shall submit copies of monthly construction progress reports to the Council. Such reports shall describe the status of mining activities, building construction and tailings dam and pond construction in sufficient detail to allow the Council or its representatives to observe significant construction progress.

(2) The certificate holder shall notify the Council of any major changes in construction schedules and of any significant changes in process equipment, pollution control equipment or facilities or equipment or facilities designed for the protection of workers.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.470 & 469.556  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

# ADMINISTRATIVE RULES

## 345-095-0060

### Standards that Apply to Operation

The following rules apply to the operation of a uranium mill:

(1) The certificate holder shall implement a safety and health program covering both occupational and radiological hazards, subject to the approval of the Council and including:

(a) Identification of an onsite occupational safety officer trained and experienced in the recognition and control of the occupational hazards of milling operations including physical and chemical hazards and the use of respiratory protection equipment.

(b) Identification of an onsite radiological safety officer trained and experienced in the recognition and control of the radiological hazards associated with uranium milling operations.

(c) Description of the authority of the safety officers to order immediate correction of safety or health hazards including process modification or cessation if, in the judgment of the safety officer, such action is required to protect workers or the public.

(d) An occupational radiological dose assessment program.

(e) A policy stating that personal protective equipment, including respirators, shall not be used routinely in lieu of process modification in order to meet personnel exposure limits.

(f) An employee training program that includes training in the safety and health hazards of facility operation and the use of personnel protection equipment and procedures.

(2) The site certificate holder shall maintain records of all yellowcake shipments including amounts, routes to be followed, description of packaging, description of labeling and a copy of the information supplied to the shipper, including instructions to be followed in case of an accident. The certificate holder shall make these records available for review by the Council or its representatives. The certificate holder shall submit an emergency plan for transportation accidents to the Council for approval before beginning operation of the facility. The certificate holder shall submit any later changes in the plan to the Council at least 45 days before they are effective, except that the certificate holder may immediately implement any temporary changes the certificate holder believes are necessary immediately for the protection of the public health and safety or the health and safety of facility personnel.

(3) The certificate holder shall have established written procedures for dealing with off-normal and emergency situations including, but not limited to:

(a) Failure of yellowcake drying and packaging dust control systems.

(b) Fire.

(c) Dam or dike failure.

(d) Slurry pipeline rupture.

(e) Hazardous process chemical spills.

(4) The certificate holder shall not use underground injection of solutions for the extraction of minerals including uranium (in situ solution mining).

(5) The certificate holder shall not remove uranium mill tailings from the facility for any purpose other than samples for research or analytical purposes. The site certificate holder shall maintain a permanent record of any tailings transfer for such purposes.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470 & 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0070

### Effluent Release Limits

The certificate holder shall operate the uranium mill to ensure that, during routine operation of the facility, effluent releases to uncontrolled areas do not exceed limits established by rules of the Public Health Division of the Oregon Department of Human Services or rules of the Oregon Department of Environmental Quality.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470, 469.525 & 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0080

### Effluent Monitoring

(1) During construction and operation of a uranium mill, the site certificate holder shall implement an effluent monitoring program to evaluate facility effluents compared to effluent releases projected in the site certificate application, to regulatory limits of the rules in this Division and to environmental impacts.

(2) The certificate holder shall submit the effluent monitoring program to the Council for approval. The Council may consult with affected state agencies before approving the program.

(3) In the effluent monitoring program, the certificate holder shall describe the methods for ensuring the adequacy of control procedures for each point of routine or potential effluent release. The certificate holder shall include in the program a method of determining average release rates, maximum release rates and total releases as well as the physical, chemical and radiological characteristics of the release.

(4) The certificate holder shall submit annual reports to the Council within 90 days of the end of each reporting year and shall include data on all effluent releases, comparison of these releases to those projected in the site certificate application and to regulatory limits, review of the adequacy of the monitoring program and recommendations and justification for any improvements in the program. For the purpose of this rule, reporting year begins upon the initiation of construction at the site and subsequent reporting years begin upon the anniversary of that date.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470 & 469.507

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0090

### Public Health Impacts

The certificate holder shall operate the uranium mill to ensure that, during operation of the uranium mill, public health impacts do not exceed the following limits:

(1) Annual dose equivalent not exceeding 25 millirems to the whole body, 75 millirems to the thyroid and 25 millirems to any other organ of any member of the public as the result of exposures to planned discharges of radioactive materials except radon and its daughters.

(2) Concentrations of total suspended particulates resulting from facility operation at any location that is routinely inhabited or visited by members of the public not exceeding 19 ug/m3 annual geometric means. The 24-hour concentration at these locations must not exceed 37 ug/m3 more frequently than once per year. In any case where measurable impacts might occur in wilderness areas designated by federal or state agencies or in designated national or state parks, the site certificate holder shall determine the concentration of total suspended particulates at the wilderness or park boundary nearest the facility. The concentration limit at that location must not exceed 5 ug/m3 annual geometric mean nor 10 ug/m3 on a 24-hour average more frequently than once per year.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470 & 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0100

### Environmental Monitoring

(1) During construction and operation of a uranium mill, the site certificate holder shall implement an environmental monitoring program to evaluate all aspects of the environment and to analyze the environment of the site compared to the baseline environmental data presented in the site certificate application and to the projected environmental impacts of facility operation.

(2) The certificate holder shall submit the environmental monitoring program to the Council for approval. The Council may consult with affected state agencies before approving the program.

(3) In the environmental monitoring program, the certificate holder shall address each item discussed in the environmental assessment, including but not limited to the following:

(a) Geography: The site certificate holder shall determine, evaluate and summarize any changes in land ownership and land use within 5 miles of the mill.

(b) Demography, Sociology and Economics: The site certificate holder shall evaluate any changes in population and nearest residences and the effects of facility operation on public services, demographic characteristics and economic status of the affected communities.

(c) Historic and Cultural Resources: The site certificate holder shall determine any changes, attributable to facility operation, in the status of any resources described in the application.

(d) Meteorology: The site certificate holder shall monitor those parameters necessary to evaluate environmental impacts of mill operation including, but not limited to wind speed and direction.

(e) Hydrology: The site certificate holder shall monitor ground water and surface water sources to determine impacts of the facility on water sources.

(f) Geology: The site certificate holder shall identify any significant geological discoveries and their potential impacts on operation of the facility.

(g) Seismology: The site certificate holder shall identify nearby earthquakes by location and intensity.

# ADMINISTRATIVE RULES

(h) Ecology: The site certificate holder shall maintain a program to identify changes in the ecological baseline and determine the extent to which mill operation is responsible for those changes.

(i) Radiological: The site certificate holder shall conduct an operational monitoring program designed to identify impacts on the environment and to allow dose assessments of any affected populations.

(j) Chemical: The site certificate holder shall maintain a monitoring program to assess project related impacts of non-radiological materials on the environment including bioaccumulation or biological effects.

(4) The site certificate holder shall prepare an annual environmental report including data on all parts of the monitoring programs described in section (3), except that the certificate holder may include the information in parts (a), (b), (c), (f) and (g) in the annual report at intervals not to exceed 5 years. The certificate holder shall submit the report to the Council within 90 days after the end of each reporting year, as defined in OAR 345-095-0080(4). The certificate holder shall include in the report: data on each part of the program; analysis of that data compared to baseline monitoring, effluent releases and projected impacts; calculated radiological impacts upon the maximum exposed member of the public and the population; review of the adequacy of the program based on experience gained; and recommendations and justification for any improvements to the monitoring program.

(5) During construction and operation of the facility, the certificate holder shall obtain and maintain control (through ownership, long term lease or other legal means) over all environmental monitoring and sampling sites sufficient to preclude the direct impact on such site of any non-facility related activities (such as logging, plowing, grazing, etc.) that could destroy the usefulness of the monitoring program. If loss of control or destruction of a sampling site occurs through no fault of the certificate holder, the certificate holder shall select a replacement sampling site and shall provide to the Council a thorough evaluation of the replacement site compared to the lost or destroyed sampling site. The certificate holder shall use the replacement site subject to Council approval.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470 & 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0115

### Violations

If air or water pollution control mechanisms malfunction or other factors result in emissions or discharges in violation of applicable standards, the certificate holder shall take the following actions:

(1) For a violation of an emission standard or discharge limit administered by an agency other than the Council, the certificate holder shall submit to the Council copies of all notifications required by the agency at the same time the notifications are submitted to the agency.

(2) For a violation of an emission or discharge standard imposed by the Council, the site certificate holder shall:

(a) Notify the Department of Energy of the violation as soon as reasonably possible after the occurrence, giving all pertinent facts including the estimated duration of the breakdown.

(b) Promptly initiate and complete appropriate actions to correct the conditions that resulted in the violation.

(c) Cease or discontinue operations of those portions of facility operation contributing to the violation, if the violation is not otherwise corrected within 48 hours after it began, except as required under sections (3) and (4).

(d) Submit to the Council an initial written report of the failure or breakdown within ten days after the occurrence. When the condition has been corrected, the certificate holder shall submit a final written report to the Council describing the causes and the actions taken to prevent similar upsets or breakdown conditions. If more than 45 days elapse between the initial and final reports, the certificate holder shall submit monthly status reports.

(3) The certificate holder shall cease yellowcake drying and packaging operations immediately upon the failure of affected emission control equipment unless alternative licensed emission control equipment, adequate to provide equivalent control of releases, is available and operational.

(4) The certificate holder shall cease the generation of tailings as soon as possible following any dam failure or threatened failure to avoid uncontrolled tailings release inside or outside of the facility and, in the meantime, shall use an unaffected impoundment of sufficient size to contain all tailings generated in that period. The certificate holder shall not restart the generation of tailings without approval by the Council.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0117

### Mill Decommissioning

Following the operational life of the facility, the certificate holder shall decontaminate the site, except for the tailings disposal area, to permit unrestricted use of the site. Reclamation of the tailings disposal area is subject to the requirements of OAR 345-095-0120.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470 & 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0118

### Mine Reclamation

Following the operational life of the facility, the certificate holder shall reclaim the mine site by modifying overburden and waste dump slopes to grades favorable to reclamation and by implementing surface water management measures to prevent water collection or erosion in the area and to aid in revegetating the site.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0120

### Tailings Disposal

The certificate holder shall reclaim the final disposal site for uranium mill tailings to meet the following requirements:

(1) Above grade tailings disposal systems must be constructed to include a secondary dam or dike capable of, and designed to, contain the maximum quantity of tailings which could be released in the case of primary containment failure. Where a multiple dam or dike system is used, secondary dams or dikes must be provided to retain any tailings released in the failure of any section of the primary containment.

(2) Following abandonment and sufficient drying time to permit satisfactory reclamation, tailings must be covered by sufficient capping material and/or overburden, not less than three meters in thickness, to ensure that radon flux from the surface of the disposal area does not exceed two picocuries per square meter per second above background.

(3) External gamma radiation levels above background must not be statistically significant.

(4) The site must be covered with riprap and must be revegetated with plant life compatible with projected site uses.

(5) Following reclamation, the site certificate holder shall develop and maintain an environmental surveillance program, approved by the Council, to verify the adequacy of reclamation and revegetation methods in complying with requirements of this rule. The certificate holder shall continue to implement the surveillance program until the state or federal government has accepted title to the property and until the certificate holder has completed its financial obligations as required by OAR 345-095-0150.

(6) All tailings disposal sites must be lined with natural materials selected for their impermeability.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0150

### Financial Assurance

(1) Before beginning construction of the uranium mill, the site certificate holder shall provide financial assurance, in a form and amount acceptable to the Council, sufficient to cover the cost of decommissioning the uranium mill and its associated facilities in accordance with OAR 345-095-0117, 345-095-0118, and 345-095-0120 and to provide long term monitoring and maintenance in an amount specified in the site certificate.

(2) When the site certificate holder has completed the decommissioning required in OAR 345-095-0117, 345-095-0118 and 345-095-0120 and the state or federal government has accepted title to the site, the site certificate may be terminated as described in OAR 345-027-0110.

(3) The adequacy of bonding or other funds shall be reviewed and adjusted by the Council annually following receipt of the site certificate holder's financial report described in OAR 345-095-0160.

Stat. Auth.: ORS 469.556

Stats. Implemented: ORS 469.470 & 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## 345-095-0160

### Financial Report

The site certificate holder and any parties owning a controlling interest in the site certificate holder and having the power to control the activities of the site certificate holder or successors in ownership shall provide to the Council an annual financial report that demonstrates financial qualifications to construct and operate the facility and that includes a discussion

# ADMINISTRATIVE RULES

of the adequacy of, and any changes in, the financial assurance required under OAR 345-095-0150.

Stat. Auth.: ORS 469.556  
Stats. Implemented: ORS 469.470 & 469.501  
Hist.: EFSC 2-1980, f. & cf. 2-28-80; EFSC 1-2007, f. & cert. ef. 5-15-07

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Adopt commercial and sport fisheries seasons in the Pacific Ocean, estuaries, Columbia River and tributaries.

**Adm. Order No.:** DFW 24-2007

**Filed with Sec. of State:** 4-16-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 635-003-0003, 635-003-0004, 635-003-0085, 635-013-0003, 635-013-0004, 635-013-0009, 635-014-0090, 635-017-0095, 635-023-0128, 635-023-0130

**Rules Repealed:** 635-017-0095(T)

**Subject:** Amend rules relating to commercial and sport salmon fishing in the Pacific Ocean; salmon fishing in specific nearshore ocean waters, bays and coastal streams; sport sturgeon fishing in the Willamette River, sport salmon fishing in the Columbia River and tributaries. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

### 635-003-0003

#### Purpose and Scope

(1) The purpose of Division 003 is to provide for management of commercial salmon fisheries off the Oregon Coast over which the state has jurisdiction.

(2) Division 003 incorporates into Oregon Administrative Rules, by reference, the annual ocean troll salmon specifications and management measures for 2007, included in the **Pacific Fishery Management Council — Adopted 2007 Ocean Salmon Management Measures and Impacts, dated April 2007**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H (61FR34572, July 2, 1996**, as amended to incorporate the standards in the **Pacific Fishery Management Council referenced document**). Therefore, persons must consult the **Pacific Fishery Management Council referenced document** and **Federal Regulations** in addition to Division 003 to determine all applicable troll salmon fishing requirements. A copy of the **Pacific Fishery Management Council referenced document** and the **Federal Regulations** may be obtained by contacting Pacific Council News at [www.pccouncil.org](http://www.pccouncil.org) or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(3) 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 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 20-1996, f. & cert. ef. 4-29-96; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07

### 635-003-0004

#### Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon 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) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial 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, Subpart H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) South of Cape Falcon to the Oregon/California border:

(a) Open to all salmon except coho April 10-April 29;

(b) It is *unlawful* to take chinook salmon less than 28 inches in length;

(c) It is *unlawful* to retain incidentally caught halibut during the March/April salmon season;

(d) It is *unlawful* to fish with gear having more than four spreads per wire, and only single point, single shank barbless hooks are allowed;

(e) It is *unlawful* to possess or land more than 100 salmon per vessel per calendar week (Sunday thru Saturday).

(f) A rectangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management Council in adjacent waters, except that prior to August 1 only fin-clipped chinook salmon may be retained in this area. This rectangular area extends from Twin Rocks (45°35'54" N. Lat.) to Pyramid Rock (45°29'48" N. Lat.) inside the 15 fathom depth contour.

(6) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; 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 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 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02, cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; DFW 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; 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 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; DFW 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 13-2006(Temp), f. 3-14-06, cert. ef. 3-15-06 thru 4-30-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07

### 635-003-0085

#### Extended Commercial Seasons

In addition to the open seasons prescribed in OAR 635-003-0003 there are open seasons for chinook salmon as follows:

(1) Chetco River Ocean Terminal Area — from October 15 through the earlier of a 1,000 chinook quota or November 5 in the area described in section (1)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of the north shore of Twin Rocks (N. Lat. 42°05'36") to the Oregon/California border (N. Lat. 42°00'00") and seaward three nautical miles offshore;

(b) During the season described in this section (1) it is unlawful to take chinook salmon less than 28 inches in total length; it is unlawful to use barbed hooks or to fish more than four spreads per line; it is *unlawful* to make more than one landing of chinook per day; and it is *unlawful* to have

# ADMINISTRATIVE RULES

in possession or to land more than 25 chinook per day taken in this fishery. Landings are restricted to Brookings.

(2) Elk River Ocean Terminal Area — from September 17-30 and November 1 through December 15 in the area described in section (2)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of Cape Blanco (42°50'20" N. Lat.) and north of Humbug Mountain (42°40'30" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (2), it is unlawful to take chinook salmon less than 28 inches in total length; it is *unlawful* to use barbed hooks or to fish more than four spreads per line; and landings are restricted to Port Orford.

(3) Tillamook Bay Ocean Terminal Area — from November 1 through November 15 in the area described in section (3)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area between Pyramid Rock (45°29'48" N. Lat.) and Twin Rocks 45°35'54" N. Lat.) and seaward three nautical miles offshore;

(b) During the season described in this section (3), it is unlawful to take chinook salmon less than 28 inches in total length and it is *unlawful* to use barbed hooks or fish more than four spreads per line.

(4) Coos River Ocean Terminal Area — from September 1-8 and 17-30 or 1,500 chinook quota in the area described in section (4)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of N. Lat. 43°31'00" and north of Cape Arago (N. Lat. 43°20'15") and within state territorial waters (seaward three nautical miles from land);

(b) During the season described in this section (4) it is unlawful to take chinook salmon less than 28 inches in total length; it is unlawful to use barbed hooks or to fish more than four spreads per line. All chinook taken in this fishery must be landed in Coos Bay.

(5) Umpqua River Ocean Terminal Area — from September 1-8 and 17-30 or 500 chinook quota in the area described in section (5)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of Tahkenitch Creek (N. Lat. 43°47'55") and north of N. Lat. 43°37'00" and within state territorial waters (seaward three nautical miles from land);

(b) During the season described in this section (5) it is unlawful to take chinook salmon less than 28 inches in total length; it is *unlawful* to use barbed hooks or to fish more than four spreads per line. All chinook taken in this fishery must be landed in Coos Bay or Winchester Bay.

(6) Siuslaw River Ocean Terminal Area — from September 1-8 and 17-30 or 2,000 chinook quota in the area described in section (6)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of Heceta Head (N. Lat. 44°08'18") and north of N. Lat. 44°00'00" and within state territorial waters (seaward three nautical miles from land);

(b) During the season described in this section (6) it is *unlawful* to take chinook salmon less than 28 inches in total length; it is unlawful to use barbed hooks or to fish more than four spreads per line. All chinook taken in this fishery must be landed in Coos Bay, Winchester Bay, Florence, or Newport.

(7) Alsea River Ocean Terminal Area — from September 1-8 and 17-30 or 2,000 chinook quota in the area described in section (7)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of N. Lat. 44°29'00" and north of N. Lat. 44°23'00" and within state territorial waters (seaward three nautical miles from land);

(b) During the season described in this section (7) it is *unlawful* to take chinook salmon less than 28 inches in total length; it is unlawful to use barbed hooks or to fish more than four spreads per line. All chinook taken in this fishery must be landed in Newport or Depoe Bay.

(8) Yaquina River Ocean Terminal Area — from September 1-8 and 17-30 or 1,000 chinook quota in the area described in section (8)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of Yaquina Head (N. Lat. 44°40'35") and north of N. Lat. 44°33'00" and within state territorial waters (seaward three nautical miles from land);

(b) During the season described in this section (8) it is unlawful to take chinook salmon less than 28 inches in total length; it is unlawful to use barbed hooks or to fish more than four spreads per line. All chinook taken in this fishery must be landed in Newport or Depoe Bay.

(9) Nestucca River Ocean Terminal Area — from September 1-8 and 17-30 or 1,000 chinook quota in the area described in section (9)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of Cape Lookout (N. Lat. 45°20'30" Lookout and north of Neskowin Cr. (N.

Lat. 45°06'00") and within state territorial waters (seaward three nautical miles from land);

(b) During the season described in this section (9) it is unlawful to take chinook salmon less than 28 inches in total length; it is unlawful to use barbed hooks or to fish more than four spreads per line. All chinook taken in this fishery must be landed in Pacific City or Garibaldi.

(10) Tillamook Bay/Nehalem River Ocean Terminal Area - from September 1-8 and 17-30 or 2,000 chinook quota in the area described in section (10)(a) of this rule:

(a) The open area is all Pacific Ocean waters inside an area south of Cape Falcon (N. Lat. 45°46'00") and north of Pyramid Rock (N. Lat. 45°29'48") and within state territorial waters (seaward three nautical miles from land);

(b) During the season described in this section (10) it is unlawful to take chinook salmon less than 28 inches in total length; it is unlawful to use barbed hooks or to fish more than four spreads per line. All chinook taken in this fishery must be landed in Garibaldi or Nehalem.

(11) It is unlawful for a vessel to have in possession or to land more than 50 chinook per calendar week (Sunday thru Saturday) taken in any of the terminal area fisheries authorized in sections (4) through (10) of this rule, combined, during the month of September.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 48-1984(Temp), f. & ef. 8-31-84; 57-1984(Temp), f. & ef. 9-15-84; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 106-1992(Temp), f. 10-8-92, cert. ef. 10-24-92; FWC 111-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 80-1994(Temp), f. 10-25-94, cert. ef. 10-26-94; FWC 82-1994(Temp), f. 10-28-94, cert. ef. 10-30-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 85-1995(Temp), f. & cert. ef. 10-20-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 66-1997(Temp), f. 10-24-97, cert. ef. 10-26-97; FWC 67-1997(Temp), f. 10-28-97, cert. ef. 10-29-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 78-2006(Temp), f. 8-7-06, cert. ef. 9-1-06 thru 12-15-06; Administrative correction 12-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07

## 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 2007, included in the **Pacific Fishery Management Council — Adopted 2007 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 **2007 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](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(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; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07

## 635-013-0004

### Inclusions and Modifications

(1) OAR 635-013-0005 through 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 **2007 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2007 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the



# ADMINISTRATIVE RULES

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 **2007 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; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; FWC 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; FWC 31-1999, f. & cert. ef. 5-3-99; FWC 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; FWC 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; FWC 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; FWC 24-2000, f. 4-28-00, cert. ef. 5-1-00; FWC 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; FWC 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; FWC 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; FWC 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; FWC 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; FWC 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; FWC 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; FWC 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; FWC 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; FWC 35-2003, f. 4-30-03, cert. ef. 5-1-03; FWC 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; FWC 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; FWC 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; FWC 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; FWC 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; FWC 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; FWC 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; FWC 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; FWC 24-2007, f. 4-16-07, cert. ef. 5-1-07

## 635-013-0009

### Tillamook Terminal Area Ocean Fishery

(1) In addition to the open seasons prescribed in OAR 635-013-0004 there are open seasons for chinook salmon in the areas described in Sections (2) and (3) of this rule.

(2) The Pacific Ocean waters inside an area south of Twin Rocks (45°35'54" N. Lat.) and north of Pyramid Rock (45°29'48" N. Lat.) and seaward three nautical miles offshore are open for chinook salmon March 15-November 15.

(3) A rectangular area offshore is open to salmon angling for fin-clipped chinook salmon from March 15 through July 31 and open to angling for all chinook from August 1 through November 15. This rectangular area extends from twin Rocks (45°35'54" N. Lat.) to Pyramid Rock (45°29'48" N. Lat.) inside the 15 fathom depth contour.

(4) During the open season for adipose fin-clipped coho salmon in the ocean, the Terminal Area and the rectangular Control Zone described in sections (2) and (3) of this rule are open to angling for salmon consistent with federal sport salmon management measures for the area from Cape Falcon to Humbug Mountain.

(5) During the period August 1-December 31, in the area described in sections (2) and (3), no more than two adult salmon may be retained per day, no more than four adult chinook salmon may be retained in any seven consecutive days, and no more than 10 adult chinook salmon may be retained per season. Adult chinook salmon catch limits include, in aggregate, salmon taken in Tillamook, Nehalem, and Nestucca bays and tributaries (see OAR 635-014-0090). For purposes of this rule, adult salmon are chinook having a length greater than 24 inches.

(6) No more than two single-point, single-shank barbless hooks are required in the ocean adipose fin-clipped coho salmon fishery and in the ocean outside the Terminal Area at all times.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 45-1983(Temp), f. & cert. ef. 9-16-84; FWC 57-1984(Temp), f. & cert. ef. 9-15-84; FWC 64-1984(Temp), f. & cert. ef. 9-21-84; FWC 59-1985(Temp), f. & cert. ef. 9-13-85; FWC 59-1986(Temp), f. & cert. ef. 9-19-86; FWC 76-1987, f. & cert. ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-

90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 31-1999, f. & cert. ef. 5-3-99; FWC 24-2000, f. 4-28-00, cert. ef. 5-1-00; FWC 28-2001, f. & cert. ef. 5-1-01; FWC 37-2002, f. & cert. ef. 4-23-02; FWC 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; FWC 35-2003, f. 4-30-03, cert. ef. 5-1-03; FWC 25-2005, f. & cert. ef. 4-15-05; FWC 24-2007, f. 4-16-07, cert. ef. 5-1-07

## 635-014-0090

### Inclusions and Modifications

(1) The **2007 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 **2007 Oregon Sport Fishing Regulations**.

(2) Big Creek downstream from the hatchery weir including the railroad trestle bridge near the mouth is closed to all angling from August 15, 2007 through September 30, 2007.

[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; FWC 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 69-1998, f. 8-28-98, cert. ef. 9-1-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 36-1999, f. & cert. ef. 5-20-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; FWC 24-2000, f. 4-28-00, cert. ef. 5-1-00; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 28-2001, f. & cert. ef. 5-1-01; FWC 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-01-01; FWC 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; FWC 81-2001, f. & cert. ef. 8-29-01; FWC 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; FWC 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; FWC 123-2001, f. 12-31-01, cert. ef. 1-1-02; FWC 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; FWC 26-2002, f. & cert. ef. 3-21-02; FWC 37-2002, f. & cert. ef. 4-23-02; FWC 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by FWC 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); FWC 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; FWC 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; FWC 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; FWC 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; FWC 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; FWC 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; FWC 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; FWC 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; FWC 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; FWC 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; FWC 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; FWC 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; FWC 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; FWC 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; FWC 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; FWC 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; FWC 79-2006, f. 8-11-06, cert. ef. 1-1-07; FWC 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; FWC 24-2007, f. 4-16-07, cert. ef. 5-1-07

## 635-017-0095

### Sturgeon Season

(1) The **2007 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 **2007 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon three days per week, Thursday, Friday and Saturday, during the following periods:

(a) January 1 through January 31.

(3) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon four days per week, Thursday, Friday, Saturday and Sunday during the following periods:

(a) February 1 through July 31; and

(b) October 1 through December 31.

(4) The retention of white sturgeon in the areas identified in subsections (2) and (3) of this rule is prohibited August 1 through September 30.

[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 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; FWC 55-2005, f. & cert. ef. 6-17-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; FWC 5-2006, f. & cert. ef. 2-15-06; FWC 79-2006, f. 8-11-06, cert. ef. 1-1-07; FWC 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; FWC 7-

# ADMINISTRATIVE RULES

2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07

## 635-023-0128

### Summer Sport Fishery

(1) The **2007 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 **2007 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2007 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through June 30, 2007, or until the harvest guideline is achieved, the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult and jack chinook salmon; and

(b) Effective June 16 through July 31, 2007, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult and jack chinook salmon.

(c) The daily bag limit for adult salmon and adipose fin-clipped steelhead combined is two fish.

[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 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07

## 635-023-0130

### Fall Sport Fishery

(1) The **2007 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 **2007 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2007 Oregon Sport Fishing Regulations**:

(3) Effective August 1 through December 31, 2007, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a chinook; except

(a) Retention of chinook is prohibited during August 1 through August 21, 2007, and September 4 through September 30, 2007; and

(b) Effective August 1 through December 31, 2007, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a chinook; except

(c) During September 5 through September 30, 2007, retention of chinook is prohibited downstream of a line projected from the lower end of Bachelor Island to the Warrior Rock Lighthouse on the Oregon bank.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07

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**Rule Caption:** Modified commercial spring salmon seasons in Columbia River Select Areas.

**Adm. Order No.:** DFW 25-2007(Temp)

**Filed with Sec. of State:** 4-17-2007

**Certified to be Effective:** 4-18-07 thru 7-26-07

**Notice Publication Date:**

**Rules Amended:** 635-042-0145, 635-042-0160, 635-042-0180

**Subject:** Amended rules to modify commercial fishing seasons for salmon in the Columbia River Select Areas. Commercial salmon gill net fishing periods previously adopted for April 19 through April 20, 2007 in the Youngs Bay; Blind and Knappa Sloughs; and Deep River Select Areas are rescinded. Modifications are consistent with the action taken April 17, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-042-0145

### Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay:

(a) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A); the spring fishery, paragraph (B); and summer fishery, paragraph (C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: 6:00 p.m. Wednesday February 14, 2007 to 12:00 noon Thursday February 15, 2007; 6:00 p.m. Sunday February 18, 2007 to 12:00 noon Monday February 19, 2007; 6:00 p.m. Wednesday February 21, 2007 to 12:00 noon Thursday February 22, 2007; 6:00 p.m. Sunday February 25, 2007 to 12:00 noon Monday February 26, 2007; 6:00 p.m. Wednesday February 28, 2007 to 12:00 noon Thursday March 1, 2007; 6:00 p.m. Sunday March 4, 2007 to 12:00 noon Monday March 5, 2007; 6:00 p.m. Wednesday March 7, 2007 to noon Thursday March 8, 2007; 6:00 p.m. Sunday March 11, 2007 to 12:00 noon Monday March 12, 2007; and 3:00 p.m. to 7:00 p.m. Wednesday March 14, 2007;

(ii) Walluski Area: 12:00 noon Sunday March 18, 2007 to 6:00 a.m. Monday March 19, 2007; 6:00 a.m. to 6:00 p.m. Tuesday March 20, 2007; 6:00 a.m. to 6:00 p.m. Thursday March 22, 2007; 12:00 noon Sunday March 25, 2007 to 6:00 a.m. Monday March 26, 2007; 6:00 a.m. to 6:00 p.m. Tuesday March 27, 2007; 6:00 a.m. to 6:00 p.m. Thursday March 29, 2007; 12:00 noon Sunday April 1, 2007 to 6:00 a.m. Monday April 2, 2007; 6:00 a.m. to 6:00 p.m. Tuesday April 3, 2007; 6:00 a.m. to 6:00 p.m. Thursday April 5, 2007; 12:00 noon Sunday April 8, 2007 to 6:00 a.m. Monday April 9, 2007; 6:00 a.m. to 6:00 p.m. Tuesday April 10, 2007.

(B) Spring Season: Entire Youngs Bay: 6:00 p.m. Monday April 23, 2007 to 6:00 a.m. Tuesday April 24, 2007; 6:00 p.m. Thursday April 26, 2007 to 6:00 a.m. Friday April 27, 2007; 6:00 p.m. Monday April 30, 2007 to 12:00 noon Tuesday May 1, 2007; 6:00 p.m. Thursday May 3, 2007 to 12:00 noon Friday May 4, 2007; 12:00 noon Monday May 7, 2007 to 12:00 noon Friday May 11, 2007; 12:00 noon Monday May 14, 2007 to 12:00 noon Friday May 18, 2007; 12:00 noon Monday May 21, 2007 to 12:00 noon Friday May 25, 2007; 12:00 noon Monday May 28, 2007 to 12:00 noon Friday June 1, 2007; 12:00 noon Monday June 4, 2007 to 12:00 noon Friday June 8, 2007; 12:00 noon Tuesday June 12, 2007 to 12:00 noon Friday June 15, 2007;

(C) Summer Season: 6:00 a.m. Wednesday June 20, 2007 to 6:00 a.m. Friday June 22, 2007; 6:00 a.m. Wednesday June 27, 2007 to 6:00 a.m. Friday June 29, 2007; 6:00 a.m. Wednesday July 4, 2007 to 12:00 noon Thursday July 5, 2007; 6:00 a.m. Wednesday July 11, 2007 to 12:00 noon Thursday July 12, 2007; 6:00 a.m. Wednesday July 18, 2007 to 12:00 noon Thursday July 19, 2007; 6:00 a.m. Wednesday July 25, 2007 to 12:00 noon Thursday July 26, 2007.

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) From February 14, 2007 through March 12, 2007 and from April 19, 2007 through July 26, 2007, the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River);

(B) On March 14, 2007, the fishing area extends from old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers;

(C) From March 18, 2007 through April 10, 2007 the fishing area extends from the first overhead powerlines downstream of the Walluski River upstream to the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net:

(a) It is unlawful to use a gill net having a mesh size that is less than 7-inches during the winter season from February 14, 2007 to April 10, 2007. From March 6 through 31, 2007 nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (can-

# ADMINISTRATIVE RULES

vas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of  $\leq 2$  inches or  $\geq 9$  inches are not required to be properly stored. Other permanent gear regulations remain in effect. It is unlawful to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 19, 2007 to July 26, 2007;

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers at the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(3) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-20-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992(Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07

## 635-042-0160

### Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A) of this rule, and the spring fishery in Blind Slough and Knappa Slough in paragraph (B) of this rule. The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:

Wednesday February 21 to Thursday February 22, 2007; Sunday February 25 to Monday February 26, 2007; Wednesday February 28 to Thursday March 1, 2007; Sunday March 4 to Monday March 5, 2007; Wednesday March 7 to Thursday March 8, 2007; Sunday March 11 to Monday March 12, 2007; Sunday March 18 to Monday March 19, 2007; Sunday March 25 to Monday March 26, 2007.

(B) Blind and Knappa Sloughs:

Monday April 23 to Tuesday April 24, 2007; Thursday April 26 to Friday April 27, 2007; Monday April 30 to Tuesday May 1, 2007; Thursday May 3 to Friday May 4, 2007; Monday May 7 to Tuesday May 8, 2007; Thursday May 10 to Friday May 11, 2007; Monday May 14 to Tuesday May 15, 2007; Thursday May 17 to Friday May 18, 2007; Monday May 21 to Tuesday May 22, 2007; Thursday May 24 to Friday May 25, 2007; Monday May 28 to Tuesday May 29, 2007; Thursday May 31 to Friday June 1, 2007; Monday June 4 to Tuesday June 5, 2007; Thursday June 7 to Friday June 8, 2007; Monday June 11 to Tuesday June 12, 2007; Thursday June 14 to Friday June 15, 2007.

(b) The fishing areas for the winter and springs seasons are:

(A) Blind Slough are those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge;

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore;

(C) During the periods identified in (1)(a)(B), the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above in (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is less than 7-inches. From March 6 through 31, 2007 nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of  $\leq 2$  inches or  $\geq 9$  inches are not required to be properly stored. Other permanent gear regulations remain in effect;

(B) During the spring fishery, outlined above in (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is more than 8-inches.

(2) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (1)(a)(A) and (1)(a)(B), the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef.

# ADMINISTRATIVE RULES

4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. & cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. & cert. ef. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. & cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. & cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. & cert. ef. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. & cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. & cert. ef. 4-17-07, cert. ef. 4-18-07 thru 7-26-07

## 635-042-0180

### Deep River Select Area Salmon Season

(1) Salmon, shad, and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) Winter season: nightly from 6:00 p.m. to 8:00 a.m. the following morning (14 hours), Sunday February 18–Monday February 19, 2007; Sunday February 25–Monday February 26, 2007; Sunday March 4–Monday March 5, 2007; and Sunday March 11–Monday March 12, 2007;

(b) Spring season: nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), Monday April 23–Tuesday April 24, 2007; Thursday April 26–Friday April 27, 2007; Monday April 30–Tuesday May 1, 2007; Thursday May 3–Friday May 4, 2007; Monday May 7–Tuesday May 8, 2007; Thursday May 10–Friday May 11, 2007; Monday May 14–Tuesday May 15, 2007; Thursday May 17–Friday May 18, 2007; Monday May 21–Tuesday May 22, 2007; Thursday May 24–Friday May 25, 2007; Monday May 28–Tuesday May 29, 2007; Thursday May 31–Friday June 1, 2007; Monday June 4–Tuesday June 5, 2007; Thursday June 7–Friday June 8, 2007; Monday June 11–Tuesday June 12, 2007; Thursday June 14–Wednesday June 15, 2007.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel:

(a) During the winter season, outlined above in (2)(a), it is unlawful to use a gill net having a mesh size that is less than 7-inches. From March 6 through 31, 2007 nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of ≤ 2 inches or ≥ 9 inches are not required to be properly stored. Other permanent gear regulations remain in effect;

(b) During the spring season, outlined above in (2)(b) it is unlawful to use a gill net having a mesh size that is more than 8-inches.

(4) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2)(a) and (2)(b) of this rule, the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. & cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. & cert. ef. 5-6-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. & cert. ef. 8-3-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru

7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. & cert. ef. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. & cert. ef. 4-17-07, cert. ef. 4-18-07 thru 7-26-07

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

**Adm. Order No.:** DFW 26-2007

**Filed with Sec. of State:** 4-19-2007

**Certified to be Effective:** 4-19-07

**Notice Publication Date:** 12-1-06

**Rules Amended:** 635-100-0125

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

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-100-0125

### State List of Threatened and Endangered Species

The state list of threatened and endangered species is as follows:

[Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

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

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

Hist.: FWC 50-1988, f. & cert. ef. 6-24-88; FWC 108-1988, f. & cert. ef. 12-29-88; FWC 40-1989, f. & cert. ef. 7-1-89; FWC 46-1991, f. & cert. ef. 5-6-91; FWC 130-1991, f. & cert. ef. 11-4-91; FWC 132-1991, f. & cert. ef. 11-19-91, cert. ef. 11-20-91; FWC 69-1993, f. & cert. ef. 11-1-93; FWC 44-1995, f. & cert. ef. 5-30-95; FWC 93-1995, f. & cert. ef. 12-8-95; Administrative Correction 3-10-98; DFW 18-1999(Temp), f. & cert. ef. 4-1-99 thru 9-27-99; DFW 24-1999(Temp), f. & cert. ef. 4-14-99, cert. ef. 5-1-99 thru 10-27-99; DFW 33-1999(Temp), f. & cert. ef. 5-7-99, cert. ef. 6-1-99 thru 11-27-99; DFW 44-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; DFW 49-1999(Temp), f. & cert. ef. 8-1-99 thru 1-27-00; DFW 51-1999, f. & cert. ef. 7-22-99; DFW 54-1999(Temp), f. & cert. ef. 8-10-99, cert. ef. 9-1-99 thru 2-27-00; DFW 63-1999(Temp), f. & cert. ef. 9-10-99, cert. ef. 10-1-99 thru 3-28-00; DFW 80-1999(Temp), f. & cert. ef. 10-11-99, cert. ef. 11-1-99 thru 4-27-00; DFW 91-1999(Temp), f. & cert. ef. 12-2-99, cert. ef. 1-1-00 thru 6-28-00; DFW 2-2000(Temp), f. & cert. ef. 2-1-00 thru 7-28-00; DFW 5-2000, f. & cert. ef. 2-3-00, cert. ef. 2-4-00; DFW 66-2005(Temp), f. & cert. ef. 7-1-05 thru 12-12-05; DFW 93-2005, f. & cert. ef. 8-19-05; DFW 26-2007, f. & cert. ef. 4-19-07

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**Rule Caption:** Amendments were made relating to the Jewell Meadows and Wenaha Wildlife Area Management Plans.

**Adm. Order No.:** DFW 27-2007

**Filed with Sec. of State:** 4-19-2007

**Certified to be Effective:** 4-19-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 635-008-0110, 635-008-0170

**Subject:** Rules were amended relating to the Jewell Meadows and Wenaha Wildlife Area management plans.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-008-0110

### Jewell Meadows Wildlife Area

The Jewell Meadows Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2007 Jewell Meadows Management Plan unless otherwise excluded or restricted by the following rules:

(1) Discharging firearms is prohibited except as authorized during game bird and game mammal seasons, or by permit.

(2) Posted Refuges and Safety Zones are closed to public access.

(3) Camping is prohibited except on areas designated for that use, or by permit.

(4) Running of dogs is prohibited.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 496.992

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 496.992

Hist.: GC 64, f. & cert. ef. 4-3-57; GC 232, f. & cert. ef. 8-13-70, f. & cert. ef. 9-11-70; GC 252, f. & cert. ef. 5-11-72, f. & cert. ef. 6-1-72. Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & cert. ef. 11-4-80; FWC 2-1981(Temp), f. & cert. ef. 1-20-81; FWC 30-1982, f. & cert. ef. 5-18-82, Renumbered from 635-008-0005(9); FWC 53-1994, f. & cert. ef. 8-25-84; DFW 27-2007, f. & cert. ef. 4-19-07

## 635-008-0170

### Wenaha Wildlife Area

The Wenaha Wildlife Area is open to wildlife-oriented public use compatible with goals and objectives contained in the 2007 Wenaha Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

# ADMINISTRATIVE RULES

(1) Motor vehicles are prohibited except on parking areas, open roads and up to 300 feet off open roads for the purpose of moving to and from campsites.

(2) Camping is prohibited except on areas designated for that use, or by permit, and may not exceed 14 days per stay.

(3) Campfires or open burning is prohibited except at campsites. Open fires are prohibited during designated fire closures.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(20); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 27-2007 f. & cert. ef. 4-19-07

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**Rule Caption:** Modified sport and commercial spring salmon seasons in the Columbia River.

**Adm. Order No.:** DFW 28-2007(Temp)

**Filed with Sec. of State:** 4-26-2007

**Certified to be Effective:** 4-26-07 thru 6-26-07

**Notice Publication Date:**

**Rules Amended:** 635-023-0125, 635-042-0180

**Subject:** Amend rule to modify recreational and commercial fishing seasons for salmon in the Columbia River. Modifications are consistent with the action taken April 25, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-023-0125

### Spring Sport Fishery

(1) The 2007 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 **2007 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1 through April 15, 2007 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16 through May 3, 2007 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained;

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed;

(c) Catch limits are two adult adipose fin-clipped salmon or two adipose fin-clipped steelhead per day. Catch limits for jacks remain in effect as per permanent regulations.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through May 15, 2007, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 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. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & 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. & 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; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07

## 635-042-0180

### Deep River Select Area Salmon Season

(1) Salmon, shad, and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) Winter season: nightly from 6:00 p.m. to 8:00 a.m. the following morning (14 hours), Sunday February 18–Monday February 19, 2007; Sunday February 25–Monday February 26, 2007; Sunday March 4–Monday March 5, 2007; and Sunday March 11–Monday March 12, 2007.

(b) Spring season: nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), Monday April 23–Tuesday April 24, 2007; Thursday April 26–Friday April 27, 2007; Sunday April 29–Monday April 30, 2007; Monday April 30–Tuesday May 1, 2007; Wednesday May 2–Thursday May 3, 2007; Thursday May 3–Friday May 4, 2007; Sunday May 6–Monday May 7, 2007; Monday May 7–Tuesday May 8, 2007; Wednesday May 9–Thursday May 10, 2007; Thursday May 10–Friday May 11, 2007; Sunday May 13–Monday May 14, 2007; Monday May 14–Tuesday May 15, 2007; Wednesday May 16–Thursday May 17, 2007; Thursday May 17–Friday May 18, 2007; Sunday May 20–Monday May 21, 2007; Monday May 21–Tuesday May 22, 2007; Wednesday May 23–Thursday May 24, 2007; Thursday May 24–Friday May 25, 2007; Sunday May 27–Monday May 28, 2007; Monday May 28–Tuesday May 29, 2007; Wednesday May 30–Thursday May 31, 2007; Thursday May 31–Friday June 1, 2007; Sunday June 3–Monday June 4, 2007; Monday June 4–Tuesday June 5, 2007; Wednesday June 6–Thursday June 7, 2007; Thursday June 7–Friday June 8, 2007; Sunday June 10–Monday June 11, 2007; Monday June 11–Tuesday June 12, 2007; Wednesday June 13–Thursday June 14, 2007; Thursday June 14–Wednesday June 15, 2007.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel:

(a) During the winter season, outlined above in (2)(a), it is unlawful to use a gill net having a mesh size that is less than 7-inches. From March 6 through 31, 2007 nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of  $\leq 2$  inches or  $\geq 9$  inches are not required to be properly stored. Other permanent gear regulations remain in effect;

(b) During the spring season, outlined above in (2)(b) it is unlawful to use a gill net having a mesh size that is more than 8-inches.

(4) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2)(a) and (2)(b) of this rule, the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07

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**Rule Caption:** Adopt inseason actions implemented by the federal government for commercial fisheries.

**Adm. Order No.:** DFW 29-2007(Temp)

**Filed with Sec. of State:** 5-1-2007

**Certified to be Effective:** 5-1-07 thru 10-27-07

**Notice Publication Date:**

# ADMINISTRATIVE RULES

**Rules Amended:** 635-004-0019

**Subject:** The rule is needed to adopt inseason actions implemented by the federal government for commercial fisheries including: rockfish conservation area boundaries and trip limits.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-004-0019**

## Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.**

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G,** provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations.**

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-04, announced inseason management measures, effective April 17, 2007, including but not limited to adjusted Rockfish Conservation Area (RCA) boundaries.

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS) by means of NMFS-SEA-07-05, announced inseason management measures, effective May 1, 2007, including but not limited to commercial trip limit tables.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), f. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07

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**Rule Caption:** Partial closure of the Umatilla River to angling for spring chinook salmon.

**Adm. Order No.:** DFW 30-2007(Temp)

**Filed with Sec. of State:** 5-9-2007

**Certified to be Effective:** 5-10-07 thru 9-30-07

**Notice Publication Date:**

**Rules Amended:** 635-019-0090

**Subject:** Amend rule to implement partial closure of the Umatilla River to angling for spring Chinook salmon.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-019-0090**

## Inclusions and Modifications

(1) The **2007 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 **2007 Oregon Sport Fishing Regulations.**

(2) The McKay Reservoir (Umatilla County) is open to angling March 1 through September 30, 2007. The daily catch limit for bass is 3 per day and minimum length is 15 inches.

(3) The Umatilla River from Highway 730 Bridge upstream to Three Mile Dam is closed to angling for spring chinook salmon effective Thursday, May 10, 2007 at 12:01 a.m.

[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; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07

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**Rule Caption:** Open a spring Chinook sport fishery on the Snake River below Hells Canyon Dam.

**Adm. Order No.:** DFW 31-2007(Temp)

**Filed with Sec. of State:** 5-9-2007

**Certified to be Effective:** 5-11-07 thru 6-18-07

**Notice Publication Date:**

**Rules Amended:** 635-023-0134

**Subject:** Amend rule to open a spring Chinook fishery from Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam on the Snake River.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-023-0134**

## Snake River Fishery

(1) Notwithstanding, all other specifications and restrictions as outlined in the current **2007 Oregon Sport Fishing Regulations**, the following conditions apply:

(2) The Snake River from Dug Bar boat ramp upstream to the deadline below Hell's Canyon Dam is open effective May 11, 2007 through July 16, 2007 during the following periods:

- Friday through Monday May 11 to May 14;
- Friday through Monday May 18 to May 21;
- Friday through Monday May 25 to May 28
- Friday through Monday June 1 to June 4;
- Friday through Monday June 8 to June 11; and
- Friday through Monday June 15 to June 18.

(3) Daily bag limit is one adipose fin-clipped spring Chinook adult or jack salmon per day.

(4) Barbless hooks are required.

[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 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07

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**Rule Caption:** Lamprey harvest at Willamette Falls.

**Adm. Order No.:** DFW 32-2007

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 6-1-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 635-017-0090

**Subject:** Amend rule regarding lamprey harvest at Willamette Falls. Expands the weekly harvest periods by one more day while rescinding the season harvest limit.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-017-0090**

## Inclusions and Modifications

(1) The **2007 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 **2007 Oregon Sport Fishing Regulations.**

(2) Pacific Lamprey Harvest:

# ADMINISTRATIVE RULES

(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 Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(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) 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.

(f) 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; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & 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, cert. ef. 1-1-04; DFW 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07

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**Rule Caption:** Modified sport spring Chinook salmon seasons in the Columbia River.

**Adm. Order No.:** DFW 33-2007(Temp)

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 5-16-07 thru 7-30-07

**Notice Publication Date:**

**Rules Amended:** 635-023-0125

**Subject:** Amend rules to modify recreational fishing seasons for spring Chinook salmon in the Columbia River. Modifications are consistent with the Joint State Action taken May 15, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-023-0125

### Spring Sport Fishery

(1) The 2007 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 2007 Oregon Sport Fishing Regulations.

(2) The Columbia River is open from January 1 through April 15, 2007 from the mouth at Buoy 10 upstream to the I-5 Bridge; from March 16 through May 3, 2007 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines; and from May 16–31, 2007 or until guideline is reached from the Rocky Point-Tongue Point line upstream to the I-5 Bridge with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained;

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits are two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead per day. Catch limits for jacks remain in effect as per permanent regulations.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line from May 16 through June 15, 2007, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 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; DFW 29-2004(Temp), f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 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; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07

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## Department of Human Services, Addictions and Mental Health Division: Mental Health Services Chapter 309

**Rule Caption:** Amendment of the PSRB administrative rules.

**Adm. Order No.:** MHS 1-2007

**Filed with Sec. of State:** 4-24-2007

**Certified to be Effective:** 4-24-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 309-032-0455, 309-032-0460, 309-032-0465, 309-032-0470, 309-032-0475, 309-032-0480, 309-032-0485, 309-032-0490, 309-032-0495, 309-032-0500, 309-032-0505, 309-032-0510, 309-032-0515

**Rules Repealed:** 309-032-0450, 309-032-0455(T), 309-032-0475(T), 309-032-0480(T), 309-032-0490(T), 309-032-0495(T), 309-032-0500(T), 309-032-0505(T), 309-032-0510(T), 309-032-0515(T)

**Subject:** The Department of Human Services, Addictions and Mental Health Division, is proposing to amend OAR 309-032-0450 through 309-032-0515 "Psychiatric Security Review Board" (PSRB) rules to allow the Division to contract directly with a community mental health and developmental disabilities program, other public agency or private corporation or an individual to provide supervision and treatment for a conditionally released person, as allowed under ORS 161.390.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

# ADMINISTRATIVE RULES

309-032-0455

## Definitions

As used in these rules:

(1) "Qualified Person" means a person who is a qualified mental health professional, is identified by the PSRB in the Conditional Release Order and who is designated by the provider to deliver and/or arrange and monitor the provision of required reports and services in this rule.

(2) "Case Number" means the unique identification number assigned to each client by the provider. No more than one such number shall be assigned to the client, and that number shall be identical for both the client's treatment record and CPMS enrollment. Once assigned, the case number must be retained for all subsequent admissions or periods of service for the client.

(3) "Client" means a person who is under the jurisdiction of the PSRB and receiving services under these rules.

(4) "Client Identifying Information" means specific personal, biographical, and demographic information about the client.

(5) "Community Mental Health Program" or "CMHP" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, and operated in a specific geographic area of the state under an omnibus contract with the Division.

(6) "Conditional Release" means placement by a court or the PSRB, of a person who has been found eligible under ORS 161.327(b) or 161.336, for supervision and treatment in a community setting.

(7) "CPMS" or "Client Process Monitoring System", means an automated client data system maintained by the Division. "CPMS" shall also mean any subsequent modification or change to this system.

(8) "Data Base" means that collection of client information obtained through the mental health assessment process. It includes, but is not limited to: Identifying information, behavioral description, presenting problem(s), psychosocial and medical histories, developmental history, mental status, and current health information.

(9) "Diagnosis" means a DSM diagnosis determined through the mental health assessment and any examinations, tests, procedures, or consultations suggested by the assessment.

(10) "DSM" means the current edition of the "Diagnostic and Statistical Manual of Mental Disorders," published by the American Psychiatric Association.

(11) "Division" means the Addictions and Mental Health Division of the Department of Human Services.

(12) "Goal" means the broad aspirations or more final objectives toward which the client is striving, and toward which all services are intended to assist the client.

(13) "Health History" means a review of the client's current and past state of health as reported by the client, including:

(a) History of any significant illnesses, injuries, allergies, or drug sensitivities; and

(b) History of any significant medical treatments, including hospitalizations and major medical procedures.

(14) "Informed Consent" means the client or guardian understands a specific diagnosis and consents to service procedures and is informed of the risks or benefits, alternative services and procedures and the consequences of not receiving a specific service or procedure.

(15) "Licensed Medical Professional" means a medically trained person who is licensed to practice in the State of Oregon and has one of the following degrees: MD (Medical Doctor); DO (Doctor of Osteopathy); NP (Nurse Practitioner); PA (Physician's Assistant); or RN (Registered Nurse).

(16) "Local Mental Health Authority", as described in ORS 430.620, means the county court or board of county commissioners or one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation.

(17) "Medication Use Record" means information kept in the client's treatment record which documents medications and/or agents prescribed or recommended by the provider's employed or contracted licensed medical professional who has prescriptive privileges, and includes medication progress notes as applicable.

(18) "Mental Health Assessment" means a process in which the client's need for mental health services is determined through evaluation of the client's strengths, goals, needs, and current level of functioning.

(19) "Mental Status Examination" means an overall assessment of a person's mental functioning that includes descriptions of appearance,

behavior, speech, mood and affect, suicidal/homicidal ideation, thought processes and content, and perceptual difficulties including hallucinations and delusions. Cognitive abilities are also assessed and include orientation, concentration, general knowledge, abstraction abilities, judgment, and insight.

(20) "Objective" means an interim level of progress or a component step that is necessary or helpful in moving toward a goal.

(21) "Progress Note" means a written summary of how the client is progressing with respect to the client's treatment plan.

(22) "Provider" means:

(a) An organizational entity which is operated by, or contractually affiliated with, a community mental health program, and is responsible for the direct delivery of mental health services to clients; or

(b) A public agency or private corporation or an individual, as provided for in ORS 161.390. Notwithstanding the conditions of certification in OAR Chapter 309, the Division may contract directly with a community mental health and developmental disabilities program, other public agency or private corporation or an individual to provide supervision and treatment for a conditionally released person.

(23) "Psychiatric Evaluation" means an assessment performed by a licensed medical professional with prescriptive privileges who is a qualified mental health professional.

(24) "Qualified Mental Health Associate" (QMHA) means a person who delivers services under the direct supervision of a qualified mental health professional, and who meets the following minimum qualifications:

(a) Has a bachelor's degree in a mental health related field; or

(b) Has a combination of at least one year's work experience and two years education, training or work experience in mental health.

(25) "Qualified Mental Health Professional" (QMHP) means a person who meets all of the following minimum qualifications:

(a) Fits one of these categories:

(A) Psychiatrist or physician, licensed to practice in the State of Oregon; graduate degree in psychology, social work, or other mental health related field; graduate degree in psychiatric nursing, licensed in the State of Oregon; registration as an occupational therapist; graduate degree in recreational therapy; or

(B) Any other person whose education and experience meet, in a determination process approved by the Division, a level of competence consistent with the standards established for qualified mental health professionals.

(b) Has demonstrated competence to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social, and work relationships; conduct a mental status assessment; document a DSM diagnosis; write and supervise a treatment plan; and provide individual, family, and/or group therapy.

(26) "Qualified Person" means a qualified mental health professional or a qualified mental health associate.

(27) "Treatment plan" means an individualized, written plan defining specific treatment objectives and proposed service interventions derived from the client's mental health assessment, and the Conditional Release Order.

(28) "Treatment Record" means a separate file established and maintained under these rules for each client.

(29) "Service Supervisor" means a person who has two years of experience as a qualified mental health professional and who, in accordance with OAR 309-032-0505, reviews the services provided to clients by qualified persons.

(30) "Setting" means the location at which a service is provided, and includes, but is not limited to: CMHP office, client's residence, or other identified location.

(31) "Significant Procedure" means a diagnostic or service modality which may have a substantial adverse effect on the client's psychological or physical health, such as administration of medications which have serious side effects.

(32) "Supervision" means monitoring of client's compliance with Conditional Release Orders, Agreement to Conditional Release, the treatment plan requirements, and any additional monitoring and reporting requirements stipulated by the PSRB, the courts, or the Division, not otherwise specified in these rules.

(33) "Termination Summary" means a summary of client progress toward treatment objectives from the time of admission to the termination of services.



# ADMINISTRATIVE RULES

(34) "Utilization Review" means a process in which client treatment records are examined by a review committee to evaluate the need for, and appropriateness of services, as well as completeness of the record.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0460

### General Standards

Providers of mental health evaluations and services under Orders for Evaluation and/or Orders of Conditional Release shall provide all reports and notifications ordered by the PSRB, under ORS 161.295 through 161.430, or otherwise required in this rule and other law. These responsibilities do not conflict with adherence to client rights under this rule and other Oregon statutes.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0465

### Order for Evaluation

Following the receipt of an Order for Evaluation from the PSRB, the provider will:

- (1) Within 15 days of receipt of the Order, schedule an interview with the client for the purpose of initiating or conducting the evaluation;
- (2) Appoint a qualified mental health professional to conduct the evaluation and to provide an evaluation report to the PSRB;
- (3) Within 30 days of the evaluation interview, submit the evaluation report to the PSRB responding to the questions asked in the Order for Evaluation; and

(4) If supervision by the provider is recommended, notify the PSRB of the name of the person designated to serve as the client's Qualified Person, who will be primarily responsible for delivering or arranging for the delivery of services and the submission of reports under these rules.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0470

### Periodic and Special Circumstance Reports to the PSRB

The service provider, acting through the designated Qualified Person, shall submit reports to the PSRB as follows:

(1) Monthly reports. Monthly reports consistent with PSRB reporting requirements as specified in the Conditional Release Order that summarize the client's adherence to Conditional Release requirements and general progress in treatment. Reports are to be received by the PSRB by the tenth day of the month following the reporting period;

(2) Interim reports. Prompt interim reports, including immediate reports by phone, if necessary, to ensure the public's or client's safety including:

(a) At the time of any significant change in the client's clinical, legal, employment or other status which may affect compliance with Conditional Release orders;

(b) Upon noting major symptoms of a psychiatric decompensation requiring psychiatric stabilization or hospitalization or any other major change in the client's treatment plan;

(c) Upon learning of any violations of the Conditional Release Order;

(d) At any other time when, in the opinion of the Qualified Person, such an interim report is needed to assist or protect the client or to protect public safety.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0475

### Minimum Treatment Services

Treatment services shall include all appropriate services determined necessary by the Community Mental Health Program or the Provider to assist the client in maintaining community placement and which are consistent with Conditional Release Orders and the Agreement to Conditional Release. Treatment shall include:

- (1) Medication management and monitoring;
- (2) Substance abuse treatment or referral;
- (3) Group, family, and individual counseling services;

(4) Health care services. The providers shall directly provide, or refer for, available health care services to the extent they are necessary for continuation of conditional release;

(5) Life skills training; and

(6) Hospital services. The provider shall directly provide or arrange for psychiatric hospital services, if needed as follows:

(a) Voluntary psychiatric hospitalization. At the discretion of the Qualified Person, and in consultation with the PSRB Executive Office, clients may be returned to psychiatric hospitalization on a voluntary basis. These returns may be prompted by a deterioration in mental status, violations of Conditional Release Orders, or at the request of the Qualified Person or the client;

(b) Conditional release revocation. If a client requires involuntary return to a State Psychiatric Hospital or center, revocation procedures shall be initiated through the PSRB. If the CMHP or the provider is unable to consult immediately with the PSRB when it is necessary to hospitalize a client involuntarily, the PSRB Executive Office shall be notified of actions taken by the next working day.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0480

### Policies and Procedures

Each provider shall have written policies and procedures governing the following:

- (1) Establishment, maintenance, and contents of treatment records;
- (2) Confidentiality of treatment records;
- (3) Safety, storage, and retention of treatment records;
- (4) Client rights specific to services received, and client appeal process and grievance procedures;
- (5) Client participation in treatment and termination planning;
- (6) Assessment, evaluation, and planning for client treatment needs;
- (7) Performance and documentation of medical services;
- (8) Establishment and maintenance of medication use record;
- (9) Performance and documentation of staff supervision;
- (10) Performance and documentation of utilization review; and
- (11) Client Revocation of the client's community placement when the client requires involuntary hospitalization and/or fails to comply with Conditional Release Orders.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0485

### Consumer Rights Specific to Services Received

In addition to client rights delineated in applicable Oregon Revised Statutes, Oregon Administrative Rules, and elsewhere in these rules, the following shall be required specific to services received:

(1) Notification of rights. At the time of enrollment, the provider shall make available to the client or guardian a document that describes the client's rights and responsibilities.

(2) Services refusal. The client shall have the right to refuse service, including any specific procedure, unless ordered by a court or the PSRB.

(3) Grievances. The client shall have the right to lodge a grievance.

(4) Access to records. The client shall have the right to access the client's own treatment records in accordance with state and federal law, including ORS 179.505, 192.505, 45 CFR 205.50, 42 CFR Part 2.

(5) Informed participation in treatment planning. The client shall be afforded the opportunity participate in an informed way in planning his or her treatment unless this participation would jeopardize the client's treatment.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0490

### Establishment and Maintenance of Treatment Record

(1) Individuality of records and maintenance. A separate, individual treatment record shall be opened and maintained for each eligible and enrolled PSRB client receiving services from the provider, including the instance in which more than one eligible and enrolled member of a family receives services from the same provider.

# ADMINISTRATIVE RULES

(2) Organization of records. Each treatment record shall be maintained to assure accessibility, uniform organization, and completeness of all components required by these rules.

(3) Signature of authors. All documentation required in this rule must be signed by the staff providing the service and making the entry. Where required, the entry must be signed by the supervisor signifying approval of the material. Each staff and supervisor signature must include the person's academic degree or professional status and the date signed.

(4) Documentation of client consent. All procedures in these rules requiring client consent shall be documented in the record on forms describing what the client has been asked to consent to, and signed and dated by the client or client representative.

(5) Error corrections. Errors in the record shall be corrected by lining out the incorrect data with a single line in ink, and then adding the correct information, the date corrected, and the initials of the person making the correction.

(6) Confidentiality of other clients. References to other clients, when included in the individual client's record, shall preserve the confidentiality of the other clients.

(7) Security. Treatment records shall be secured, safeguarded, stored, and retained in accordance with applicable Oregon Revised Statutes and Oregon Administrative Rules. The PSRB shall provide copies of all reports to the client and to the client's counsel as required by ORS 161.336(4)(d).

(8) Confidentiality of treatment records. All individuals' records are confidential except as otherwise indicated by applicable rule or laws:

(a) For the purpose of disclosure from individual medical records under these rules, service providers under these rules shall be considered "providers" as defined in ORS 179.505 and 179.506(1) shall be applicable;

(b) For the purposes of disclosure from non-medical individual records, both the general prohibition against disclosure of "information of a personal nature" and limitations to the prohibition in ORS 192.502(2) shall be applicable;

(c) This does not restrict the provider from submitting reports required in this rule to the court or the PSRB without a client's signed release of information.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0495

### Documentation of Protection of Client Rights

Treatment records shall document adherence to the client's rights:

(1) Client consent to enrollment in treatment services. At the time of enrollment, the client or guardian shall sign a document or documents which verifies the client has been informed of all client rights referred to in OAR 309-032-0485 Client; and that the client consents to evaluation and services prior to development of the treatment plan.

(2) Consent to specific treatment services. At the time of treatment plan development the qualified mental health professional responsible for development of the treatment plan shall obtain client or guardian signed consent to the treatment approaches recommended, and include this documentation in the service record.

(3) Consent to significant procedures. Whenever a significant procedure is proposed, the client's or guardian's signature verifying informed consent to the procedure shall be obtained and included in the treatment record.

(4) Refusal to consent. If the client refuses recommended treatment services, or refuses to consent to a procedure as required in these rules, the client's refusal shall be documented in the service record and the PSRB notified. The reasons for refusal and efforts to obtain the client's signature shall be documented in the client's treatment record.

(5) Documentation of disclosure of fee policy. The service record shall include documentation signed by the client verifying that fees the client will be asked to pay have been described.

(6) Authorization to release information. The service record must include documentation signed by the client authorizing any release of information by the type of information and the recipient of information.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0500

### Client Identification and Documentation of Service Needs and Delivery

Treatment records shall document the gathering of information, conduct of assessments, planning, reviews, and the provision of services as follows:

(1) Client identifying information. Client identifying information must be obtained by a QMHA OR QMHP. The information must be readily identifiable and accessible in the client's record, and include the following:

- (a) The unique case number assigned to the client;
- (b) The client's name;
- (c) The client's gender, age, and marital status;
- (d) The client's phone number and address;
- (e) Who to contact in case of an emergency and the phone or address at which contact may be made;
- (f) A copy of the CPMS enrollment form(s).

(2) Conditional release orders. A copy of the Order of Conditional Release and the Agreement to Conditional Release shall be included in the client's record.

(3) Mental health assessment. A mental health assessment shall be completed for each client within 60 days of enrollment and prior to the initial review of the treatment plan. The assessment must be completed by a QMHP who shall sign and date the final page of the assessment. The service supervisor, a psychiatrist, or a physician who is a QMHP shall review, sign and date the assessment within 60 days of the client's enrollment. The assessment must include the following elements that must be readily accessible and identifiable in the record:

(a) A statement of the client's initial goal(s) in seeking or entering treatment services and a description of events precipitating enrollment, and their related history;

(b) Historical information shall be obtained from the client, or other sources when appropriate, including but not necessarily limited to:

- (A) Mental health history;
- (B) Health history;
- (C) Substance use and abuse history;
- (D) Developmental history;
- (E) Social history, including family and interpersonal history;
- (F) Educational, vocational, and employment history; and
- (G) Legal history.

(c) A determination of the client's functional strengths and deficits including, but not necessarily limited to daily living, social and vocational skills, and current support system;

(d) A mental status examination;

(e) A summary of significant and pertinent data from the mental health assessment including client strengths and deficits;

(f) A DSM diagnosis, supported by data obtained in the assessment;

(g) Preliminary recommendations for treatment services, including psychosocial and medical interventions, additional examinations, tests, and evaluations that are needed; and

(h) A disposition statement about how the client will be served by the provider, and/or referred elsewhere, and if referred, the reasons for referral.

(4) Treatment goal identification. The treatment goals including those articulated by the client shall be recorded in the treatment record so as to be readily identifiable and accessible. Each goal must derive from the mental health assessment, and be updated as follows:

(a) To reflect significant changes in the client's status which may affect goal pursuit; and

(b) When significant new goals are identified.

(5) Treatment plan and the PSRB Order of Release. An individualized treatment plan, developed from the mental health assessment, and the client's goals so far as possible, must be completed, signed and dated by a QMHP within 60 days of the client's enrollment. The plan must be readily identifiable and accessible within the treatment record and be written at a level of specificity that will permit its subsequent implementation to be efficiently monitored and reviewed. The recorded plan shall contain the following minimum components:

(a) Specific objectives that clearly state in language understandable to the client, the component steps, or outcomes for each treatment goal, and the criteria for determining when each objective or outcome is attained;

(b) The specific services or interventions to be used to achieve each objective;

(c) The projected frequency and duration of services;

(d) Specific efforts to be undertaken by the clients both:

(A) As a participant in services being offered by the provider; and

## ADMINISTRATIVE RULES

(B) Those to be undertaken by the client personally in their daily or ongoing living activities.

(e) Identification of the qualified person assigned to the client who is responsible for coordinating services.

(6) Client participation in treatment planning. The QMHP responsible for providing services to the client must document in the client's treatment record that:

(a) The treatment goals including the client's goals for seeking services, as noted in the assessment, have been discussed with the client and consented to;

(b) The proposed treatment activities and service approaches have been discussed with the client and consented to;

(c) The provider is exempt from complying with subsection (a) or (b) of this section if the QMHP documents in the treatment record that the client is unable to participate as required in subsection (a) or (b) of this section; or, that such participation would jeopardize the client's treatment;

(d) When and if the circumstances which prevented the completion of one or more actions required by subsection (a) or (b) of this section change, such that client participation and consent can occur, the client must be afforded the opportunity to participate in the activities, and that participation must be documented in the treatment record.

(7) Medical services. Psychiatric evaluation services, and within resources specifically allocated for the purpose, other medical screening services, shall be provided. Delivery of any such services must be documented so as to be readily accessible and identifiable in the client's record, and must meet the following standards:

(a) Psychiatric evaluations shall be performed by a medical professional who is a psychiatrist, other physician, or licensed medical professional with prescriptive privileges, any of whom must be a QMHP:

(A) If the evaluation is performed by the provider's employed or contracted medical professional, it must be completed within 60 days of the client's enrollment, unless a similar evaluation was performed within 180 days prior to the enrollment. A psychiatric evaluation must be performed at least once annually. The evaluation must contain pertinent psychiatric history and information, a psychiatric diagnostic statement, and identification of medications recommended for the client's psychiatric condition;

(B) If the evaluation is performed by a medical professional not employed by, or under contract to, the provider, a summary of the evaluation must be obtained in a timely manner and include a diagnostic statement and medications recommended.

(b) If resources have been allocated for the purpose, medical screenings as follows will be provided to determine whether the client has organic diseases or conditions that cause or exacerbate the client's mental or emotional disturbance:

(A) A comprehensive health history;

(B) A physical examination;

(C) A blood chemistry screening; and

(D) Other laboratory, radiological, or diagnostic tests that may be indicated by history and physical examination.

(c) Medical screening shall be ordered within 60 days after enrollment of the client, unless a screening was performed within 180 days prior to enrollment. The data collected from the medical screening must be reviewed by a licensed medical professional, and the findings and interpretation(s), along with the licensed medical professional's recommendations for further medical tests, evaluations and treatment, filed in the treatment record;

(d) All orders for medication, laboratory and other medical procedures issued by medical staff of the provider shall be recorded in the treatment record in conformance with standard medical practice. Such orders, whether written or verbal, shall be initiated and authenticated by a licensed medical professional with prescriptive privileges. Relevant medical orders issued by medical personnel not employed by, or under contract to, the provider shall be documented through periodic consultation or exchange of information;

(e) A medication use record documenting all medications or agents prescribed or recommended for the client shall be signed by the provider's licensed medical professional having prescriptive privileges and shall be maintained so as to be readily identifiable and accessible in the treatment record. Documentation for each medication or agent prescribed or recommended shall include the following:

(A) Name of medication or agent;

(B) Dosage and method of administration;

(C) Dates prescribed, reviewed, or renewed;

(D) If administered by provider staff, the dates administered, and the signature and identification of the staff person(s) administering the medication; and

(E) Observed affects and side effects, including laboratory findings and corrective actions taken for side effects.

(8) Progress notes. Progress notes, documenting client progress toward meeting treatment plan objectives, must be recorded so as to be readily identifiable and accessible within the client's treatment record, and must meet the following requirements:

(a) A progress note shall be recorded and signed by the qualified person providing the service each time a service is provided; or at any time a significant change occurs in the client's condition;

(b) Each progress note shall specify the service(s) provided, the date provided, and the amount of time it took to delivery each service. As appropriate, progress notes shall document:

(A) Periodic discussions with the client concerning progress or difficulty in meeting objectives identified in the treatment plan;

(B) Significant changes in the client's condition including, at a minimum, documentation of changes in the client's mental status;

(C) Description of situational problems arising and their effect on the client;

(D) Description of modifications to the treatment plan that are necessary due to paragraphs (A), (B), and (C) of this subsection; and

(E) Description of services provided that depart from the treatment plan.

(9) Periodic review of assessment and plan. A review and update of each client's mental health assessment and treatment plan shall occur at least annually, unless greater frequency is required by client needs, OAR 309-0160080, or the PSRB. A copy of the review and update shall be submitted to the PSRB. Reviews and updates must be recorded so as to be readily identifiable and accessible within the treatment record and must be signed by the QMHP providing services and by supervisory personnel:

(a) The Mental Health Assessment review and update must include:

(A) An interim history, including significant changes in the client's environment, functioning, and mental status;

(B) A summary of treatment interventions used and client response; and

(C) Any change in diagnosis.

(b) The Treatment Plan review shall summarize client's progress toward meeting treatment objectives and shall include updates of, or modifications to, the treatment plan objectives.

(10) Services termination summary. A services termination summary shall be completed for each client for whom the provider no longer assumes treatment responsibility. The summary must be prepared and signed by the QMHP responsible for the provision of services to the client, and be readily identifiable and accessible within the client's treatment record. The summary must be formulated and written and the client's record closed no later than 90 days after the last treatment service contact with the client, unless otherwise specified in the treatment plan. This requirement for closure of the client's treatment record is independent of, and unrelated to, requirements for CPMS termination:

(a) The services termination summary shall include the following minimum information:

(A) The date of termination, including the date of last contact with the client;

(B) Reasons for termination;

(C) Summary of client progress for each treatment goal identified;

(D) Summary of client's status and level of functioning, including goals not accomplished; and

(E) Prognosis and recommendations for further services.

(b) In the case of a client's discharge from PSRB jurisdiction, the client, to the extent able, and family members or significant others, to the extent appropriate, shall participate in services termination planning. Such participation shall be documented;

(c) Client non-appearance. When treatment responsibility is terminated for a client who no longer appears for services, the provider must document efforts made to locate or contact the client, and, for any client remaining under PSRB jurisdiction, immediately notify the PSRB.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

# ADMINISTRATIVE RULES

## 309-032-0505

### Service Supervision

Except as provided for by section (2) of this rule, any staff providing services to a client shall be supervised:

(1) Approval of treatment plan. The service supervisor, or a psychiatrist, or a physician who is a QMHP shall review and approve by signature, the treatment plan and each periodic plan update for each client. The review(s) shall determine the appropriateness of the relationship between client needs, proposed services, services provided, and intended results. Reviews shall, at minimum, include reviewing the client's case with the qualified person(s) providing services to the client or by examining the client's treatment record.

(2) Service supervision exceptions. Notwithstanding the supervision requirements above, the provider may modify the requirements specified in these rules for supervision of staff:

(a) Who are licensed under Oregon Revised Statutes to conduct private practice without supervision (such as a physician, psychologist, or social worker); and

(b) Who are qualified mental health professionals; and

(c) Whose activities are not required to be supervised by OAR 309-016-0075 and 309-016-0080; or

(d) Who are supervisors not under supervision of another supervisor, and whose activities are not required to be supervised by OAR 309-016-0075, and 309-016-0080.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0510

### Utilization Review

Utilization reviews shall be conducted quarterly in accordance with applicable administrative rules and must include at least the following components:

(1) Completeness review. Client records shall undergo a completeness review to determine that all entries necessary to document services are present, that the records are accurate, and that the records contain all information, forms, and signatures required by these rules. The completeness review shall be conducted every quarter on a random sample of at least three percent of all active PSRB cases with no fewer than three of those cases not subject to reviews required by OAR 309-016-0090. If fewer than three PSRB service clients are enrolled, the completeness review must include each client's record.

(2) Content review. The content of client records shall be examined by a committee consisting of at least the following members:

(a) A QMHP on the staff of the provider;

(b) A QMHP not on the staff of the provider; and

(c) A licensed medical professional who is a QMHP and, when necessary, meets additional requirements set by OAR 309-016-0090 concerning Utilization Review Requirements;

(d) The content review shall be conducted on a random sample of at least three percent of all active cases, with no fewer than three cases selected for the sample, or all PSRB service clients if fewer than three persons are enrolled. The review shall meet any additional sampling requirements set by OAR 309-016-0090.

(3) Utilization review summary. Upon completion of each quarterly utilization review a summary shall be written of both the content review and the completeness review findings, presented to the provider director or designee, and retained in the provider's files. The summary shall include recommended corrective action(s), if any. Corrective actions taken shall be documented in the appropriate file.

(4) Utilization review records access. Utilization reviews of client records shall be available for examination by appropriate local, state, and federal agency representatives.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

## 309-032-0515

### Variations

(1) Criteria for a variance. Variations may be granted to a CMHP or a provider if there is a lack of resources to implement the standards required in this rule or if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules.

(2) Variance application. The CMHP or provider requesting a variance shall submit, in writing, an application to the Division that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed;

(d) A description of the individual's opinion and participation in requesting the variance;

(e) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(f) Signed documentation from the CMHP or the provider indicating its position on the proposed variance.

(3) Division review. The Assistant Director or designee of the Division shall approve or deny the request for a variance.

(4) Notification. The Division shall notify the CMHP or the provider of the decision. This notice shall be given to the CMHP or the provider within 30 days of the receipt of the request by the Division with a copy to other relevant sections of the Division.

(5) Appeal application. Appeal of the denial of a variance request shall be made in writing to the Assistant Director of the Division, whose decision shall be final.

(6) Written approval. The CMHP or the provider may implement a variance only after written approval from the Division. The intergovernmental Agreement shall be amended to the extent that the variance changes a term in that agreement.

(7) Duration of variance. A variance shall be reviewed by the Division at least every two years.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 161.295 - 161.430, 428.205 - 428.270

Hist.: MHD 2-1991, f. 1-30-91, cert. ef. 2-1-91; MHD 3-2006(Temp), f. & cert. ef. 11-1-06 thru 4-25-07; MHS 1-2007, f. & cert. ef. 4-24-07

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**Rule Caption:** Adult Foster Home 24-Hour Supervision Variance.

**Adm. Order No.:** MHS 2-2007(Temp)

**Filed with Sec. of State:** 5-4-2007

**Certified to be Effective:** 5-4-07 thru 10-31-07

**Notice Publication Date:**

**Rules Amended:** 309-040-0350

**Subject:** The Department of Human Services, Addictions and Mental Health Division (AMH) is temporarily amending Oregon Administrative Rule (OAR) 309-040-0350 to grant a variance to the requirement that a provider or caregiver must be on duty 24 hours a day in an Adult Foster Home licensed with the AMH and to develop a process of determining when residents of adult foster homes may remain at home alone unsupervised.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

## 309-040-0350

### Variance

(1) A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that such a variance does not jeopardize the health, life, or safety of the residents, and the variance would not violate or compromise applicable ORS.

(2) No variance will be granted from a regulation or provision of these rules pertaining to the license capacity of the Adult Foster Home, inspections of the Adult Foster Home, civil, legal and human rights, and inspection of the public files. No variance related to fire and life safety will be granted by the Department without prior consultation with the local fire Department or its designee.

(3) A provider or applicant may apply to the Department for a variance specific to each individual resident under ORS 443.725, subject to the following requirements:

(a) The variance is effective only for the specific resident who has been assessed and meets the safety requirements prescribed by the Department. This assessment shall become part of the resident's PCP;

(b) A variance allowing a specific resident to be in the Adult Foster Home alone shall not exceed 4 hours in a 24-hour period;

(c) No variance allows a provider to leave a resident alone in the Adult Foster Home between the hours of 11:00 pm to 6:00 am; and

(d) 24-hour per day care shall continue for any resident that does not qualify to be in the Adult Foster Home alone.

(4) Variances will be granted or denied in writing. All variances granted will be reviewed with each license renewal under OAR 309-040-0345.

# ADMINISTRATIVE RULES

A variance granted to one Adult Foster Home provider, or a variance granted regarding a specific resident, does not constitute a precedent for any other Adult Foster Home, provider or resident.

(5) The AFH provider or applicant may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Department. The Department will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Department will be final.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0035, MHD 3-2005, f. & cert. ef. 4-1-05; MHS 2-2007(Temp), f. & cert. ef. 5-4-07 thru 10-31-07

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**Rule Caption:** Repeal of unnecessary rules in OAR Chapter 309.

**Adm. Order No.:** MHS 3-2007

**Filed with Sec. of State:** 5-11-2007

**Certified to be Effective:** 5-11-07

**Notice Publication Date:** 3-1-07

**Rules Repealed:** 309-019-0000, 309-019-0010, 309-019-0020, 309-019-0030, 309-031-0005

**Subject:** The Department of Human Services, Addictions and Mental Health Division, is proposing to repeal OAR 309-019-0000 through 309-019-0030 (Essential Community Provider Certification) & 309-031-0005 (Dammach State Hospital Transportation Services) as these rules are no longer needed or used by the Division.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

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**Department of Human Services,  
Children, Adults and Families Division:  
Child Welfare Programs  
Chapter 413**

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

**Adm. Order No.:** CWP 6-2007

**Filed with Sec. of State:** 5-1-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 11-1-06

**Rules Adopted:** 413-020-0233, 413-020-0236, 413-020-0245, 413-020-0255

**Rules Amended:** 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0240

**Rules Repealed:** 413-020-0220, 413-020-0250, 413-020-0260, 413-020-0270

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-020-0200

### Purpose

The purpose of these rules (OAR 413-020-0200 to 413-020-0255), is to describe the responsibilities of the Department to:

(1) Monitor the challenging behavior of children and young adults in substitute care with relative caregivers or foster parents;

(2) Identify when relative caregivers or foster parents are having difficulty managing the challenging behavior of children and young adults;

(3) Describe the responsibilities of the relative caregiver or foster parent and the Department in an emergency when a child or young adult's behavior places the child or young adult or others in imminent risk of harm, and physical restraint is used; and

(4) Provide training and support services to relative caregivers or foster parents who are having difficulty managing the challenging behavior of children and young adults.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2003, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07

## 413-020-0210

### Definitions

The following definitions apply to OAR 413-020-0200 to 413-020-0255:

(1) "Behavior log" means the relative caregiver or foster parent's record of the child or young adult's behavior and the relative caregiver or foster parent's actions and interventions to manage the child or young adult's behavior.

(2) "Behavior Intervention plan" means a documented set of strategies that is developed to assist a relative caregiver or foster parent to proactively manage a child or young adult's challenging behavior (CF 0994).

(3) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(4) "Child" means a person under 18 years of age.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(6) "Incident report" means a written description of an event that affects a child or young adult in the care or custody of the Department (CF 0985).

(7) "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure in order to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. "Physical restraint" does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(8) "Physical Restraint Intervention — Incident Report" means a written description of an event involving a child or young adult that requires the relative caregiver or foster parent to intervene through the use of physical restraint (CF 0984).

(9) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(10) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SCF 8-1997, f. 8-12-97, cert. ef. 8-25-97; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07

## 413-020-0230

### Behavior Intervention Services

The caseworker of the child or young adult must perform all of the following actions to monitor a child or young adult's challenging behavior:

(1) Routinely share with the relative caregiver or foster parent the information known to the Department regarding the child or young adult's challenging behavior and the relationship of the challenging behavior to the child or young adult's mental and physical condition.

(2) During monthly contacts, review a child or young adult's challenging behavior and the interventions used by each relative caregiver or foster parent in the ongoing care of the child or young adult.

(3) Assess the relative caregiver or foster parent's implementation of any recommended, documented behavior interventions in the child or young adult's mental health assessment, physical diagnosis or diagnoses, and the case plan.

(4) Instruct the relative caregiver or foster parent to keep a record, in the behavior log, of the actions and interventions used to manage a child or young adult's challenging behavior.

(5) Assess the relative caregiver or foster parent's willingness and ability to:

(a) Implement the behavior interventions;

(b) Manage the child or young adult's challenging behavior; and

# ADMINISTRATIVE RULES

(c) Maintain conditions in the home that provide safety and well-being for the child or young adult.

(6) Assess whether additional support is needed to maintain conditions in the home that provide safety and well-being and manage a child or young adult's challenging behavior.

(7) Document the contacts with the relative caregiver or foster parent in FACIS case notes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07

## 413-020-0233

### Determine Whether to Develop a Behavior Intervention Plan for the Child or Young Adult

(1) When, after completing the actions required by OAR 413-020-0230(2) to (6), the caseworker determines that the relative caregiver or foster parent is able and willing to maintain conditions in the home that provide safety and well-being for the child or young adult, and needs a structured plan or the relative caregiver or foster parent requests a structured plan to manage a child or young adult's challenging behavior, the caseworker must develop a Behavior Intervention plan (CF 0994) for the child or young adult within 60 days.

(2) When, after completing the actions required by OAR 413-020-0230(2) to (6), the caseworker determines that the relative caregiver or foster parent is unable or unwilling to maintain conditions in the home that provide safety and well-being for the child or young adult, the caseworker must complete the actions described in Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0059(2)(b)(A) to (C).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07

## 413-020-0236

### Developing a Behavior Intervention Plan for the Child or Young Adult

Within 60 days of determining a need for, or receiving a relative caregiver or foster parent request for, a structured plan for behavior intervention, the caseworker must:

(1) Advise the relative caregiver or foster parent to continue to implement the recommended actions and interventions to manage the child or young adult's challenging behavior;

(2) Gather information from the relative caregiver or foster parent, the child or young adult, the certifier, and, if appropriate, the parents or legal guardians of the child or young adult, the child or young adult's attorney, CASA, mental health providers, school personnel, and other service providers working with the child or young adult regarding the child or young adult's challenging behavior that --

(a) Is difficult for the relative caregiver or foster parent to manage; or  
(b) Presents a threat to self or others.

(3) Meet with the relative caregiver or foster parent, the child or young adult, the certifier, and, if appropriate the parents or legal guardians of the child or young adult, the child or young adult's attorney, CASA, mental health providers, school personnel, and other service providers working with the child or young adult to develop a Behavior Intervention plan that documents:

(a) The challenging behavior of the child or young adult that requires additional support for the relative caregiver or foster parent so that they may maintain conditions that provide safety and well-being for the child or young adult;

(b) The specific strategies and actions the relative caregiver or foster parent will use to prevent, intervene, and follow-up when the child or young adult's challenging behavior presents difficulties or is a threat to self or others, including:

(A) Proactive use of space, routine, and structure of the environment;

(B) Positive reinforcement, de-escalation techniques, and therapeutic activities; and

(C) When necessary, *physical restraint* (defined at OAR 413-020-0210). Planned use of *physical restraint* may be used only as an emergency measure in response to imminent danger to self or others, and when no alternate actions are sufficient to intervene in a child or young adult's challenging behavior.

(c) The actions and assistance that the Department will provide to support the relative caregiver or foster parent in maintaining the child or young adult in the current substitute care placement.

(d) The relative caregiver or foster parent's responsibility to continue documenting the child or young adult's challenging behaviors in a behavior log.

(e) A plan for regular communication between those monitoring the child or young adult's challenging behavior (the relative caregiver or foster parent, the caseworker, and others) regarding the effect of the behavior intervention services and Behavior Intervention plan on the child or young adult's challenging behavior; and

(f) A timeline for review of the Behavior Intervention plan, which is at least every 90 days.

(4) The caseworker's supervisor must approve the Behavior Intervention plan.

(5) A Behavior Intervention plan that includes the planned use of *physical restraint* must:

(a) Focus on the intervention strategies designed to modify a child or young adult's behavior and designed to minimize the need for planned physical restraint;

(b) Use planned physical restraint only as an emergency measure in response to imminent danger to self or others, when no alternate actions are sufficient to intervene in a child or young adult's challenging behavior; and

(c) Be approved by the Child Welfare program manager.

(6) A Behavior Intervention plan may include the use of planned physical restraint only when the following conditions have been met.

(a) The relative caregiver or foster parent has completed training requirements described in OAR 413-020-0255;

(b) The relative caregiver or foster parent must agree to document the circumstances of each *physical restraint* in writing in a Physical Restraint Intervention — Incident Report (CF 984) as soon as reasonably possible after the incident; and

(c) The relative caregiver or foster parent must agree to orally report the circumstances of each physical restraint to the caseworker or the caseworker's supervisor within one working day and submit the written documentation (required in subsection (b) of this section) of the circumstances of the *physical restraint* within 48 hours.

(7) The caseworker must provide a copy of the signed Behavior Intervention plan for the relative caregiver or foster parent, and file a copy in the child's case file.

(8) The caseworker must document a summary of the Behavior Intervention plan in FACIS case notes and in the relative caregiver or foster parent's FACIS provider notes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 6-2007, f. & cert. ef. 5-1-07

## 413-020-0240

### Use of Physical Restraint in an Emergency

(1) In an emergency situation, only if the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and only if good judgment indicates that a *physical restraint* (defined at OAR 413-020-0210) can safely be implemented, the relative caregiver or foster parent should do so whether or not the relative caregiver or foster parent has attended Behavior Crisis Management Training, whether or not the child or young adult has a Behavior Intervention plan.

(a) *Physical restraint* should be implemented with the least force necessary to prevent the risk of harm to self or others and should end as soon as the risk of harm no longer exists.

(b) When the emergency situation results in any injury to the child or young adult, the relative caregiver or foster parent must immediately notify the Department's emergency 24-hour contact.

(2) Any time an unplanned physical restraint is used, the relative caregiver or foster parent must:

(a) Document the circumstances of the physical restraint in writing on a *Physical Restraint* Intervention Incident Report (CF 0984) as soon as reasonably possible after the incident;

(b) Report the circumstances of the physical restraint to the caseworker or the caseworker's supervisor within one working day; and

(c) Submit the written documentation of the circumstances of each *physical restraint* to the caseworker within 48 hours.

(3) In an emergency, if the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and good judgment indicates that a *physical restraint* cannot safely be implemented, the relative caregiver or foster parent should call the local law enforcement agency to request intervention. The relative caregiver or foster parent must:

(a) Orally report the incident to the caseworker or the caseworker's supervisor as soon as reasonably possible; and

(b) Document the incident in writing in an Incident Report (CF 0985) and submit written documentation to the caseworker within 48 hours.

# ADMINISTRATIVE RULES

(4) Mechanical restraint or seclusion of children or young adults is prohibited in an emergency or at any other time. For the purposes of this rule:

(a) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child's body as a means of controlling his or her physical activities in order to protect the child or other persons from injury. Mechanical restraint does not apply to movement restrictions stemming from physical medicine, dental, diagnostic, or surgical procedures which are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure.

(b) "Seclusion" means the involuntary confinement of a child alone in a specifically designed room from which the child is physically prevented from leaving.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 4-1996, f. & cert. ef. 9-11-96; SOSCF 8-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 3-2002, f. & cert. ef. 1-7-03; CWP 6-2007, f. & cert. ef. 5-1-07

## 413-020-0245

### Responsibilities in Monitoring a Child or Young Adult's Challenging Behavior

The caseworker must:

(1) During the required 30 day face-to-face contact with the child or young adult, monitor the interventions used in managing the challenging behavior of the child or young adult while in substitute care and determine whether the placement maintains conditions for the safety and well-being of the child or young adult.

(2) Review behavior logs as they are received, but no less than every 30 days.

(3) When it is determined that additional support is needed in the home:

(a) Consult with the certifier or the certifier's supervisor to determine if available resources or training will provide the additional support needed in the home; or

(b) Convene a meeting to develop a Behavior Intervention plan as described in OAR 413-020-0236.

(4) If there is a Behavior Intervention plan in place:

(a) Review the Behavior Intervention plan within the timeline described in OAR 413-020-0236(3)(g);

(b) Assess the effectiveness of the interventions used by the relative caregiver or foster parent; and

(c) End the Behavior Intervention plan if strategies have successfully reduced or eliminated the challenging behavior, or revise the Behavior Intervention plan when additional strategies are needed to manage challenging behavior. Any revised Behavior Intervention plan that includes the use of planned *physical restraint* (defined at OAR 413-020-0210) must be approved by the Child Welfare program manager.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07

## 413-020-0255

### Training and the Planned Use of Physical Restraint

(1) The Department has approved Behavior and Crisis Management Training as the standard behavior intervention training for relative caregivers and foster parents. The training curriculum focuses on strengthening a relative caregiver or foster parent's behavior-management skills and instructs the relative caregiver or foster parent in specific actions when intervention requires planned physical restraint (defined at OAR 413-020-0210). When additional training is needed for a relative caregiver or foster parent, the certifier must refer him or her to available training resources.

(2) When a Behavior Intervention plan includes the planned use of physical restraint to manage the behavior of a child or young adult, the caseworker must consult with the certifier to confirm the relative caregiver or foster parent has completed Behavior Crisis Management Training prior to the use of physical restraint as an intervention strategy.

(3) Child Welfare may approve comparable behavior and crisis management training obtained by a relative caregiver or foster parent for a specific child or young adult when the relative caregiver or foster parent has completed crisis intervention training selected by a school district and used in the school, or approved by the Addictions and Mental Health Division and used in a Children's Intensive Mental Health Treatment Services program. A Foster Care Coordinator or designee must approve comparable crisis intervention training courses.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 6-2007, f. & cert. ef. 5-1-07

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

**Adm. Order No.:** CWP 7-2007

**Filed with Sec. of State:** 5-1-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 2-1-07

**Rules Amended:** 413-210-0806

**Subject:** OAR 413-210-0806 is being amended to correct a clerical error that omitted the section about bond requirements for outdoor youth programs from the original text filed with the Secretary of State, while this text had been included on the Department website version of this rule. The restored section sets out the bond requirements for outdoor youth programs based on ORS 418.246.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-210-0806

### License Required

(1) License Required. Unless exempted by Oregon laws governing private child caring agencies, no person or organization shall operate an outdoor youth program in Oregon without a valid license issued by DHS in accordance with OAR 413-210-0800 through 0883.

(2) Compliance Required. Any agency which provides the services of an outdoor youth program shall comply with these rules governing outdoor youth programs and OAR 413-210-0010 through 0070; 413-210-0140, 413-210-0190 – 0250 except that 413-210-0020(2)(c)(A)-(E) shall not apply.

(3) Inspection. The outdoor youth program shall provide to DHS representatives upon request access to all of the program's accounts and records.

(4) Bond Required. Each outdoor youth program applying for licensure shall file with DHS a Fiduciary Bond in the amount of \$50,000 or 50 percent of the program's yearly budget, whichever amount is less. The Bond shall be issued by a surety or insurer that is licensed to do business in the State of Oregon. The Bond must be written and issued on the Surety Bond Form DHS CF1066, provided to the outdoor youth program by DHS. The required Bond shall be continuous until canceled and shall remain in full force at all times to comply with the section. Any claims or potential impairment to the Bond shall be reported to DHS within 30 days of the incident or occurrence involving the claim or potential impairment. In the event of impairment to the Bond, the outdoor youth program will be required to obtain additional bonding to satisfy the requirements of this section. The surety or insurer shall give DHS at least 30 days written notice before canceling or terminating its liability under the Bond. An action on the Bond may be brought by any person aggrieved by the misconduct of an outdoor youth program required to be licensed under ORS 418.205 to 418.310. As evidence of the Bond, the outdoor youth program shall keep a certified copy of the Bond on file with DHS at all times.

(5) Insurance Required. The outdoor youth program shall secure, and keep in effect during the term of the license, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State of Oregon. This insurance shall include personal injury liability, completed operations and contractual liability coverage, and be written on an occurrence basis. Combined single limit per occurrence shall not be less than one million dollars (\$1,000,000). Each annual aggregate limit shall not be less than two million dollars (\$2,000,000). Coverage shall be primary and non-contributory with any other insurance and self-insurance. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the outdoor youth program or its insurer(s) to the Department of Human Services. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of licensure requirements and may be grounds for immediate termination of the license to operate the outdoor youth program. As evidence of the insurance coverages required by this section, the outdoor youth program shall furnish Certificate(s) of Insurance to DHS prior to the issuance of license to the outdoor youth program and at the time of all subsequent renewals. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). The outdoor youth program shall pay for all deductibles, self-insured retention and/or self-insurance included hereunder.

(6) Workers Compensation. The outdoor youth program shall comply with all provisions of ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. The outdoor youth program shall ensure that each of its subcontractors complies with these requirements.

# ADMINISTRATIVE RULES

(7) Financial Stability. The outdoor youth program shall demonstrate sufficient financial stability and backing to ensure effective and responsible delivery of its services. Consideration of the program's financial stability will be based on its reports using generally accepted accounting practices. The reports should reflect a program with the capacity to meet current and future obligations; reasonably free from debt obligations; and free from onerous liens or bankruptcy proceedings.

(8) Unless otherwise exempt, an outdoor youth program is subject to the requirements of the Interstate Compact for Placement of Children. The program shall have written policy and procedures regarding compliance with Compact as found in ORS 417.200 through 417.260.

Stat. Auth.: ORS 409.050, 418.005, 418.240  
Stats. Implemented: ORS 409.010, 418.205-418.325, 418.990-418.998  
Hist.: SOSCF 9-2002, f. & cert. ef. 5-29-02; CWP 1-2004, f. & cert. ef. 1-9-04; CWP 7-2007, f. & cert. ef. 5-1-07

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**Rule Caption:** Changing OARs affecting Child Welfare programs.  
**Adm. Order No.:** CWP 8-2007

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**Notice Publication Date:** 11-1-07

**Rules Amended:** 413-070-0400, 413-070-0410, 413-070-0430, 413-070-0440, 413-070-0450, 413-070-0470, 413-070-0480, 413-070-0490

**Rules Repealed:** 413-070-0420, 413-070-0460

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0400

### Purpose

These rules (OAR 413-070-0400 to 413-070-0490) describe the responsibilities of the substitute caregiver and the Department when a child or young adult in the Department's care or custody placed with a substitute caregiver, including a pre-adoptive placement, is prescribed or administered psychotropic medication.

Stat. Auth.: ORS 418.005, 418.517  
Stats. Implemented: ORS 109.675, 418.517  
Hist.: SCF 3-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

## 413-070-0410

### Definitions

The following definitions apply to OAR 413-070-0400 to 413-070-0490:

- (1) "Child" means a person under 18 years of age.
- (2) "Department" means the Department of Human Services, Child Welfare.
- (3) "Designee" means a person whom the designator directly and immediately supervises, or a person with equal or greater management responsibility than the designator.
- (4) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.
- (5) "Licensed health care professional" means a person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license or certification.
- (6) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.
- (7) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication

depends upon its stated, intended effect when prescribed because it may have many different effects.

(8) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(9) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(10) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(11) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005, 418.517  
Stats. Implemented: ORS 109.675, 418.517  
Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

## 413-070-0430

### Department Records, Medication Review, and Documentation Requirements

(1) The Department must keep the medical history record of any child or young adult in substitute care. As used in this section, "medical history" includes a child or young adult's records of medical care, including but not limited to the names of former and current health providers, medical services and diagnoses, evaluations, immunizations, and prescribed medications.

(2) The caseworker must:

(a) Document and inform the substitute caregiver of known health information of a child or young adult at the time of placement, including information regarding any prescribed and administered psychotropic medication;

(b) Retain copies of all medical documents received by the Department in the medical section of the case file of the child or young adult in substitute care;

(c) Document and update records of known health conditions of the child or young adult in substitute care when developing the case plan and at each case plan review;

(d) Complete the notifications required per OAR 413-070-0480 and 413-070-0490;

(e) Review the child or young adult's psychotropic medication with the caseworker's supervisor and notify the Department's Personal Care RN Coordinator or designee when any of the following circumstances become known to the caseworker:

(A) A child under six years of age has been prescribed a psychotropic medication;

(B) More than three psychotropic medications are administered to a child or young adult in substitute care;

(C) More than one psychotropic medication is being administered from one of the following classifications of psychotropic medication:

- (i) Stimulants;
- (ii) Mood stabilizers;
- (iii) Anti-depressants;
- (iv) Anti-anxiety;
- (v) Anti-psychotics.

(D) When a psychotropic medication is prescribed PRN. As used in this rule, "PRN" means ordered to be given as needed (pro re nata);

(E) When a child or young adult's monthly medication log reflects administration of a psychotropic medication prescribed PRN more than two times in any seven day period.

(f) After the review required in subsection (e) of this section, when advised by either the supervisor or the Department Personal Care RN Coordinator:

(A) Consult with the prescribing licensed health care professional to seek additional information; or

(B) Seek a second opinion regarding a child or young adult's psychotropic medication.

(g) Assure that the diagnosed condition of the child or young adult in substitute care and the effects of the administration of psychotropic medication are routinely reviewed and monitored by the licensed health care professional;

(h) Report to the prescribing health care professional when the condition of the child or young adult in substitute care is not improving or is deteriorating;



# ADMINISTRATIVE RULES

(i) Request and receive updated health information of the child or young adult in substitute care and effects of the prescribed psychotropic medication therapy from the substitute caregiver during the required 30 day contact with the substitute caregiver;

(j) Receive and review each month the medication log of the child or young adult in substitute care and file a copy in the medical section of the case record of the child or young adult;

(k) Document the review and actions taken subsequent to the review required in subsection (e) of this section, and all consultation notes in FACIS case notes;

(l) File all written medical records in the medical section of the case file.

Stat. Auth.: ORS 418.005, 418.517  
Stats. Implemented: ORS 109.675, 418.517  
Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

## 413-070-0440

### Authority for the Administration of a Psychotropic Medication Prescription in an Emergency

(1) In any instance where the behavior or condition of a child or young adult requires immediate, emergency medical care, which includes the administration of psychotropic medication, the District Manager or designee may consent to emergency medical care as described in Child Welfare Policy I-B.1.4, "Guardian and Legal Custodian Consents", OAR 413-020-0100 to 413-020-0170.

(2) The caseworker must request copies of records for orders for medication, laboratory, and other medical procedures recorded in the child or young adult's clinical record, within seven working days of the emergency medical care.

(3) Requirements of notification as described in OAR 413-070-0480 and 413-070-0490 apply to emergency administration of psychotropic medication upon the caseworker's receipt of the information requested in section (2) of this rule.

Stat. Auth.: ORS 418.005, 418.517  
Stats. Implemented: ORS 109.675, 418.517  
Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

## 413-070-0450

### Disclosure Requirements for the Department Regarding a Child 14 Years of Age and Older and a Young Adult in Substitute Care

Pursuant to ORS 109.675, a child 14 years of age or older or a young adult in substitute care may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder, or a chemical dependency, excluding methadone maintenance, by a physician, licensed psychologist, nurse practitioner or licensed clinical social worker. However, when a child 14 years of age or older or a young adult is placed in substitute care, and the substitute caregiver or Child Welfare has knowledge of that prescription, the notification requirements of OAR 413-070-0470(2), 413-070-0480, and 413-070-0490 apply.

Stat. Auth.: ORS 418.005, 418.517  
Stats. Implemented: ORS 109.675, 418.517  
Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

## 413-070-0470

### Substitute Caregiver Responsibilities

(1) Before administering a new or amended prescription for psychotropic medication to a child or young adult in substitute care, the substitute caregiver must provide written or verbal notification to the caseworker or caseworker's supervisor within one working day when a licensed health care professional:

- (a) Prescribes psychotropic medication therapy; or
- (b) Prescribes a change in dosage, suspension, or discontinuation of the current psychotropic medication.

(2) The notification required under section (1) of this rule must include:

- (a) The name and contact information of the prescribing licensed health care professional;
- (b) The diagnosed condition for which the medication was prescribed;
- (c) The name of the medication;
- (d) The dosage prescribed or changed; and
- (e) The reason the medication was prescribed or changed.

(3) The substitute caregiver must keep current medical records of a child or young adult in the care or custody of the Department. The records must include:

(a) Medical appointments for the child or young adult in substitute care;

(b) Medical appointment follow-up reports provided to the substitute caregiver;

(c) Any immunization records obtained while in the care of the substitute caregiver;

(d) A record of all prescribed medications administered to the child or young adult in substitute care;

(e) Substitute caregivers certified by the Department must keep a current medication log on a form prescribed by the Department (CF 1083). Providers must keep a current medication log either on the Department's form (CF 1083) or on a form provided by the child caring agency. The medication log record must include all medications administered to the child or young adult in substitute care and must include:

- (A) The name of the child or young adult in substitute care;
- (B) The brand or generic name of the medication, including the prescribed dosage and prescribed dosage administration schedule;
- (C) Times and dates of administration or monitored self-administration of the medication;
- (D) The name or initials of the substitute caregiver administering the medication or monitoring the self-administration.

(4) The substitute caregiver must give completed Medication logs to the Department at the end of each month. This must include logs of all medication administered to the child or young adult at school or in settings other than the substitute caregiver's home.

(5) The substitute caregiver must keep all psychotropic medications properly stored and must:

(a) Ensure the psychotropic medication specifies the licensed health care professional's order for the administration of the psychotropic medication; and

(b) Ensure the psychotropic medication is kept in locked storage and stored as prescribed. Psychotropic medication requiring refrigeration must be kept under refrigeration in a locked box.

(6) The substitute caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for a child or young adult in substitute care without direction from the licensed health care professional.

(7) The substitute caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of the licensed health care professional of the child or young adult in substitute care.

Stat. Auth.: ORS 418.005, 418.517  
Stats. Implemented: ORS 109.675, 418.517  
Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

## 413-070-0480

### Notification Timelines for Psychotropic Medication Therapy

(1) The Department must provide written notification to the parties identified in section (2) of this rule within a timely manner, not to exceed seven working days of:

(a) The Department receiving notice of the child or young adult in substitute care beginning psychotropic medication therapy; or

(b) Any of the following changes occur in the treatment of a child or young adult in substitute care:

- (A) The prescribed dosage of a psychotropic medication;
- (B) Discontinuation of existing psychotropic medication therapy;
- (C) An additional or another psychotropic medication.

(2) Written notification is provided to:

(a) The parent or legal guardian of a child or young adult in substitute care unless a parent has relinquished parental rights, had parental rights terminated, or whereabouts are unknown;

(b) The parent or legal guardian's attorney, if known to the branch;

(c) The attorney of the child or young adult in substitute care, if known; and

(d) The court appointed special advocate of the child or young adult in substitute care, if one has been appointed.

(3) A copy of the written notification described in sections (1) and (2) of this rule is provided to all other legal parties to the case and the child or young adult's substitute caregiver.

Stat. Auth.: ORS 418.005, 418.517  
Stats. Implemented: ORS 109.675, 418.517  
Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

# ADMINISTRATIVE RULES

## 413-070-0490

### Notification Content for Psychotropic Medication Therapy

The notification described in OAR 413-070-0480 must contain:

- (1) The diagnosed condition of the child or young adult in substitute care;
- (2) The name of the prescribed psychotropic medication;
- (3) The prescribed dosage;
- (4) The dosage recommended by the drug's manufacturer or the United States Food and Drug Administration (FDA) when the FDA has issued pediatric dosage recommendations;
- (5) The reason the medication was prescribed;
- (6) The expected benefit of the medication;
- (7) The most common side-effects of the medication; and
- (8) Notice of the right to petition the juvenile court for a hearing if there is an objection to the use of the prescribed medication or prescribed dosage.

Stat. Auth.: ORS 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07

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

**Adm. Order No.:** CWP 9-2007

**Filed with Sec. of State:** 5-1-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 11-1-07

**Rules Amended:** 413-070-0300, 413-070-0310, 413-070-0320, 413-070-0340, 413-070-0350, 413-070-0360, 413-070-0370, 413-070-0380

**Rules Ren. & Amend:** 413-070-0330 to 413-070-0345

**Subject:** OAR 413-070-0300, 413-070-0310, 413-070-0320, 413-070-0340, 413-070-0350, 413-070-0360, 413-070-0370, and 413-070-0380 are being amended, and OAR 413-070-0330 is being amended and renumbered to 413-070-0345. These rules, which concern the placement of refugee children, are being amended to update terminology and statutory references, clarify the rules, and more closely incorporate statutory language.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0300

### Purpose

These rules (OAR 413-070-0300 to 413-070-0380) prescribe conditions that must be met for the Department to remove a refugee child from home. These rules also establish the Refugee Child Welfare Advisory Committee and set the criteria for its operations and duties.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

## 413-070-0310

### Definitions

(1) "Affected family members" means biological and legal parents, extended family members, and any person within the fifth degree of consanguinity to the child.

(2) "Child" means a person under 18 years of age.

(3) "Child's home" means the home from which the child is removed under the provisions of ORS 419B.150.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Extended family member" means a person ordinarily recognized as the refugee child's parent by the custom of the child's culture, or a person 18 years of age or older who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally

associated with parenthood unless a court finds that the putative father is not the legal father.

(8) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(9) "Refugee child" means, as defined by ORS 418.925, a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of *persecution* or a well-founded *fear of persecution* on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of *persecution* or a well-founded *fear of persecution* on account of race, religion, nationality, or membership in a particular group or political opinion:

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person in order to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country;

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

## 413-070-0320

### Placement of Refugee Children

(1) When it appears to the Department that a child who may be taken into custody under ORS 419B.150 or 419C.080 by the Department is a refugee child, the Department will make oral inquiry of the child or the parent concerning national origin and ethnic and cultural information relative to the child's status as a refugee child. For purposes of determining the child's status as a refugee child, the Department may consider a variety of information, including information from the following sources:

(a) Any *extended family member*;

(b) Refugee community resources (any group, association, partnership, corporation, or legal entity whose purpose is to represent the interests of a particular group or groups of refugees who have the same ethnic or minority heritage);

(c) The RCWAC;

(d) Federal immigration agencies;

(e) Refugee agencies; and

(f) Department records.

(2) As required by ORS 418.937, the Department will not remove a refugee child pursuant to ORS 419B.150, 419C.080, or 419C.088 unless:

(a) The Department has determined there is a safety threat and removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(b) The provision of remedial or preventive services cannot manage the child's safety in the home.

(3) The Department will follow ORS 418.937 in making placement decisions for refugee children:

(a) The Department will consider the child's culture and tradition;

(b) Unless shown to be inappropriate and inconsistent with the best interests of the child, the Department will place the child with one or more of the following persons, listed in order of preference:

(A) Biological and legal parents;

(B) Extended family members who are 18 years of age or older;

(C) Members of the same cultural heritage;

(D) Persons with knowledge and appreciation of the cultural heritage of the child.

(4) The determination that one of the preferred placements is inappropriate and inconsistent with the best interests of the child must be based on one or more of the following reasons:

(a) The informed request of the child's parent, if the request is consistent with the stability, security and individual needs of the refugee child;

(b) The safety, medical, physical, or psychological needs of the child.

(5) When the Department has taken a refugee child into custody under ORS 419B.150, the Department will make diligent efforts to locate the child's affected family members for the purposes of placing the child, if possible, in one of the preferred placements.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

# ADMINISTRATIVE RULES

## 413-070-0340

### Petition

As required by ORS 418.930 and 418.933:

(1) Within one working day of the removal of a refugee child from the child's home, the Department must file a petition with the juvenile court.

(2) In addition to the material required under ORS 419B.809 or 419C.255, the Department must include the following items in its petition:

(a) A specific and detailed account of the circumstances which led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(b) Specific actions the Department is taking or has taken to alleviate the need for removal;

(c) Assurance that the Department has complied with the placement preferences of ORS 418.937; and

(d) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected family members and to the Refugee Child Welfare Advisory Committee of the pendency of the petition.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

## 413-070-0345

### Notice

(1) When a refugee child is removed from home, in addition to the notice provided by the court of a hearing, the Department must notify all affected family members and the Refugee Child Welfare Committee of the pendency of the petition described in OAR 413-070-0340.

(2) The notice will be written in language understandable to the recipient.

(3) The notice will contain the child's name; the reason a petition was filed; and the time and place that the juvenile court will be considering the petition.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Renumbered from 413-070-0330 by CWP 9-2007, f. & cert. ef. 5-1-07

## 413-070-0350

### Judicial Determination

As required by ORS 418.933(1), no refugee child shall remain out of the child's home for longer than five days unless there has been a judicial determination supported by clear and convincing evidence that:

(1) Preventive or remedial services provided by the Department have failed to alleviate the need for removal; and

(2) Return to the home will likely result in psychological or physical harm to the child.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

## 413-070-0360

### Record of Care

The Department must maintain a case record for each refugee child in its care containing:

(1) The name, age, residence from which the child was removed, legal status, sex, and race of the child, and the accumulated length of time the child has spent in substitute care;

(2) The child's health and education records;

(3) The name, former residence, and health history of each parent and other information relating to the parent's ability to care for the child in the parent's home;

(4) The date of the child's intake and placement in substitute care and the name, race, occupation, and residence of the person with whom the child is placed;

(5) If applicable, the date of the child's adoption and the name, race, occupation, and residence of each adoptive parent;

(6) The date of the removal of the child to another home and the reason for removal;

(7) The date of termination of guardianship, if applicable;

(8) The history of the child, based on information that is known to the Department, until the child reaches 18 years of age, is legally adopted, or is discharged from the legal custody of the Department according to law;

(9) Documentation of the reasonable efforts made by the Department to reunite the child with his or her family, to comply with the placement preferences of ORS 418.937, to place the child in the least restrictive setting possible, and to place the child close to the child's own home and the child's school;

(10) Documentation of the child's status as a refugee child, including the source of information concerning the child's refugee status and the date the information was received by the Department;

(11) Any required demographic information; and

(12) Other documentation as required by Child Welfare Policies I-I.1, "Service Reporting" and I-I.2, "Narrative Recording".

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

## 413-070-0370

### Annual Report of Care

(1) As required by ORS 418.943, the Department will publish annually a report on refugee children in its care. The report will include, statewide and county information on legal status, living arrangement, age, sex, race, accumulated length of time in foster care, and other demographic information deemed appropriate. The report will also state the extent to which the Department has complied with ORS 418.925 to 418.945 and will include descriptions of the methods of compliance.

(2) The annual report will be sent to all members of the RCWAC no later than March 1 of each year.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

## 413-070-0380

### Refugee Child Welfare Advisory Committee

(1) As required by ORS 418.941, the Department will establish an advisory committee known as the Refugee Child Welfare Advisory Committee (RCWAC). The RCWAC will perform the following tasks:

(a) Advise the Department on its implementation of ORS 418.925 to 418.945;

(b) Advise the Department in the identification, development, and certification of foster parents who meet requirements of ORS 418.925 to 418.945 for placement of refugee children, placing a special emphasis on locating homes maintained by refugees; and

(c) Advise the Department in developing training programs to insure the availability of culturally sensitive social work.

(2) Each person appointed to the RCWAC is subject to all confidentiality requirements and penalties as are employees of the Department.

(3) In addition to records of the juvenile court under ORS 418.941(3), members of the RCWAC have access to Department records that:

(a) Are pertinent to the care of an individual refugee child who is receiving care from the Department under the provisions of OAR 413-070-0300 to 413-070-0380; and

(b) The Department is authorized by law to provide to the RCWAC.

(4) The Department will work jointly with the RCWAC in the development and implementation of written bylaws or procedures that will specify all local procedures, duties, and tasks necessary for the RCWAC to fulfill the purpose described above.

(5) A maximum of 14 members will be appointed for a two-year renewable term and will serve at the pleasure of the Assistant Director for the Children, Adults and Families Division of the Department.

(6) The RCWAC will meet at least once every three months. Special meetings may be held to carry out required tasks.

(7) Members of the RCWAC receive no compensation for their services. Members of the RCWAC other than members in full-time public service may be reimbursed by the Department for their travel and necessary expenses incurred in the performance of their duties according to rates and procedures established by state management service cost reimbursement policy.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.925 - 418.945

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2007, f. & cert. ef. 5-1-07

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

**Adm. Order No.:** CWP 10-2007(Temp)

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 5-15-07 thru 11-9-07

**Notice Publication Date:**

**Rules Amended:** 413-080-0059

**Subject:** OAR 413-080-0059 about monitoring the safety and well-being of a child or young adult in substitute care in Child Welfare programs is being amended to expand the actions required of a case-

# ADMINISTRATIVE RULES

worker when certain conditions are not met for a child or young adult in a provider placement.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-080-0059

### Monitoring the Safety and Well-Being of the Child or Young Adult in Substitute Care

(1) To monitor the safety and well-being of the child or young adult when the parent or legal guardian is unable or unwilling to protect the child or young adult from the identified safety threats and substitute care is necessary to assure child safety, the caseworker must make the following contacts:

(a) Face-to-face contact with the child or young adult every 30 days;

(b) Contact with the relative caregiver, foster parent, or provider every 30 days; and

(c) Face-to-face contact with the relative caregiver, foster parent, or provider in the home or facility a minimum of once every 60 days. The face-to-face contact must include at least one of the certified or licensed adults who provide direct care for the child or young adult.

(2) Monitor and assess the child or young adult's safety and well-being in substitute care with a relative caregiver or foster parent:

(a) Within each 30-day period, the caseworker must complete all of the following activities:

(A) Have a conversation with a verbal child or young adult;

(B) Assess the child or young adult's progress in and adjustment to the placement;

(C) Receive updates from the child or young adult and from the relative caregiver or foster parent;

(D) Assess the safety and well-being of the child or young adult in the home by determining whether each of the following conditions exists in the home:

(i) The child or young adult is comfortable and the environment of the home is supportive and safe;

(ii) Adults in the home take an active role in caring for and supervising the child or young adult in the home;

(iii) Adult family members possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult;

(iv) Family members and the child or young adult have formal and informal contact with others in the community;

(v) The child or young adult is accepted as part of the household;

(vi) The relative caregiver or foster family understands and is attentive to the vulnerability and need for protection of the child or young adult;

(vii) The relative caregiver or foster family is amenable to Department oversight and willing to partner with the Department;

(viii) When the child or young adult is placed with a relative caregiver, the child or young adult's parents and other family members understand the role of the relative caregiver in managing safety as a substitute care resource;

(ix) The child has a sufficiently positive relationship with the relative caregiver or foster family's own children who live in the home;

(x) The relative caregiver or foster family is caring for children matching the preferences and experience of the family;

(xi) The interactions between the child or young adult and other children placed in the home are sufficient to assure safety;

(xii) The present demands of the home do not exceed the ability of the relative caregiver or foster parent to provide safe and protective care.

(E) Document the date, time, location, and observations of the conditions that exist in the home in FACIS case notes.

(b) If one or more of the conditions described in paragraph (a)(D) of this section do not exist in the home, and the caseworker cannot confirm safety and well-being of the child or young adult in the home of the relative caregiver or foster parent, the caseworker must:

(A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii);

(B) If a safety threat is identified, immediately:

(i) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the child's safety or any action required to assure the safety of the young adult; and

(ii) Contact a CPS screener and report the identified safety threat to the child.

(C) Document the behaviors, conditions, or circumstances observed in the home and any immediate protective actions in FACIS.

(c) When the child or young adult is currently safe in the home, but the conditions described in this rule or Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-

Adoptive Parents", (OAR 413-200-0301 to 413-200-0396) are not fully met, the caseworker must:

(A) Document date, time, location, and current behaviors, conditions, or circumstances observed in the home in FACIS notes and notify the certifier or certifier's supervisor within one working day;

(B) The caseworker must have face-to-face contact with the relative caregiver or foster parent within the next 30 days and the visit must occur in the home. The caseworker must observe the behaviors, conditions, or circumstances of the foster parent or relative caregiver, the child, and other children in the home, and conditions in the home:

(i) When the caseworker can confirm that current conditions in the home provide safety and well-being for the child or young adult, the caseworker must:

(I) Document the date, time, location, and observations of the condition of the environment in FACIS notes; and

(II) Notify the certifier of the improved behaviors, conditions, or circumstances in the home.

(ii) When the caseworker cannot confirm that current conditions in the home provide safety and well-being for the child or young adult, the caseworker must:

(I) Consult with the supervisor to determine whether to recommend to the certifier implementation of a Placement Support Plan to assist the relative caregiver or foster parent, or whether the child or young adult should no longer remain in the home because the conditions necessary to provide safety and well-being cannot be sustained in this home;

(II) Send written notification to the certifier of the behaviors, conditions, or circumstances in the home;

(III) Document the date, time, location, and the behaviors, conditions, or circumstances in the home in FACIS notes.

(3) Monitoring and assessing safety when the child or young adult is in a provider placement:

(a) During each 30-day period, the caseworker must:

(A) Assess the progress in and adjustment to the placement of the child or young adult;

(B) Have a conversation with a verbal child or young adult;

(C) Receive updates from the child or young adult and from the provider;

(D) Assess the safety of the child or young adult in the home or facility by determining whether each of the following conditions exists:

(i) The child or young adult is comfortable and the environment is supportive and safe;

(ii) Adults take an active role in caring for and supervising the child or young adult;

(iii) Adults possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult;

(iv) The child or young adult has formal and informal contact with others in the community;

(v) The child or young adult is accepted as part of the household or facility;

(vi) The provider understands and is attentive to the vulnerability and need for protection of the child or young adult;

(vii) The provider is amenable to Department oversight and willing to partner with the Department;

(viii) The child or young adult has a sufficiently positive relationship with other children in the home or facility of the provider;

(ix) The provider is caring for children matching the preferences and experience of the provider;

(x) The interactions between the child or young adult and other children placed in the home or facility is sufficient to assure safety;

(xi) The present demands of the home or facility do not exceed the ability of the provider to provide safe and protective care.

(E) Document the date, time, location, and observations of the condition of the environment in FACIS.

(b) If one or more of the conditions described in paragraph (a)(D) of this section do not exist in the home or facility, and the caseworker cannot confirm safety and well-being of the child or young adult, the caseworker must:

(A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii);

(B) If a safety threat is identified, immediately:

(i) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the child's safety or any action required to assure the safety of the young adult; and

(ii) Contact a CPS screener and report the identified safety threat to the child.

# ADMINISTRATIVE RULES

(C) Document the behaviors, conditions, or circumstances observed in the home or facility and any immediate actions in FACIS case notes.

(c) If the caseworker does not identify a safety threat but the conditions described in paragraph (a)(D) of this section are not fully met, the caseworker must complete the following activities:

(A) Contact the child-caring agency's management and the Department's Child Caring Agency Licensing Program to report the conditions in the home or facility and request additional supportive resources for the provider;

(B) Document in FACIS the contact required in paragraph (A) of this subsection;

(C) Have face-to-face contact with the provider within the next 30 days in the home or facility of the provider, and:

(i) Observe the actions and behaviors of the provider, the child or young adult, and other children in the home or facility, and conditions in the home or facility;

(ii) Confirm that current conditions in the home or facility provide safety and well-being for the child or young adult;

(iii) Contact the child-caring agency's management and the Department's Child Caring Agency Licensing Program to confirm the conditions in the home or facility provide safety and well-being for the child or young adult.

(D) After the contact required in paragraph (C) of this subsection, when the caseworker cannot confirm that current conditions in the home or facility provide safety and well-being for the child or young adult, the caseworker must consult with the supervisor to determine:

(i) Whether an immediate protective action is required to assure the child's safety or any other action is required to assure the safety of the young adult; or

(ii) Whether consultation with the child-caring agency's management is necessary to determine what additional support is necessary to assure the safety of the child or young adult in the home or facility of the provider.

(E) After the actions required in paragraph (D) of this subsection, the caseworker or caseworker's supervisor must contact the Department's Child Caring Agency Licensing Program. The caseworker must report the date, time, location, observations of the conditions of the home or facility, and any actions taken by the caseworker during or after the visit;

(F) Document the date, time, location, observations of the condition of the home or facility, and any actions in FACIS case notes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 10-2007(Temp), f. 5-14-07, cert. ef. 5-15-07 thru 11-9-07

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

**Rule Caption:** Amends Maximum Cost for Community-Based Care for Medicaid Long-Term Care.

**Adm. Order No.:** SPD 5-2007

**Filed with Sec. of State:** 4-16-2007

**Certified to be Effective:** 4-17-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 411-027-0000

**Rules Repealed:** 411-027-0000(T)

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently amending OAR 411-027-0000 to change the maximum monthly cost for community-based long-term care services for Medicaid recipients eligible for services under the Title XIX 1915(c) Waiver.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

### 411-027-0000

#### Payment Limitations in Community-Based Care

(1) Payment for Services:

(a) Department service payments under this rule are limited to home and community-based services provided under Oregon's Title XIX 1915(c) Waiver for Aged and Disabled Persons.

(b) Community-based services include, but are not limited to:

(A) In-Home Services (client-employed providers and home care agencies);

(B) Residential Care Facility Services;

(C) Assisted Living Facility Services;

(D) Adult Foster Home Services;

(E) Specialized Living Services;

(F) Adult Day Services; and

(G) Home-Delivered Meals.

(2) Payment Basis:

(a) Unless otherwise specified, service payment will be based upon each client's assessed need for services as documented by the Seniors and People with Disabilities Division (SPD) Client Assessment/Planning System (CA/PS).

(b) Payments for community-based services are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Payment by the Department may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the client. Clients with excess income will contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620.

(c) Case plans will be based upon the least costly means of providing adequate services consistent with client choice. Client choice means that the person has a choice of services that are available within the approved SPD rate schedule. Any services that are available at a rate higher than the SPD rate schedule will only be a choice if the client meets the criteria in the exception policy in OAR 411-027-0050.

(d) SPD and Type B Area Agency on Aging and Disability Services (AAAD) local office staff will monitor the progress of the client. When a change occurs in the client's service needs that may warrant a change in the service payment rate, staff will update the case plan.

(3) Payment Limitations:

(a) The total continuing cost of waiver services for a client in a community-based setting must not exceed the comparable nursing facility rate.

(b) Notwithstanding section (3)(a) of this rule, the Department may authorize service payment rates that exceed the comparable nursing facility rate when:

(A) There is a specific rehabilitation plan approved by SPD, with goals and a definite time frame for delivery, that will improve the client's self-sufficiency; or

(B) SPD determines that intensive convalescent care is required for a limited period of time; or

(C) SPD determines that intensive long-term care or special technology is required, but is otherwise available locally only in an acute care facility (hospital); and

(D) SPD has reviewed the costs of service to be provided and determined their reasonability.

(c) If service payment is authorized under section (3)(b) of this rule:

(A) The case plan shall reflect specific provider responsibilities, the time period for the delivery of services and corresponding payment rate adjustments; and

(B) SPD will give the provider written authorization for the services provided and the time period for delivery; and

(C) SPD and Type B AAAD local office staff will monitor the progress of the client. When a change occurs in the client's service needs that may warrant a change in the service payment rate, staff will update the case plan and recommend an adjustment in the service payment rate to SPD.

(4) All service payments must be prior authorized by SPD or Type B AAAD local office staff.

(a) SPD will publish the established provider payment rate schedule. When SPD has established a rate schedule, SPD and Type B AAAD long-term care case managers may prior authorize service payments from that schedule based on the client's living situation and assessed need for services documented on the SPD CA/PS.

(b) Any rate that differs from the SPD published rate based on the client's living situation and assessed need for services must be pre-authorized by SPD.

(5) The Department will not make payment to a spouse for providing community-based services except for In-Home Services as provided in OAR chapter 411, division 030 (Spousal Pay Program).

(6) Payments for Adult Day Services:

(a) Local SPD and Type B AAAD office staff may authorize payments to any Medicaid-contracted adult day services program as defined in OAR 411-066-0000 through 411-066-0020 in accordance with the published rate schedule.

(b) Adult day services may be authorized as part of an overall plan of services for service-eligible clients and may be used in combination with other community-based services if day services are the appropriate resource to meet a special need.

# ADMINISTRATIVE RULES

(c) Adult day services may be authorized for payment as a single service or in combination with other community-based services. Adult day services will not be authorized nor paid for if another provider has been authorized payment for the same service. Payments authorized for adult day services will be included in computing the total cost of services.

(d) The Department will pay for a half day of program services when four or less hours of services are provided, and will pay for a full day of program services when more than four, but less than twenty-four, hours are provided.

(7) Payment For Home Delivered Meals:

(a) Local SPD and Type B AAAD office staff may authorize payments to any Medicaid-contracted home delivered meals as defined in OAR 411-040-0000 in accordance with the published rate schedule.

(b) Home-delivered meals may be authorized as part of an overall plan of services for service-eligible clients and may be used in combination with other community-based services if meals are the appropriate resource to meet a special need.

(8) Payments to Assisted Living Facilities (ALF's):

(a) Local SPD and Type B AAAD office staff may authorize payments to any Medicaid-contracted Assisted Living Facility as defined in OAR 411-056-0005.

(b) In all instances, placement in ALFs is contingent upon the client meeting the payment levels described in section (8)(c)(C) of this rule.

(c) Monthly Service Payment Determination:

(A) Monthly service payment for SPD clients is based on degree of impairment in each of the six Activities of Daily Living (ADL) as determined by the SPD CA/PS and the payment levels described in section (8)(c)(C) of this rule. The initial service plan must be developed prior to admission and must be revised if needed within 30 days. The service plan must be reviewed and updated at least quarterly or more often as needed, as per OAR 411-056-0015(2)(g).

(B) Activities of Daily Living (ADL) are weighted for purposes of determining the monthly service payment as follows:

(i) Critical activities of daily living (ADL): elimination, eating and cognition/behavior;

(ii) Less critical ADLs: mobility, bathing/personal hygiene and dressing/grooming.

(iii) Essential factors: Other essential factors considered are medical problems, structured living, medical management and other needs.

(C) Payment (Impairment) Levels:

(i) Level 5 — Client is full assist in three to six ADLs; OR full assist in behavior AND one or two other ADLs.

(ii) Level 4 — Client is full assist in one or two ADLs; OR requires assistance in four to six ADLs plus assistance in behavior.

(iii) Level 3 — Client requires assistance in four to six ADLs; OR requires assistance in toileting, eating and behavior.

(iv) Level 2 — Client requires assistance in toileting, eating and behavior; OR requires assistance in behavior AND eating or toileting.

(v) Level 1 — Client requires assistance in two or more of the critical ADLs; OR requires assistance in any three ADLs; OR requires assistance in toileting, eating or behavior and assistance in at least one other essential factor; OR requires assistance in one critical ADL and one other ADL.

(D) The reimbursement rate for Department clients will not be more than the rates charged private paying clients receiving the same type and quality of services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 9-1984(Temp), f. & ef. 11-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 10-1985, f. & ef. 8-1-85; SSD 12-1985(Temp), f. & ef. 9-19-85; SSD 16-1985, f. 12-31-85, ef. 1-1-86; SSD 4-1987(Temp), f. & ef. 7-1-87; SSD 13-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 2-1993, f. 3-19-93, cert. ef. 4-1-93; SSD 9-1993, f. & cert. ef. 12-1-93; SDDSD 3-1998, f. 2-27-98, cert. ef. 3-1-98; SDDSD 1-1999, f. & cert. ef. 3-1-99; SDDSD 2-1999, f. 3-1-99, cert. ef. 4-1-99; SDDSD 1-2001(Temp) f. & cert. ef. 2-5-01 thru 8-3-01; Suspended by SDDSD 5-2001(Temp), f. & cert. ef. 3-8-01 thru 8-3-01; Administrative correction 11-20-01; SDDSD 10-2001, f. 12-27-01, cert. ef. 1-1-02; SPD 21-2004(Temp), f. 7-31-04 cert. ef. 8-1-04 thru 1-5-05; SPD 39-2004, f. 12-30-04, cert. ef. 1-5-05; SPD 27-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 5-2007, f. 4-16-07, cert. ef. 4-17-07

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**Rule Caption:** Registration and Standards for Adult Day Services Programs.

**Adm. Order No.:** SPD 6-2007(Temp)

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 5-15-07 thru 11-11-07

**Notice Publication Date:**

**Rules Adopted:** 411-066-0015

**Rules Amended:** 411-066-0000, 411-066-0005, 411-066-0010, 411-066-0020

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is temporarily adopting and amending their Oregon Administrative Rules related to the registration and standards for adult day services programs.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

**411-066-0000**

**Statement of Purpose**

Adult day services are community-based group programs designed to meet the service needs of seniors and people with disabilities in a structured non-residential setting. These rules create a registry of adult day services programs and describe the process and criteria for listing on the registry. These rules also allow state certification of Medicaid contracted adult day services programs. Certification by the Department of Human Services, Seniors and People with Disabilities Division fulfills the Centers for Medicare and Medicaid Services (CMS) definition of "state certified" in regards to the continuing eligibility criteria for Medicare beneficiaries. The criteria for state certification are defined in these rules.

Stat. Auth.: ORS 410.070, 410.490 & 410.495

Stats. Implemented: ORS 410.485 - 410.495

Hist.: SSD 12-1992, f. & cert. ef. 12-1-92; SDDSD 4-1999, f. & cert. ef. 3-15-99; SPD 6-2007(Temp), f. & cert. ef. 5-15-07 thru 11-11-07

**411-066-0005**

**Definitions**

(1) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities consist of Eating, Dressing/Grooming, Bathing/Personal Hygiene, Mobility (ambulation and transfer), Elimination (toileting, bowel and bladder management), and Cognition/Behavior as defined in OAR 411-015-0006.

(2) "Administrator" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(3) "Adult Day Services (ADS) Program" means a community-based group program designed to meet the needs of adults with functional impairments through service plans. These structured, comprehensive, non-residential programs provide health, social and related support services in a protective setting during part of a day, but for less than 24 hours.

(4) "Certification" means to certify the individual adult day services program by measuring the ability of the adult day services program to meet the Department of Human Services, Seniors and People with Disabilities Division standards.

(5) "DHS" means the Department of Human Services.

(6) "Group" means:

(a) A program with ten or more enrolled participants;

(b) Adult day services programs just beginning, with plans to enroll ten or more participants; or

(c) The enrolled participants in a certified adult day services program.

(7) "Long-Term Care Facilities (LTC)" means nursing facilities, residential care facilities, assisted-living facilities, and adult foster homes.

(8) "Registry" means the registration database of all adult day services programs maintained by the Department of Human Services, Seniors and People with Disabilities Division.

(9) "SPD" means the Seniors and People with Disabilities Division, within the Department of Human Services.

Stat. Auth.: ORS 410.070, 410.490 & 410.495

Stats. Implemented: ORS 410.485 - 410.495

Hist.: SSD 12-1992, f. & cert. ef. 12-1-92; SDDSD 4-1999, f. & cert. ef. 3-15-99; SPD 6-2007(Temp), f. & cert. ef. 5-15-07 thru 11-11-07

**411-066-0010**

**Registration**

(1) All ADS programs that provide SPD with the information described in section (2) of this rule will be placed on SPD's ADS registry.

(2) Information on the registry must include, but is not limited to:

(a) The name and address of the ADS program; and

(b) A checklist to determine the extent to which each ADS program is voluntarily complying with the standards set forth in OAR 411-066-0020.

Stat. Auth.: ORS 410.070, 410.490 & 410.495

Stats. Implemented: ORS 410.485 - 410.495

Hist.: SSD 12-1992, f. & cert. ef. 12-1-92; SDDSD 4-1999, f. & cert. ef. 3-15-99; SPD 6-2007(Temp), f. & cert. ef. 5-15-07 thru 11-11-07

# ADMINISTRATIVE RULES

## 411-066-0015

### Certification

ADS programs that contract with SPD to provide services must be certified.

#### (1) INITIAL CERTIFICATION.

(a) To receive SPD certification and a DHS Medicaid contract, ADS programs must complete the certification process that includes the following:

- (A) Contacting SPD to schedule an initial certification on-site visit;
- (B) Provision of a cover letter detailing qualifications and specific experience in delivering adult day services (at least six months in Oregon);
- (C) Completion of an Adult Day Services Medicaid Provider Application;

(D) Completion of the ADS self assessment demonstrating the program meets the standards for adult day services in OAR 411-066-0020;

(E) Completion of a Medicaid daily rate proposal and cost justification; and

(F) Participation in a follow-up on-site inspection by a representative(s) of SPD.

(b) SPD will complete an on-site certification assessment form after the visit, citing standards as "met" or "unmet";

(c) If all standards are met, SPD will certify the ADS program.

(d) If any of the standards are unmet, the application for certification will be denied. The ADS program may bring the unmet standards into compliance and request that SPD complete a site certification reassessment. A request for a site certification reassessment must be made within 30 calendar days after denial. If the request for the site certification reassessment is more than 30 calendar days, the ADS program will be required to resubmit the information in sections (1)(a)(B) through (1)(a)(F) of this rule.

(e) If the denial is upheld after a site certification reassessment, the ADS program may request a review in writing within ten business days of receipt of the denial notice. Within ten business days of receipt of the request for review, the Administrator will review all material relating to the denial of the certification. The Administrator will determine, based on a review of the material, whether to uphold the denial. If the Administrator does not uphold the denial, certification will be granted immediately. The decision of the Administrator is subject to a contested case hearing under ORS 183.413 to 183.470.

(2) MAINTAINING CERTIFICATION. Certification for an adult day services program may continue for up to two years from the effective date as long as the ADS program complies with the standards for certification as established in OAR 411-066-0020.

(a) Ninety-days prior to certification ending, ADS programs renewing certification and their DHS Medicaid contract must:

(A) Complete an Adult Day Services Medicaid Provider Application;

(B) Complete an ADS self assessment demonstrating the program meets the standards for adult day services in OAR 411-066-0020; and

(C) Participate in a follow-up on-site inspection by a representative(s) of SPD.

(b) SPD will complete an on-site certification assessment form after the visit, citing standards as "met" or "unmet".

(c) If all standards are met, SPD will notify the ADS program that certification will be renewed.

(d) If any of the standards are unmet, the ADS program must develop and submit to SPD, within seven calendar days, a written plan of action to comply with the standards. Depending upon the nature of the inadequacy, SPD may perform a follow-up inspection to confirm compliance. SPD may immediately suspend certification for threat to the participant's health, safety, welfare, or failure to comply with the standards.

(e) If the written plan of action is not accepted in full, or the follow-up inspection reveals non compliance, SPD may revoke or not renew certification.

(f) If the denial is upheld after reviewing the plan of action, or follow-up inspection, the ADS program may request a review in writing within ten business days of receipt of the denial notice. Within ten business days of receipt of the request for review, the Administrator will review all material relating to the denial of the certification. The Administrator will determine, based on a review of the material, whether to uphold the denial. If the Administrator does not uphold the denial, certification will be granted immediately. The decision of the Administrator is subject to a contested case hearing under ORS 183.413 to 183.470.

(3) SPD may perform an unannounced on-site certification review at anytime during the certification period to assure quality and safety standards continue to be met.

Stat. Auth.: ORS 410.070, 410.490 & 410.495

Stats. Implemented: ORS 410.485 - 410.495

Hist.: SPD 6-2007(Temp), f. & cert. ef. 5-15-07 thru 11-11-07

## 411-066-0020

### Standards for Adult Day Services Programs

ADS programs that voluntarily meet the standards, as established in this rule, may be placed on the ADS registry.

(1) SERVICE PLANS. For each participant, the ADS program must have a service plan based on services needed and the ADS program ability to provide those services. The service plan must include the following:

(a) Intake Screening. The intake screening must be completed prior to admission in order to determine the appropriateness of the ADS program for the participant and to determine that the participant's needs are within the scope of the ADS program.

(b) Application. An application or enrollment agreement must be completed and include:

(A) Applicant's personal identifying information;

(B) Information regarding health, safety and emergency needs;

(C) Identification of services to be provided;

(D) A disclosure statement that describes the ADS program's range of care and services;

(E) Criteria for admission and discharge; and

(F) Fees and arrangements for payment, including insurance coverage or other payment sources.

(c) Assessment. A written assessment of the participant must include functional abilities and disabilities, strengths and weaknesses, personal habits, preferences and interests, likes and dislikes, medical condition, medications, personal care, assistance required with activities of daily living, a statement on the ability to live independently and any other information helpful to developing the service plan, such as life history.

(d) Written Service Plans. The service plan, which is based on the assessed needs, strengths, and abilities, must include realistic objectives that are both long-term and short-term. The service plan must also:

(A) Specify number of days per week of attendance;

(B) Define the services to be provided;

(C) Explain how the service will meet the assessed need; and

(D) Identify staff responsible for providing or monitoring service delivery.

(e) Coordination of Care. The need for coordination of care must be considered for each participant. If coordination of care is needed and the participant is receiving services from another agency or resides in a community based care setting, the ADS service plan should be developed to acknowledge and not duplicate the services provided by that agency or facility.

(f) Service Documentation and Reassessment. Progress notes on each participant must be written at least quarterly and must reflect a review of the service plan and the participant's status in regard to the services. Reassessing the participant's needs and reevaluating the appropriateness of the service plan must be not less than semiannually. A reassessment of the participant's needs and service plan must also be completed as needed when significant changes occur in the participant's functional ability, service needs, health status, or living situation.

#### (2) PARTICIPANT RECORDS.

(a) All ADS programs must maintain a current roster of all participants with dates of admission and discharge.

(b) All ADS programs must maintain an individual file on each participant containing the following:

(A) Intake screening and application forms;

(B) Photograph of participant with signed release by individual or guardian;

(C) Medical history. The ADS program must submit a request to the participant's physician's or primary care provider requesting:

(i) A physician's signed release to attend the ADS program; and

(ii) Pertinent medical information, including but not limited to chart notes, to assist in developing a service plan.

(D) Nutritional status assessment including medically prescribed dietary needs;

(E) Service plans including information found in section (1) of this rule.

(F) Correspondence;

(G) Attendance. Daily attendance must accurately document the time the participant is in attendance at the ADS program. This does not include transportation to and from the ADS program site;

(H) Transportation Plans. Transportation plans must specify the arrangements for transportation to and from the ADS program. The plan must identify the transportation service provider.

(I) Physician's name and contact information;

(J) Hospital's name and contact information;

## ADMINISTRATIVE RULES

(K) A listing of medication provision and treatments, with signed physician's authorizations to dispense prescribed medication and treatments;

(L) The ADS program's progress notes;

(M) Advance health care directive form, if the participant has completed a directive;

(N) A Physician's Order for Life Sustaining Treatment (POLST) or a statement that none has been signed, or a completed form developed by the ADS program to document resuscitation status; and

(O) Emergency contact information with at least two contacts (i.e. the participant's designated representative and others as indicated).

(c) Participant records must be stored within the facility for three years after the participant has been discharged from the ADS program.

(3) SERVICES. ADS programs must make services identified in the service plan available to the participant. ADS programs must make the following services available:

(a) ADL Assistance. This includes assistance and supervision with activities of daily living.

(b) Social Services. The following social services, if identified on the services plan, must be provided to participants:

(A) Providing or arranging mental health counseling within the community;

(B) Arranging for other community services;

(C) Advocating for the participant's human and civil rights;

(D) Assessing for indicators of physical illness or disabilities and making referrals within the community;

(E) Assessing for indicators of mental illness or dementia and making referrals for diagnosis;

(F) Providing discharge planning and assisting in the transition and follow-up; and

(G) Providing information and referral for persons not appropriate for adult day services.

(c) Nutrition Services. ADS programs must screen and assess participants for nutrition needs and must provide or refer within the community for nutrition services as appropriate.

(d) Food Services. ADS programs must provide those participants that are present at a typical mealtime with a minimum of one meal per day unless contraindicated by a health condition or by cultural or religious preference. The meal must meet the adult daily nutritional requirement as established by state and federal regulations. Documentation of the food served at meals must be kept in the ADS program's files for up to six months. Nourishing snacks must be available to participants between meals.

(e) Therapeutic Activities. ADS programs must take into consideration participant differences in age, health status, sensory deficits, needs, interests, abilities, and skills by providing opportunities for a variety of activities while encompassing different levels of involvement. The activity plan must be an integral part of the service plan based on the interests, needs, and abilities of the participant. The activities may include social, intellectual, cultural, emotional, physical and spiritual activities.

(f) Health-Related Services. ADS programs must provide health care coordination, prevention and education. Services, as appropriate to the participant, may include a health assessment, nursing consultation services, and restorative therapy.

(g) Transportation. ADS programs must provide, arrange, or contract for transportation to enable persons, including persons with disabilities, to attend the ADS program and to participate in ADS program-sponsored outings.

(h) Emergency Response for Participants. ADS programs must have a written procedure for handling participant, as well as facility-wide medical emergencies. This documentation must include procedures for notification, transportation arrangements and provision for escorts, if necessary. This provision, along with the participant's medical information, must be reviewed semiannually and kept in the participant's record.

(i) Resources. Resources or guidance to locate resources must be made available to the families or caregivers and participants to enhance the general well-being and improve the level of independence of the participant.

(2) PHYSICAL DESIGN, ENVIRONMENT AND SAFETY.

(a) The facility housing the ADS program must comply with applicable state and local building regulations, zoning, fire and health codes or ordinances.

(b) The facility must be accessible to participants and must be designed in such a way that it is accessible and functional in meeting the identified needs of the population it serves.

(c) The facility must comply with the standards of accessibility contained in the Americans with Disabilities Act.

(d) Each physical location must develop, maintain, update and enforce an emergency plan for the protection of all persons in the event of an emergency. The written emergency plan must address fire and natural and human caused events identified as a significant risk for the facility and locality. The written emergency plans must specify how the ADS program will notify participants and contacts of closure.

(e) The facility must have a minimum of one toilet per ten participants in an accessible bathroom. Each bathroom must be equipped with a sink, grab bars and call bells if appropriate to the population served. The participant's privacy and comfort must be considered in developing procedures for incontinence care. Bathrooms and fixtures must function properly and must be maintained in a sanitary and odor free condition.

(f) Each bathroom must contain an adequate supply of liquid hand soap, toilet tissue, and paper hand towels with dispenser or an electrical hand dryer. Common towels are not allowed.

(g) There must be a minimum of 60 square feet of floor space available per participant. (The square footage excludes hallways, offices, restrooms, and storage spaces.) ADS programs serving participants, of which 25 percent or more are cognitively impaired or require the use of adaptive equipment, must provide at least 80 square feet per participant.

(h) The physical building, premises, and equipment must be maintained in a clean and sanitary condition, free of hazards and in good repair.

(i) Outside space that is used for outdoor activities must be safe, accessible to indoor areas, and accessible to those with a disability.

(j) Heating, cooling, ventilation, and lighting must be adequate to protect the health of the participants and staff.

(k) Illumination must be adequate in all areas and glare should be minimized.

(l) Flooring must be easily cleaned and made of a nonskid material. Stairs must be covered with nonskid material and handrails provided.

(m) There must be sufficient private space for the provision of confidential staff consultation with the participant, and nursing or therapy services if provided.

(n) There must be one room with one bed available for rest per ten participants.

(o) There must be an accessible telephone available for use by participants.

(p) Storage space must be provided for files, records, recreational and cleaning supplies.

(q) Sufficient furniture for the entire participant population must be of sturdy construction that will not easily tip over or move when used for seating or support while walking. The furniture must be safe and comfortable.

(r) A supply of safe drinking water must be readily available to participants at all times. Disposable paper cups, individual drinking cups, or an inclined jet type drinking fountain must be provided.

(s) ADS programs that dispense medications must designate a secured area for storing labeled medication away from the participant activity area. Each ADS program must have a written policy for medication management and must designate which staff are trained and authorized to administer medications. The medication management policy, which includes the training program, must be approved by a Registered Nurse or Pharmacist. ADS programs must only dispense physician prescribed medications.

(t) ADS programs must provide a safe and sanitary environment. This includes food services, general maintenance and cleaning, sewage disposal, infection control and standard precautions:

(A) Food Services. In order to assure the provision of safe food, all facilities serving 16 or more persons must meet the minimum requirements as outline in the DHS, Public Health Division's Food Sanitation Rules, OAR chapter 333, division 150. Facilities serving 15 or fewer persons or a facility that purchases meals from an outside meal source must meet the minimum requirements of the Food Sanitation Rules relating to the preparation, storage, and serving of food. Facilities serving 15 or fewer persons are not required to use commercial equipment.

(B) Garbage and Refuse. Garbage and refuse containers must be insect-proof, rodent-proof, leak-proof, and nonabsorbent. Garbage and refuse must be removed at least once a week from the premises or more often if needed to prevent odors and attraction of insects, rodents, and other animals. Items being recycled must be clean and pending removal, stored in a manner that does not present rodent harborage or insect breeding. Recycled items must be stored separately from food supplies and food preparation equipment.



## ADMINISTRATIVE RULES

(C) Cleaning and Maintenance. The facility must be kept clean, safe and in good repair. In facilities serving 16 or more persons, a utility sink must be provided.

(D) Sewage Disposal. If a community disposal system is available it must be utilized by the facility. If a private sewage disposal system is utilized, it must be properly operating and meet code requirements.

(E) Infection Control. Local health department standards must be met regarding communicable diseases.

(F) Smoking. If permitted, smoking must be supervised in an outdoor, adequately ventilated, and designated area away from the main ADS program.

(G) Standards of Precautions. Written procedures for the safe handling of soiled items minimizing the potential for the spread of communicable diseases must be established. Such procedures must include:

- (i) Soiled item disposal and storage;
- (ii) Hand washing;
- (iii) Sanitizing of contaminated surfaces; and
- (iv) Preventing contamination.

(5) EMERGENCY STANDARDS:

(a) ADS programs must adopt and implement emergency policies and procedures.

(b) The ADS program's emergency plan must be posted and provide the locations of fire extinguishers and exit routes.

(c) Staff must be trained in evacuation procedures and major emergency plans as part of their initial orientation and ongoing training.

(d) Records for fire and evacuation drills must be kept as a part of the ADS program's plan. Fire and evacuation drills must be held at least once every six months.

(e) A fire warning system, which includes, but not limited to smoke detectors, a sprinkler system or other alarm system, must be installed in all adult day services facilities to insure the safety of the participants and the staff.

(f) At least one fire extinguisher classed as 2A-10BC must be visible and readily accessible.

(g) Written protocol regarding sick or injured participants must be developed and given to participants, family and care providers upon admission.

(h) Emergency first aid kits must be visible and accessible to staff. Personnel trained in first aid and CPR must be on duty whenever participants are present.

- (i) At least two well-identified exits must be available.

(6) STAFFING REQUIREMENTS.

(a) All employees and volunteers must comply with the criminal history check rules, OAR 411-007-0200 through 411-007-0370. There must be written procedures to evaluate and determine employment status based on criminal findings.

(b) Each staff person and volunteer must be competent and qualified for the position held. Qualified means education or experience dealing with the adult day services population. Staff must hold personal information about participants and their families in confidence, treating all participants with respect and dignity.

(c) ADS programs must assure that employees and volunteers comply with standards for tuberculosis testing and hepatitis immunization specified by the local public health department.

(d) The staff to participant ratio must be a minimum of one staff person to six participants (1 to 6). ADS programs serving over 50 percent of participants who require full assistance with three or more activities of daily living must have a staff to participant ratio of one to four.

(e) Each ADS program that is located within the same facility as another program, (e.g. a hospital, nursing facility, senior center, church, or community based care facility) must be separate and distinct with designated staff and staff hours committed to the ADS program.

(f) To insure adequate care and safety of participants, there must be provisions and identified resources for qualified substitute staff.

(g) Staff must have sufficient knowledge to provide essential services to the participants. There must be at least one staff person or combination of staff on duty at all times who are knowledgeable of:

- (A) The fire, safety, and disaster plan;
- (B) Infection control;
- (C) CPR and first aid;
- (D) Body mechanics and transfer techniques;
- (E) Personal care;
- (F) Mandatory reporting laws of abuse and neglect;
- (G) Managing behavioral symptoms; and
- (H) The needs of the participants.

(h) Volunteers can be included in the staff ratio only when they conform to the same standards and requirements as paid staff, meet the job qualifications, have designated responsibilities, a signed written job description, and documentation of volunteers' schedule in the facility.

(i) There must be general orientation and continued in-service training for both paid staff and volunteers including, but not limited to:

- (A) Program mission and philosophy;
- (B) Mandatory reporting laws of abuse and neglect and indicators of abuse;

(C) Behavioral intervention and behavior acceptance and accommodations;

- (D) Standard precautions;
- (E) Participant rights;
- (F) Fire, safety, disaster plan, and emergency procedures;
- (G) Body mechanics and transfer techniques; and
- (H) Assistance with ADLs.

(4) ADMINISTRATION.

(a) Plan of Operation. Each ADS program must develop and implement a plan of operation. The plan of operation must be reviewed and, if necessary, revised annually. The plan must include:

(A) A definition of the target population including number, age and needs of participants;

- (B) Geographical definition of the service area;
- (C) Description of basic services and any optional services;
- (D) Hours and days of operation;
- (E) Admission and discharge policies and procedures;
- (F) Staffing;
- (G) Statement of participants' rights and grievance procedure;
- (H) Rates;
- (I) Procedures for reporting suspected abuse; and

(J) A written policy for dealing with lost or wandering participants must be developed and some type of identification for participants who wander must be provided.

(b) Advisory Committee. An ADS program must have a body that serves as an advisory committee. Members of the advisory committee must be representative of the community and must include family members of current or past participants and non-voting staff representatives. The advisory committee must meet at least twice a year and must have an opportunity, at least annually, to review and make recommendations on program policies. Agendas and minutes must be on file at the ADS program site. ADS program review by the committee must include items such as:

- (A) The scope and quality of services and activities provided;
- (B) Admission and discharge criteria, including recent participant admissions, discharges and grievances;
- (C) Service records;
- (D) Quality assurance or quality improvement activities, findings, and plan of corrective action;
- (E) Program evaluation; and
- (F) Rates.

(c) Discharge and Grievance Policy.

(A) The ADS program must develop a participant discharge policy that includes at a minimum:

- (i) Time frame for termination;
- (ii) Criteria for discharge;
- (iii) Notification procedures;
- (iv) Appeal policy; and

(v) End of service. When possible, the ADS program must provide referrals or resources to the participant for services from other organizations whether the discharge was voluntary or involuntary.

(B) The discharge notification must include reasons for discharge and a discharge summary. Each participant, family, or caregiver must receive a minimum of two weeks' notice. Notice may be issued with less than two weeks advance notice when the participant presents imminent danger to other participants or his or herself, or when the service needs have increased to the level at which the ADS program can no longer meet the participant's needs safely or adequately.

(C) A grievance policy for resolving participants' concerns, complaints, or discharge from the ADS program must be developed and include, but not limited to, process and time frames, a written response to the participant, and a written record of the grievance to be filed at the facility.

(d) Program Evaluation. As part of the quality assurance plan, the ADS program must develop policies and procedures for evaluating operation and services. The plan must include a survey of employees, participants, families or services providers and referral services discussing all

# ADMINISTRATIVE RULES

aspects of the ADS program. The ADS program must determine further action to ensure continuous improvement in service delivery. A written report summarizing the annual evaluation findings, with implementation or correction time tables must be posted for review and be maintained as part of the facilities permanent record.

(e) Personnel Policies and Practices. The ADS program must have written personnel policies for both staff and volunteers.

(f) General Records Policies. The ADS program must have a records policy for administrative records and participants' records.

(A) The ADS programs must maintain administrative records which include personnel records, fiscal records, statistical reports, government-related records, contracts, organizational records, quality improvement plans or quality assurance plans, advisory committee minutes, certificates of annual fire and health inspections as required by local ordinances, and incident reports.

(B) The ADS programs must develop a written policy on confidentiality and the protection of participants' records. The policy must define procedures for the use and removal of:

- (i) Participants' records;
- (ii) Conditions for the release of information; and
- (iii) Conditions that require authorization in writing by the participant or his/her legally responsible person, for the release of information, not otherwise authorized by law.

Stat. Auth.: ORS 410.070, 410.490 & 410.495  
Stats. Implemented: ORS 410.485 - 410.495  
Hist.: SSD 12-1992, f. & cert. ef. 12-1-92; SDDS 4-1999, f. & cert. ef. 3-15-99; SPD 6-2007(Temp), f. & cert. ef. 5-15-07 thru 11-11-07

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## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Amend Continuing Education Guidelines for Private Investigators.

**Adm. Order No.:** DPSST 7-2007

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 5-15-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 259-061-0260

**Subject:** Amends the current rules relating to continuing education policy to include technological advances and provide a broader range of training opportunities to constituents in rural and outlying areas of the state.

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

### 259-061-0260

#### Continuing Education (CE) Guidelines

(1) Conferences and Seminars. All Department, county, state, national, international bar, investigator, fire-related, law enforcement, forensic science, medical and mental health associations are approved for continuing education units. The Department will also maintain a list of organizations whose conferences, seminars, and educational meetings have standing approval. Continuing Education from any other organizations will be approved on a case-by-case basis.

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

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

(c) Video and Audio Media: 1 CE Unit for each hour of presentation. (Limit 16 units per licensing period.)

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

(3) Educational Institutions: Programming presented in state, nationally or internationally, by licensed or accredited educational institutions including, but not limited to colleges, universities, trade and professional schools, will be granted standing approval when that institution is licensed or approved by the respective State's Department of Education or other State approving agency. Others may be approved on a case-by-case basis.

(a) All accredited or licensed Colleges and Universities:

(A) Attendance: 1 CE Unit per college-level credit hour. (Limit 24 units per licensing period.)

(B) Lecturing: 4 CE Units per hour of presentation. (Limit 8 units per licensing period.)

(b) Online Studies:

(A) Two (2) CE Units per college-level credit hour. (Limit 20 units per licensing period.)

(B) All accredited or licensed trade and professional schools (other than colleges and universities). Course work directly related to investigations, including but not limited to, crash technology; criminal justice; fire science; law; judicial; legal and governmental systems equal one (1) CE Unit per hour of presentation. (Limit 20 units per licensing period.)

(C) All accredited or licensed trade and professional schools (other than colleges and universities). Course work indirectly related to the practice of investigation or business operation instruction. (Limit 12 units per licensing period.)

(4) Publications: The Department reserves the right to approve or disapprove any credit for articles, papers, books, or other publications the individual has authored, or co-authored, relating to the private investigative industry. A maximum of 10 CE Units may be granted per licensing period, with no carry over.

(5) Self-Study:

(a) Correspondence Courses and Online Courses: Two (2) CE units per college-equivalent credit hour; otherwise, Four (4) CE units per course that is related to investigation, completed and passed. (Limit of 4 units per licensing period.)

(b) Books and Manuals: Two (2) CE units for each non-fiction book or professional/technical manual that is related to investigation. All books published by Lawyers and Judges Publishing have standing approval. Other books will be approved on a case-by-case basis. (Limit of 6 units per licensing period.)

(c) Internet study and research: One (1) CE unit for each hour of Independent study and research directly related to the individual investigator's practice not to exceed 4 CE Units per study topic. (Limit 4 units per licensing period.)

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

(7) Department/Board/Committee Meetings: One (1) CE unit will be granted for attending a Board or Committee Meeting hour. No CE units will be granted for attending investigator association board or committee meetings. (Limit of 8 units per licensing period.)

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

(9) Mentoring: A licensed private investigator who provides investigation-related training to another licensed private investigator, or to a licensed provisional investigator, may claim one (1) CE Unit per eight hours of training. (Limit 8 units per licensing period.)

Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480

Stats. Implemented: ORS 703.401 - 703.995

Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 7-2007, f. & cert. ef. 5-15-07

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## Landscape Architect Board Chapter 804

**Rule Caption:** Organize and revise information regarding Examination Qualifications, Examination Procedures, and Qualifications for Registration.

**Adm. Order No.:** LAB 1-2007

**Filed with Sec. of State:** 4-27-2007

**Certified to be Effective:** 4-27-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 804-022-0005

**Rules Amended:** 804-010-0000, 804-010-0010, 804-020-0005, 804-020-0030, 804-020-0045

**Rules Ren. & Amend:** 804-010-0005 to 804-010-0020, 804-020-0055 to 804-022-0000, 804-010-0025 to 804-022-0010, 804-020-0020 to 804-020-0001, 804-020-0000 to 804-020-0003

**Subject:** The information regarding eligibility for examination and eligibility for registration was co-mingled. This Rule revision now provides for Examination Qualification in its own Division. The Examination Procedures are now correctly headed and clarification of the Board's role in administering the examination is presented. A new Division 22 titled "Qualifications for Registration" clarifies the

# ADMINISTRATIVE RULES

Board's requirements when individuals wish to apply for registration. With this rule revision, the Board will now require an applicant for examination to provide verification of a one year minimum of experience under a Landscape Architect.

**Rules Coordinator:** Susanna R. Knight—(503) 589-0093

## 804-010-0000

### Examination Qualifications

(1) To qualify to sit for the Board administered examination, an applicant for examination must have a degree from a program accredited and accepted by the Landscape Architecture Accreditation Board (LAAB).

(2) The degree program must be listed in LAAB's Accreditation Report current at the time of the candidate's graduation.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2007, f. & cert. ef. 4-27-07

## 804-010-0010

### Equivalent Education and Experience

(1) In lieu of the degree specified in OAR 804-010-0000, an applicant may satisfy the education requirement for examination eligibility by accumulating the required five years of credit through a combination of one or more of the following:

- Non-accredited B.L.A or M.L.A., four years credit;
- NAAB-accredited B.Arch. or M. Arch, four years credit;
- ABET-accredited degree in Civil Engineering, four years credit; or
- Any Bachelor's degree, two years credit; and
- Up to three years of diversified experience in landscape architecture under the direct supervision of a licensed landscape architect can fulfill the balance of the five years required to sit for the examination.

(2) In allowing examination applicants the opportunity to combine education and experience in fulfilling the minimum qualification requirements established by statute, the board will apply the following evaluation criteria:

(a) Degrees listed in (1) above cannot be combined to satisfy the education credit requirement;

(b) The work experience applied as education credit may not also be used to satisfy experience requirements;

(c) Any degree awarded less than two years prior to the accreditation of the program will be accepted as an accredited degree;

(d) Any degree awarded after a program has ceased to be accredited will not be accepted as an accredited degree.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.335

Hist.: LAB 1-1982(Temp), f. & ef. 5-6-82; LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 2-1998, f. & cert. ef. 4-22-98; Suspended by LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2007, f. & cert. ef. 4-27-07

## 804-010-0020

### Experience in Lieu of Education

(1) Applicants may qualify for examination under ORS 671.335(1) by completing eight years of experience under the direct supervision of a registered landscape architect.

(2) Applicants applying under the provisions of this section must submit a written request to the board seeking consideration of experience in lieu of education.

(3) The board shall supply the applicant with the format for submitting required documentation.

(4) A Board written response will provide the applicant with the Board's evaluation and conclusions regarding admission to the examination.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; Renumbered from 804-010-0005, LAB 1-2007, f. & cert. ef. 4-27-07

## 804-020-0001

### Landscape Architect Registration Examination (LARE)

(1) The board administers the Landscape Architect Registration Examination (LARE) prepared by the Council of Landscape Architect Registration Boards (CLARB) to test the applicants' knowledge, skills, and abilities considered to be the minimum competency needed for protecting the health, safety and welfare of the public.

(2) The board administers sections of the LARE as designated by CLARB.

(3) Candidates must request of CLARB to provide verification to the Oregon Board of passing Sections A, B, and D of the LARE.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 2-1998, f. & cert. ef. 4-22-98; Renumbered from 804-020-0020, LAB 1-2007, f. & cert. ef. 4-27-07

## 804-020-0003

### Application

(1) An application for examination must be on forms provided by the Board.

(2) The application must be accompanied by the following:

(a) Official university transcript(s);

(b) Verification of one year of experience under the direct supervision of a registered Landscape Architect or experience verification from the registered Landscape Architect that supervised the applicants experience if applying by other than an LAAB accredited program;

(c) Application fee for the examination; and

(d) Examination fee for the examination.

Stat. Auth.: ORS 671

Stats. Implemented:

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; Renumbered from 804-020-0000, LAB 1-2007, f. & cert. ef. 4-27-07

## 804-020-0005

### Reapply for Exam

(1) Applicants must submit a new application accompanied by the required fee to retake the failed portions of the examination.

(2) Retake applications do not need to include the official university transcript or verification of experience.

Stat. Auth.: ORS 671

Stats. Implemented:

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2007, f. & cert. ef. 4-27-07

## 804-020-0030

### Date of Exams

(1) The LARE shall be administered on the dates established by CLARB.

(2) The Board shall establish the time and location of the exam.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; 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 1-2007, f. & cert. ef. 4-27-07

## 804-020-0045

### Notice of Score

The Board will notify applicants by mail of their examination Scores for section C and E of the LARE.

Stat. Auth.: ORS 671

Stats. Implemented:

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-2007, f. & cert. ef. 4-27-07

## 804-022-0000

### Landscape Architect in Training (LAIT)

(1) A candidate who has successfully completed two or more sections of the LARE may register with the Board as a Landscape Architect in Training (LAIT).

(2) The LAIT shall continue to register annually until such time as the LAIT is eligible for registration as a Landscape Architect.

Stat. Auth.: ORS 183, 671

Stats. Implemented: ORS 671.335, 671.345, 671.365, 671.425

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1986, f. & ef. 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; Renumbered from 804-020-0055, LAB 1-2007, f. & cert. ef. 4-27-07

## 804-022-0005

### Initial Landscape Architect Registration not by Reciprocity

(1) An individual may apply for initial registration as a Landscape Architect if they:

- Are not now licensed in another jurisdiction; or
- Have not been previously licensed in another jurisdiction.

(2) The application packet must include the following:

(a) Completed application form for Landscape Architect registration;

# ADMINISTRATIVE RULES

- (b) Verification of passing all sections of the LARE:  
(A) Exams passed under Board administration are already on file;  
(B) Passing scores for exams not administered by the Board must be verified by the administering body.
- (c) Verification of three years of work experience under the direct supervision of a registered Landscape architect which has been accrued after satisfying the Oregon examination requirement but may be accrued while sitting for the examination:  
(A) Up to two years of the three years of experience may be supervised by a civil engineer, architect or credential planner;  
(B) To fulfill the requirement of A above, the Board may consider other experience for up to one year of the experience requirement.
- (b) Application fee;  
(e) Annual renewal fee; and  
(f) A signed Affidavit of Understanding which confirms that the applicant has read and understands the Oregon Revised Statutes and the Oregon Administrative Rules that govern the practice of landscape architecture.
- (3) Upon acceptance by the Board of the application information, the applicant will complete an Oral Exam/Interview.
- (4) The initial date of registration shall be the date of the meeting during which the Board approves the application for registration.
- Stat. Auth.: ORS 671  
Stats. Implemented: ORS 671.335  
Hist.: LAB 1-2007, f. & cert. ef. 4-27-07

## 804-022-0010

### Landscape Architect Registration by Reciprocity

- (1) Any person not registered as a Landscape Architect in Oregon, but who has lawfully been issued a license or certificate to practice in another state or territory, may file an application packet for registration under ORS 671.345.
- (2) An application packet must include the following:  
(a) A current Council of Landscape Architectural Registration Boards (CLARB) certificate to aid the board in determining the applicant's qualifications;  
(b) A Board application form;  
(c) An application fee;  
(d) Annual registration fee; and  
(e) Affidavit of Understanding stating that the applicant has read and understands the Oregon Landscape Architect Law and the Oregon Administrative Rules governing the practice of Landscape Architecture.
- (3) Registration shall be granted after all application materials are approved.
- Stat. Auth.: ORS 671  
Stats. Implemented: ORS 671.345  
Hist.: LAB 1-1983, f. & ef. 2-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1989, f. 7-1-89, cert. & ef. 6-23-89; LAB 2-1989, f. 6-23-89, cert. ef. 7-1-89; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; Renumbered from 804-010-0025, LAB 1-2007, f. & cert. ef. 4-27-07

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**Oregon Board of Dentistry**  
**Chapter 818**

**Rule Caption:** Adopts or amends rules regarding the Expanded Functions and Restorative Functions Endorsements for dental hygienists.

**Adm. Order No.:** OBD 2-2007

**Filed with Sec. of State:** 4-26-2007

**Certified to be Effective:** 5-1-07

**Notice Publication Date:** 1-1-07

**Rules Adopted:** 818-035-0072

**Rules Amended:** 818-001-0087, 818-035-0025, 818-035-0040

**Subject:** OAR 818-001-0087, Fees, is amended to create a fee for the Dental Hygiene Restorative Functions Endorsement.

OAR 818-035-0025, Prohibitions, is amended to allow Dental Hygienists to perform restorative functions pursuant to OAR 818-035-0072.

OAR 818-035-0040, Expanded Functions of Dental Hygienists, is amended to require that an applicant must submit an application to receive this endorsement.

OAR 818-035-0072, Restorative Functions of Dental Hygienists, is adopted allowing the placement and finishing of direct alloy and direct anterior composite restorations by Dental Hygienists after receiving the Restorative Function Endorsement (RFE).

**Rules Coordinator:** Sharon Ingram—(971) 673-3200

## 818-001-0087

### Fees

- (1) The Board adopts the following fees:  
(a) Biennial License Fees:  
(A) Dental — \$210;  
(B) Dental — retired — \$0;  
(C) Dental Faculty — \$210;  
(D) Volunteer Dentist — \$0;  
(E) Dental Hygiene — \$100;  
(F) Dental Hygiene — retired — \$0;  
(G) Volunteer Dental Hygienist — \$0.  
(b) Biennial Permits, Endorsements or Certificates:  
(A) Anesthesia Class 1 Permit (Nitrous Oxide) — \$40;  
(B) Anesthesia Class 2 Permit (Conscious Sedation) — \$75;  
(C) Anesthesia Class 3 Permit (Deep Sedation) — \$75;  
(D) Anesthesia Class 4 Permit (General Anesthesia) — \$140;  
(E) Radiology — \$75;  
(F) Expanded Function Dental Assistant — \$50;  
(G) Expanded Function Orthodontic Assistant — \$50;  
(H) Instructor Permits — \$40;  
(I) Dental Hygiene, Limited Access Permit — \$50;  
(J) Dental Hygiene Restorative Functions Endorsement — \$50.  
(c) Applications for Licensure:  
(A) Dental — General and Specialty — \$305;  
(B) Dental Faculty — \$305;  
(C) Dental Hygiene — \$140;  
(D) Licensure Without Further Examination — Dental and Dental Hygiene — \$750.  
(d) Examinations:  
(A) Jurisprudence — \$0;  
(B) Dental Specialty:  
(i) \$750 at the time of application; and  
(ii) If only one candidate applies for the exam, an additional \$1,250 due ten days prior to the scheduled exam date;  
(iii) If two candidates apply for the exam, an additional \$250 (per candidate) due ten days prior to the scheduled exam date;  
(iv) If three or more candidates apply for the exam, no additional fee will be required.  
(e) Duplicate Wall Certificates — \$50.  
(2) Fees must be paid at the time of application and are not refundable.

(3) The Board shall not refund moneys under \$5.01 received in excess of amounts due or to which the Board has no legal interest unless the person who made the payment or the person's legal representative requests a refund in writing within one year of payment to the Board.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 293.445, 679.060, 679.120, 680.050, 680.200 & 680.205

Hist.: DE 6-1985(Temp), f. & ef. 9-20-85; DE 3-1986, f. & ef. 3-31-86; DE 1-1987, f. & ef. 10-7-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0085; DE 2-1989(Temp), f. & cert. ef. 11-30-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 1-1991(Temp), f. 8-5-91, cert. ef. 8-15-91; DE 2-1991, f. & cert. ef. 12-31-91; DE 1-1992(Temp), f. & cert. ef. 6-24-92; DE 2-1993, f. & cert. ef. 7-13-93; OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction, 8-2-99; OBD 5-2000, f. 6-22-00, cert. ef. 7-1-00; OBD 8-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07

## 818-035-0025

### Prohibitions

A dental hygienist may not:

- (1) Diagnose and treatment plan other than for dental hygiene services;  
(2) Cut hard or soft tissue with the exception of root planing;  
(3) Extract any tooth;  
(4) Fit or adjust any correctional or prosthetic appliance except as provided by OAR 818-035-0040(1)(c);  
(5) Prescribe any drug, other than fluoride, fluoride varnish, antimicrobial solutions for mouth rinsing or resorbable antimicrobial agents;  
(6) Administer or dispense any drugs except as provided by OAR 818-035-0030, 818-035-0040, 818-026-0060(11) and 818-026-0070(11);  
(7) Place, condense, carve or cement permanent restorations or operatively prepare teeth except as provided in OAR 818-035-0072;  
(8) Irrigate or medicate canals; try in cones, or ream, file or fill canals;  
(9) Use the behavior management techniques of Hand Over Mouth (HOM) or Hand Over Mouth Airway Restriction (HOMAR) on any patient

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.020(1)

Hist.: DE 2-1992, f. & cert. ef. 6-24-92; DE 2-1997, f. & cert. ef. 2-20-97; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00;

# ADMINISTRATIVE RULES

OBD 2-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07

## 818-035-0040

### Expanded Functions of Dental Hygienists

(1) Upon completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, a dental hygienist who completes a Board approved application shall be issued endorsement to perform the following functions under the general supervision of a licensed dentist:

- (a) Administer local anesthetic agents;
- (b) Use high-speed handpieces to polish amalgams; and
- (c) Apply temporary soft relines to full dentures, providing that the patient is seen by the dentist within 14 days after the application.

(2) Upon completion of a course of instruction in a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, a dental hygienist may administer nitrous oxide under the indirect supervision of a licensed dentist in accordance with the Board's rules regarding anesthesia.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j) & 679.250(7)

Hist.: DE 5-1984, f. & ef. 5-17-84; DE 3-1986, f. & ef. 3-31-86; DE 2-1992, f. & cert. ef. 6-24-92; OBD 3-1998, f. & cert. ef. 7-13-98; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 8-1999, f. 8-10-99, cert. ef. 1-1-00; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07

## 818-035-0072

### Restorative Functions of Dental Hygienists

(1) The Board shall issue a Restorative Functions Endorsement (RFE) to a dental hygienist who holds an unrestricted Oregon license, and has successfully completed:

(a) A Board approved curriculum from a program accredited by the Commission on Dental Accreditation of the American Dental Association or other course of instruction approved by the Board, and successfully passed the Western Regional Examining Board's Restorative Examination or other equivalent examinations approved by the Board within the last five years; or

(b) If successful passage of the Western Regional Examining Board's Restorative Examination or other equivalent examinations approved by the Board occurred over five years from the date of application, the applicant must submit verification from another state or jurisdiction where the applicant is legally authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least 25 restorative procedures within the immediate five years from the date of application.

(2) A dental hygienist may perform the placement and finishing of direct alloy and direct anterior composite restorations, under the indirect supervision of a licensed dentist, after the supervising dentist has prepared the tooth (teeth) for restoration(s):

(a) These functions can only be performed after the patient has given informed consent for the procedure and informed consent for the placement of the restoration(s) by a Restorative Functions Endorsement dental hygienist;

(b) Before the patient is released, the final restoration(s) shall be checked by a dentist and documented in the chart.

Stat. Auth.: ORS 679, 680

Stats. Implemented: ORS 679.010(3), 679.250(7)

Hist.: OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07

## Oregon Commission on Children and Families

### Chapter 423

**Rule Caption:** Define meaning of "Directed Funding Streams" and document disallowable grant streams for direct and indirect assessments.

**Adm. Order No.:** OCCF 3-2007(Temp)

**Filed with Sec. of State:** 5-8-2007

**Certified to be Effective:** 5-11-07 thru 9-7-07

**Notice Publication Date:**

**Rules Amended:** 423-001-0006, 423-010-0023

**Subject:** The proposed rule amendment defines "Directed Funding Streams" and documents grant streams that are disallowable for direct and indirect cost assessments.

**Rules Coordinator:** Marsha Clark—(503) 373-1283

## 423-001-0006

### Definitions

As used in OAR Chapter 423:

(1) "Agency" means the State Commission acting through the staff of the Oregon Commission on Children and Families as defined in ORS 417.735(6).

(2) "Basic capacity" means an allocation to Local Commissions that provides for the basic functions of a Local Commission office which include the following functions:

(a) Managing resources (includes general office support, fiscal and budget management, program evaluation, and staff development),

(b) Facilitation and coordination of meetings and forums,

(c) Coordinated, comprehensive planning in accordance with ORS 417.775, and

(d) The provision of technical assistance to their communities.

(3) "Best practice" or "proven practice of effectiveness" means research-based or evidence-based programs, core components, and principles that have been shown to reliably produce measurable and sustainable improvements in productivity, efficiency, or effectiveness.

(4) "BOCC" or "Board of County Commissioners" means the governing body of a county as defined in ORS 203.030 and includes a county court as defined in ORS 203.111.

(5) "Budget allocation" means an allocation of funds from the State Commission to the Board of County Commissioners pursuant to an Intergovernmental Agreement per ORS 417.705 through 417.797 and 419A.170.

(6) "Budget distribution" means a budget created by Local Commission staff in a format prescribed by the Agency. The budget distribution demonstrates, by grant stream, the projected budget for all activities proposed by the Local Commission and approved by the Board of County Commissioners.

(7) "Collaborative funding process" means allowing all interested parties to have an opportunity to participate in a funding process intended to use resources in the most effective and efficient manner based on the local coordinated, comprehensive plan.

(8) "Community mobilization" means government and private efforts to increase community awareness and to facilitate the active participation of citizens and organizations in projects and issues that will have positive impact on the well-being of children, families and communities.

(9) "County" means a county or two or more counties, which have combined to provide services to children, youth and families under ORS 417.705 to 417.797 and 419A.170.

(10) "Direct costs" means those costs that can be identified specifically and directly with a particular program or project, such as a particular federal grant or a direct activity or program of the organization.

(11) "Direct Services" means those services provided directly to a child or family or group of children or families to maintain or enhance their well-being, or the management, administration or fiscal responsibility of programs that have direct contact with children or families. Direct services do not include services that are contracted out to other parties pursuant to ORS 417.775.

(12) "Directed Funding Stream" means funds allocated to Local Commissions for a single program or initiative. A funding stream for which Local Commissions have little or no discretion about how the directed funds are utilized.

(13) "Early Childhood System Planning" means planning developed to describe the system, process and services that families can voluntarily access and that is part of and consistent with the Local Plan. The planning includes goals and strategies to achieve the early childhood benchmarks and intermediate outcomes.

(14) "Expended" means the payment of goods delivered or services rendered or liquidation of an obligation.

(15) "Indirect Costs" means those costs that have been incurred for common or joint purposes and cannot be readily identified with or directly allocated to a particular program or project of the organization. Examples of indirect costs include building and equipment depreciation, rent and facilities maintenance costs, general and administrative expenses, and personnel administration and accounting where those costs are distributed to projects or programs through a formula or cost allocation method.

(16) "Initiatives" means those time-limited activities that a Local Commission undertakes to promote community mobilization.

(17) "Innovative program or practice" means a program or practice that demonstrates success when outcomes are evaluated over time and draws on research-based principles and ideas from best programs and practices.

# ADMINISTRATIVE RULES

(18) "Layperson" means a person whose primary income is not derived from offering direct service to children and youth or from administering a program for children or youth.

(19) "Local Commission" means a local commission on children and families appointed pursuant to ORS 417.760.

(20) "Local Plan" means the local coordinated, comprehensive plan for children and families that is developed pursuant to ORS 417.775 and includes identification of connections in state and local planning processes and provisions for a local continuum of social supports. The Local Plan includes planning for the early childhood system, alcohol and drug prevention and treatment, and high-risk juvenile crime prevention, and references mental health and public health service plans.

(21) "Locally invested funds" includes Children, Youth and Families, Great Start and Youth Investment grant streams.

(22) "Oregon Commission on Children and Families (OCCF)" means the totality of the service system described in ORS 417.705 to 417.797, and 419A.170, including the State Commission on Children and Families (ORS 417.730), the State Commission-appointed director and staff (ORS 417.735), the local commissions on children and families (ORS 417.760) and specific program areas.

(23) "Partners for Children and Families" means the formal collaboration among state agencies and affected local agencies that works to combine planning and data requirements and coordinate policies and the provision of services to children and families.

(24) "Perinatal" means the period on or around the time of childbirth.

(25) "Primary health care" for purposes of Healthy Start means linkage and referral to health care resources and assisting families to establish a medical home for primary health care.

(26) "Prenatal" means the period of time from conception to the onset of labor.

(27) "Provider" means a program or service described in ORS 417.705 through 417.797 and 419A.17 that has been approved for funding by the Local Commission and the Board of County Commissioners.

(28) "Provider allocation" means those funds awarded by a county to a public or private agency or person to achieve an outcome within the county's Local Plan.

(29) "Staff director" or "director" means an upper level managerial position that provides a minimum of .5 FTE effort toward the following:

(a) Overall responsibility for daily operations of the Local Commission office;

(b) Leadership, advocacy, and key management operations of Local Commission work;

(c) Direct access to the Board of County Commissioners/County Court; and

(d) Responsibility for building and supporting the leadership capacity of the Local Commission members.

(30) "State Commission" means the Oregon Commission on Children and Families' appointed members established pursuant to 417.730.

(31) "Services for children and families" does not include services provided by the Department of Education or school districts that are related to curriculum or instructional programs as defined in ORS 417.705.

Stat. Auth.: ORS 417.705 - 417.797

Stats. Implemented: ORS 417.705 - 417.797

Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 3-2007(Temp), f. 5-8-07, cert. ef. 5-11-07 thru 9-7-07

## 423-010-0023

### Categorization & Limitation of Local Commission Costs

(1) Basic Capacity:

(a) The State Commission determines a biennial allocation of funds to assist Local Commissions in the costs associated with meeting the intent of the Partnership Agreement and the Components Document. County Basic Capacity allocations may be used for activities in accordance to the limitations in 423-010-0023(5) for costs associated with operating an office, which include functions such as policy and planning, evaluation of state and local outcomes, information systems, fiscal and budget, communications, personnel, reception, general correspondence, contracting processes, mapping systems, designing and assessing strategies, and other related functions of the Local Commission office. Basic Capacity may also be used for costs associated with the monitoring of contracts, quality control, and the measurement of outcomes to determine the efficiency and effectiveness of an activity.

**NOTE:** Copies of the Partnership Agreement and the Components Document are available from the Agency.

(b) Each county will employ at least 2.0 full-time equivalent (FTE) Local Commission staff, either as employees or contractors, from the Basic Capacity allocation to meet the requirements of OAR 423-010-023(1)(a).

(c) The Executive Committee of the State Commission may waive the 2.0 full-time equivalent staff requirement only when the following criteria have been met:

(A) A plan for staffing is submitted to the Agency that includes a detailed description of how the staffing plan meets the requirements of the Partnership Agreement and accomplishes critical areas of the Components Document and documents in-kind, volunteer assistance or other methods to meet those requirements.

(B) A review is completed by the Agency of past performance of the Local Commission, including meeting timelines, monitoring and compliance requirements, and quality of plans and outcomes.

(C) A written description is provided to the Agency that demonstrates that there is no real or perceived conflict of interest or conflict with ORS 417.775(2)(a), which prohibits Local Commissions from providing direct services.

(D) Letters or other form of written communication that support the waiver request are provided from community partners from formal and informal systems that work regularly with the Local Commission in accomplishing its work.

(E) Written evidence of the Local Commission recommendation and BOCC support.

(F) If the Local Commission disagrees with the decision of the Executive Committee, it may request reconsideration of the decision at the next regularly scheduled meeting of the Executive Committee. Following that, the Local Commission may appeal the decision to the State Commission at its next regularly scheduled meeting.

(d) Funds remaining in the Basic Capacity allocation after meeting the requirement of 423-010-0023(1)(a) may be used for Community Mobilization or programs or services to children and families that are identified in the Local Plan.

(e) Basic Capacity appropriations cannot be carried from one biennium to the next pursuant to OAR 423-010-0027(7) and (8), but will revert to the State if not obligated or expended at the end of the biennium.

(2) Community Mobilization: Counties may allocate funds for the purposes of community mobilization activities and strategies from locally invested funds as defined in OAR 423-001-006 (20). All community mobilization activities and strategies funded with locally invested funds must use proven practices of effectiveness and outcomes data must be reported for each activity and strategy.

(3) Medicaid (Title XIX): Local Commissions may allocate a combined total of 5 percent of Medicaid (Title XIX) earned income for administration and community mobilization. There is no limit to the amount that can be allocated to service providers so long as the Medicaid (Title XIX) earnings are reinvested in the program from which they were earned.

(4) Local Commissions may allocate up to a total of 4 percent of Healthy Start General Fund for contract management functions.

(5) Limitation on Usage:

(a) Consistent with the terms and conditions in the Intergovernmental Agreement, all budget allocations will be directly related to at least one strategy in the Local Plan, meet the purpose and restrictions of each program area and grant stream, and have measurable outcomes.

(b) Service provider contracts: Counties may allocate funds to providers for the cost of services or activities to children and families, however all services or activities must be identified in the Local Plan.

(c) Services and programs funded by another federal or state funding source cannot be funded with OCCF dollars when blending of those funds are not allowed by state or federal agreements or when duplication will occur.

(d) County Indirect/Direct Cost Assessment: Counties may assess direct and indirect charges from the Basic Capacity funding stream at an assessment no higher than 10 percent of the total annual Local Commission allocation from the Agency less directed funding streams or those expressly disallowed by state or federal statute or rule. The costs taken for indirect/direct assessments and the Local Commission staff salary and benefits taken from the basic capacity funding stream cannot exceed the total basic capacity funding stream. Agency will publish and regularly update operating policies that identifies directed funding streams and those disallowed by state or federal statute or rule. This rule is subject to monitoring and review by the Agency (OCCF Policy and Procedure Number CTY-150).

(6) A Local Commission may not provide direct services for children, youth and families or the management, administration or fiscal responsibility of programs that have direct contact with children or families. However a Local Commission may provide direct services for children, youth or families for a period not to exceed six months under the following conditions:

# ADMINISTRATIVE RULES

- (a) The Local Commission determines that there is an emergency;
- (b) A local activity provider discontinues providing the services in the county or region; or
- (c) The Local Commission determines no provider is able to offer the services in the county or region. The State Commission will not allow an extension beyond six months. Local Commissions not in compliance with this section will be subject to withholding of funds as noted in OAR 423-010-0027(9).

(7) Agency Approval: Budget allocations effectuated pursuant to the Intergovernmental Agreement and amendments will be subject to Agency review and approval.

Stat. Auth.: ORS 417.705 - 417.797  
Stats. Implemented: ORS 417.705 - 417.797  
Hist.: CCF 3-1994, f. & cert. ef. 5-18-94; CCF 1-1995, f. & cert. ef. 8-1-95; CCF 1-1997, f. 12-15-97, cert. ef. 12-19-97; OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 3-2007(Temp), f. 5-8-07, cert. ef. 5-11-07 thru 9-7-07

## Oregon Criminal Justice Commission Chapter 213

**Rule Caption:** Amends Sentencing Guidelines to implement pilot program using risk assessment tool in sentencing.

**Adm. Order No.:** CJC 1-2007(Temp)

**Filed with Sec. of State:** 4-25-2007

**Certified to be Effective:** 4-25-07 thru 10-21-07

**Notice Publication Date:**

**Rules Amended:** 213-004-0001

**Subject:** Oregon's mandatory sentencing guidelines system currently considers criminal history and severity of offense to determine whether an offender should be incarcerated or put on probation. The Oregon Criminal Justice Commission wishes to conduct a pilot project to introduce as an aid in sentencing, a risk assessment tool developed using demographic and criminal history variables to predict the likelihood that an offender will be rearrested. The rule change requires sentencing judges to consider the risk assessment tool when imposing sentences in each of 10 specific gridblocks (3-A, 3-B, 4-A, 4-B, 4-C, 5-C, 4-D, 5-D, 4-E, and 5-E), and affords sentencing judges discretion in determining how much weight, if any, to give the tool in imposing sentence.

Additionally, in order to study whether use of the risk assessment tool within Oregon's mandatory sentencing guidelines system is effective in reducing crime and recidivism, the rule change provides a discretionary range in which sentencing judges may use the tool. Specifically, the rule provides that, for each of the 5 vertically adjoining gridblocks in which the risk assessment tool will be used (3-A and 4-A; 3-B and 4-B; 4-C and 5-C; 4-D and 5-D; 4-E and 5-E), the presumptive sentence will be either the probationary sentence prescribed by the lower gridlock or the prison sentence prescribed by the upper gridblock, at the sentencing judge's discretion.

Finally, the upper range of gridblocks 4-A, 4-B, 5-C, 5-D, and 5-E in Appendix A were revised to 12 + 1 day, in order to include a presumptive prison term to implement the discretionary range outlined above. The upper range of gridblock 6-A was increased to 13 from 12.

This rule does not become effective without legislative action.

**Rules Coordinator:** Craig Prins—(503) 378-4830

### 213-004-0001

#### Sentencing Guidelines Grid

(1) The sentencing guidelines grid is a two-dimensional classification tool. The vertical axis is the Crime Seriousness Scale which classifies current crimes of conviction. The horizontal axis is the Criminal History Scale which classifies criminal histories.

(2) Except as provided in subsections (3) and (4) of this rule, each grid block states the presumptive sentence for an offender whose crime of conviction and criminal history place him or her in that grid block. The solid black line dividing the grid blocks is the dispositional line. The grid is set forth as Appendix 1.

(3) In the case of a conviction that is within either grid block of the following pairs of vertically adjacent grid blocks, the presumptive sentence is either the probationary sentence prescribed by the lower grid block or the prison sentence prescribed by the upper grid block:

- (a) Grid blocks 3-A and 4-A;

- (b) Grid blocks 3-B and 4-B;
- (c) Grid blocks 4-C and 5-C;
- (d) Grid blocks 4-D and 5-D;
- (e) Grid blocks 4-E and 5-E.

(4) For a conviction that is subject to subsection (3) of this rule, the sentencing judge, in exercising his or her discretion to impose either the presumptive probationary sentence or the presumptive prison sentence, may consider the aggravating and mitigating factors set forth in OAR 213-008-0002 and any other factor the sentencing judge deems relevant. Sentencing judges are required to consider a risk assessment instrument approved by the Criminal Justice Commission, but the weight to be given to the risk assessment is discretionary with the sentencing judge. The sentencing judge shall state on the record the reasons for any sentence for a conviction subject to subsection (3) of this rule.

(5) For a conviction that is subject to subsection (3) of this rule, if the sentencing judge imposes a sentence that is not within the presumptive sentence for either of the adjacent grid blocks, the sentence is a departure that is subject to the rules in divisions 8 and 12 of these guidelines. For purposes of any limitation on the nature and length of that departure sentence, the presumptive sentence for the conviction is the sentence prescribed by the grid block determined under subsection (2) of this rule.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669

Hist.: SSG 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSG 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSG 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96; Renumbered from 253-004-0001; CJC 1-2007(Temp), f. & cert. ef. 4-25-07 thru 10-21-07

## Oregon Department of Education Chapter 581

**Rule Caption:** Special education rules to be amended to reflect federal changes, to reorganize and update language.

**Adm. Order No.:** ODE 10-2007

**Filed with Sec. of State:** 4-25-2007

**Certified to be Effective:** 4-25-07

**Notice Publication Date:** 1-1-06

**Rules Adopted:** 581-015-2060, 581-015-2075, 581-015-2085, 581-015-2105, 581-015-2110, 581-015-2225, 581-015-2230, 581-015-2255, 581-015-2275, 581-015-2350, 581-015-2355, 581-015-2465, 581-015-2475, 581-015-2483, 581-015-2485

**Rules Repealed:** 581-015-0033, 581-015-0051, 581-015-0071, 581-015-0072, 581-015-0074, 581-015-0702, 581-015-0704, 581-015-0085, 581-015-0087, 581-015-0709, 581-015-0111, 581-015-0115, 581-015-0750, 581-015-0805, 581-015-0811, 581-015-0816, 581-015-0820, 581-015-0825

**Rules Ren. & Amend:** 581-015-0005 to 581-015-2000, 581-015-0035 to 581-015-2005, 581-015-0038 to 581-015-2010, 581-015-0048 to 581-015-2015, 581-015-0049 to 581-015-2020, 581-015-0057 to 581-015-2025, 581-015-0054 to 581-015-2030, 581-015-0600 to 581-015-2040, 581-015-0601 to 581-015-2045, 581-015-0602 to 581-015-2050, 581-015-0560 to 581-015-2055, 581-015-0605 to 581-015-2065, 581-015-0062 to 581-015-2070, 581-015-0037 to 581-015-2080, 581-015-0039 to 581-015-2090, 581-015-0042 to 581-015-2095, 581-015-0700 to 581-015-2100, 581-015-0701 to 581-015-2115, 581-015-0053 to 581-015-2120, 581-015-0073 to 581-015-2125, 581-015-0051(1) to 581-015-2130, 581-015-0051(2) to 581-015-2135, 581-015-0051(3) to 581-015-2140, 581-015-0051(4) to 581-015-2145, 581-015-0051(5) to 581-015-2150, 581-015-0051(6) to 581-015-2155, 581-015-0051(7) to 581-015-2160, 581-015-0051(8) to 581-015-2165, 581-015-0051(9) to 581-015-2170, 581-015-0051(10) to 581-015-2175, 581-015-0051(11) to 581-015-2180, 581-015-0063 to 581-015-2190, 581-015-0067 to 581-015-2195, 581-015-0068 to 581-015-2200, 581-015-0568 to 581-015-2205, 581-015-0066 to 581-015-2210, 581-015-0703 to 581-015-2215, 581-015-0064 to 581-015-2220, 581-015-0070 to 581-015-2235, 581-015-0059 to 581-015-2240, 581-015-0060 to 581-015-2245, 581-015-0061 to 581-015-2250, 581-015-0701 to 581-015-2260, 581-015-0141 to 581-015-2265, 581-015-0126 to 581-015-2270, 581-015-0131 to 581-015-2280, 581-015-0711 to 581-015-2285, 581-015-0712 to 581-015-2290, 581-015-0133 to 581-015-2295, 581-015-0606 to 581-015-2300,

# ADMINISTRATIVE RULES

581-015-0094 to 581-015-2305, 581-015-0075 to 581-015-2310,  
581-015-0079 to 581-015-2315, 581-015-0099 to 581-015-2320,  
581-015-0101 to 581-015-2325, 581-015-0102 to 581-015-2330,  
581-015-0095 to 581-015-2335, 581-015-0097 to 581-015-2340,  
581-015-0081 to 581-015-2345, 581-015-0080 to 581-015-2360,  
581-015-0096 to 581-015-2365, 581-015-0086 to 581-015-2370,  
581-015-0088 to 581-015-2375, 581-015-0091 to 581-015-2380,  
581-015-0084 to 581-015-2383, 581-015-0093 to 581-015-2385,  
581-015-0108 to 581-015-2390, 581-015-0109 to 581-015-2395,  
581-015-0550 to 581-015-2400, 581-015-0551 to 581-015-2405,  
581-015-0552 to 581-015-2410, 581-015-0553 to 581-015-2415,  
581-015-0554 to 581-015-2420, 581-015-0555 to 581-015-2425,  
581-015-0556 to 581-015-2430, 581-015-0557 to 581-015-2435,  
581-015-0558 to 581-015-2440, 581-015-0559 to 581-015-2445,  
581-015-0705 to 581-015-2450, 581-015-0166 to 581-015-2455,  
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581-015-0196 to 581-015-2495, 581-015-0708 to 581-015-2500,  
581-015-0191 to 581-015-2505, 581-015-0186 to 581-015-2510,  
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581-015-0301 to 581-015-2585, 581-015-0415 to 581-015-2590,  
581-015-0505 to 581-015-2595, 581-015-0603 to 581-015-2600,  
581-015-0604 to 581-015-2605, 581-015-0015 to 581-015-2610,  
581-015-0900 to 581-015-2700, 581-015-0910 to 581-015-2705,  
581-015-0920 to 581-015-2710, 581-015-0930 to 581-015-2715,  
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581-015-0937 to 581-015-2740, 581-015-0940 to 581-015-2745,  
581-015-0964 to 581-015-2750, 581-015-0966 to 581-015-2755,  
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581-015-1010 to 581-015-2770, 581-015-0945 to 581-015-2775,  
581-015-0946 to 581-015-2780, 581-015-0949 to 581-015-2785,  
581-015-0941 to 581-015-2790, 581-015-0943 to 581-015-2795,  
581-015-0955 to 581-015-2800, 581-015-0960 to 581-015-2805,  
581-015-0968 to 581-015-2810, 581-015-0970 to 581-015-2815,  
581-015-0972 to 581-015-2820, 581-015-0980 to 581-015-2825,  
581-015-0990 to 581-015-2830, 581-015-0995 to 581-015-2835,  
581-015-1120 to 581-015-2840, 581-015-1000 to 581-015-2845,  
581-015-1002 to 581-015-2850, 581-015-1003 to 581-015-2855,  
581-015-1005 to 581-015-2860, 581-015-1020 to 581-015-2865,  
581-015-1030 to 581-015-2870, 581-015-1008 to 581-015-2875,  
581-015-1125 to 581-015-2880, 581-015-1051 to 581-015-2885,  
581-015-1052 to 581-015-2890, 581-015-1090 to 581-015-2895,  
581-015-1100 to 581-015-2900, 581-015-1105 to 581-015-2905,  
581-015-1106 to 581-015-2910

**Subject:** The 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), effective July 2005, and corresponding regulations, effective October 2006, require changes to existing state special education regulations. In addition, the state regulations have been reorganized and renumbered in a more logical sequence so that information is easier to find. Regulations have also been updated to reflect more current language, and some regulations have been amended for clarity or to align more closely with the federal statutes and regulations. Obsolete rules have been repealed, and reorganization has prompted repeal of some rules that have been combined with new or amended rules. The proposed rules include amendments to rules in all sections, including: definitions, general supervision, free appropriate public education, child find, consent, evaluation and eligibility, parent participation, IEP, placement and least restrictive environment, children in public schools placed by a private agency, procedural safeguards, Section 504 hearings, discipline for children with disabilities, children in private schools enrolled by their parents,

use of public or private insurance, regional programs, special programs, and early intervention/early childhood special education.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-015-2000

### Definitions

The definitions below apply to Oregon Administrative Rules 581-015-2000 through 2999, unless the context indicates otherwise.

(1) “Adult student” is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-2325.

(2) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(3) “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child’s family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) “Children with disabilities” or “students with disabilities” means children or students who require special education because of: autism; communication disorders; deafblindness; emotional disturbances; hearing impairments, including deafness; mental retardation; orthopedic impairments; other health impairments; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.

(a) “Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child’s educational performance. Other characteristics that may be associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age three. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder — not otherwise specified, and Asperger’s syndrome. The term does not apply if a child’s educational performance is adversely affected primarily because the child has an emotional disturbance. However, a child who qualifies for special education under the category of autism may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance.

(b) “Communication Disorder” means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.

(c) “Deafblindness” means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments

(d) “Emotional Disturbance” means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;



## ADMINISTRATIVE RULES

(D) A general pervasive mood of unhappiness or depression; or  
(E) A tendency to develop physical symptoms or fears associated with personal or school problems;

(F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(e) "Hearing Impairment" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.

(f) "Mental Retardation" means significantly subaverage general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.

(g) "Orthopedic Impairment" means a motor disability that adversely affects the child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spinal bifida, muscular dystrophy or traumatic injury).

(h) "Other Health Impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:

(A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes); and

(B) Adversely affects a child's educational performance.

(i) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage.

(j) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(k) "Visual Impairment" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

(5) "Consent" means that:

(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and

(c) The parent or adult student understands that the granting of consent is voluntary and may be revoked at any time in accordance with OAR 581-015-2090(4) or 581-015-2735.

(6) "Day" means calendar day unless otherwise indicated as:

(a) "Business day," which means Mondays through Fridays, other than holidays; or as

(b) "School day," which means any day, including partial days that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including those with and without disabilities.

(7) "Department" means the Oregon Department of Education.

(8) "EI/ECSE" means early intervention/early childhood special education and refers to services or programs for preschool children with disabilities.

(9) "Elementary or secondary school or facility" means a school or facility with any combination of grades K through 12.

(10) "Evaluation" means procedures used to determine whether the child is disabled, and the nature and extent of the special education and related services that the child needs.

(11) "General education curriculum" means the same curriculum as for non-disabled children. For preschool children with disabilities, the term means age-appropriate activities.

(12) "Health assessment statement" means a written statement issued by a nurse practitioner licensed by a State Board of Nursing specially certified as a nurse practitioner, or by a physician assistant licensed by a State Board of Medical Examiners. Both a nurse practitioner and a physician assistant must be practicing within his or her area of specialty.

(13) "Homeless children" (or "homeless youth") has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC § 11434a(2).

(14) "Identification" means the process of determining a child's disability and eligibility for special education and related services.

(15) "Individualized Education Program" (IEP) means a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a disability.

(16) "Individualized Family Service Plan" (IFSP) is defined in OAR 581-051-2700.

(17) "Limited English proficient" has the same meaning as in the Elementary and Secondary Education Act, 20 USC § 9101(25).

(18) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such a time as a resolution is agreed to by the parties or the mediation process is terminated.

(19) "Medical statement" means a written statement issued by a physician licensed by a State Board of Medical Examiners.

(20) "Native language", when used with respect to a person who is limited English proficient, means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child. For an individual with deafness, blindness, deafblindness or no written language, the term means the mode of communication normally used by the person (such as sign language, Braille, or oral communication). In direct contact with a child, the term means the language normally used by the child.

(21) "Parent" means:

(a) One or more of the following persons:

(A) A biological or adoptive parent of the child;

(B) A foster parent of the child,

(C) A legal guardian, other than a state agency;

(D) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or OAR 581-015-2760 for preschool children.

(b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person under subsection (a) to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.

(22) "Participating agency" means a state or local agency, other than the school district responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(23) "Personally identifiable" means information that includes, but is not limited to:

(a) The name of the child, the child's parent or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; and

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(24) "Placement" means educational placement, not social service placement by a state agency.

(25) "Preschool child" means "preschool child with a disability" as defined under OAR 581-015-2700.

# ADMINISTRATIVE RULES

(26) "Private school" means an educational institution or agency not operated by a public agency.

(27) "Public agency" means a school district, an education service district, a state agency or institution, EI/ECSE contractor or subcontractor, responsible for early intervention, early childhood special education or special education.

(28) "Related services" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).

(29) "School age child or children" means a child or children who have reached 5 years of age but have not reached 21 years of age on or before September 1 of the current school year.

(30) "School district" means the public education agency (school district, ESD, or state agency) that is responsible by statute, rule or contract for providing education to children with disabilities.

(31) "Services plan" is defined in OAR 581-015-2450.

(32) "Short term objectives" means measurable intermediate performance steps that will enable parents, students and educators to gauge, at intermediate times during the year, how well the child is progressing toward the annual goals by either:

(a) Breaking down the skills described in the goal into discrete components, or

(b) Describing the amount of progress the child is expected to make within specified segments of the year.

(33) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction in the classroom, instruction in the home and instruction in hospitals, institutions, special schools, and other settings. The term includes specially designed instruction in physical education, speech language services, vocational education, travel training, and orientation and mobility services.

(34) "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(35) "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

(36) "Superintendent" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.

(37) "Surrogate parent" means an individual appointed under OAR 581-015-2320 for school age children or 581-015-2760 for preschool children who acts in place of a biological or adoptive parent in safeguarding a child's rights in the special education decision-making process.

(38) "Transition services" means a coordinated set of activities for a student with a disability that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(39) "Ward of the state" means child who is in the temporary or permanent custody of, or committed to, the Department of Human Services or Oregon Youth Authority through the action of the juvenile court.

Stat. Auth.: ORS 343.041, 343.045, 343.155, 343.223,

Stats. Implemented: ORS 343.045, 343.155, 343.223, 34 CFR 300.5, 300.6, 300.8, 300.11, 300.15, 300.19, 300.22, 300.27, 300.28, 300.29, 300.30, 300.34, 300.37, 300.39, 300.42, 300.43, 300.45

Hist.: IEB 8-1978, f. & ef. 3-3-78; IEB 35-1978, f. & ef. 10-5-78; IEB 18-1979(Temp), f. & ef. 11-15-79; IEB 5-1980, f. 2-22-80, ef. 2-23-80; IEB 18-1983(Temp), f. & ef. 12-20-83; IEB 5-1985, f. 1-30-85, ef. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93; EB 18-1994, f. & cert. ef. 12-15-94; EB 22-1995, f. & cert. ef. 9-15-95; ODE 10-2000, f. & cert. ef. 5-3-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0005, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2005

### Criteria for Approving School District Special Education Programs

(1) School districts operating or initiating special education programs must have their programs approved by the State Superintendent of Public Instruction in order to qualify such programs for state reimbursement. As part of this process, districts must subscribe to the following:

(a) Special education instructional programs in the district must include a continuum of services to meet the individual special education needs of all resident children with disabilities, including resident children with disabilities enrolled in public charter schools.

(b) Special education must be established and conducted as an integral part of the district's regular school program.

(c) Children who require special education have the same rights and privileges provided to other students.

(2) In addition, the school district must have on file with the Oregon Department of Education a set of assurances and other documentation as required that ensure district compliance with requirements set forth in Oregon Revised Statutes and Oregon Administrative Rules for the education of children with disabilities.

Stat. Auth.: ORS 343.041, 343.045

Stats. Implemented: ORS 343.221

Hist.: IEB 208, f. 12-19-75, ef. 1-16-76; Renumbered from 581-022-0175; IEB 248, f. & ef. 9-23-76; IEB 269, f. & ef. 12-22-77; IEB 48-1978, f. & ef. 11-17-78; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0035, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2010

### Census and Data Reporting

(1) School districts must report to the Department all resident children with disabilities who have been identified, located and evaluated and are receiving early intervention, early childhood special education or special education from a public or private educational program on December 1 of each school year.

(2) If no children have been identified, located, and evaluated as being disabled, school districts must report this fact.

(3) Each school district must conduct an annual count of the number of private school children as follows:

(a) On October 1 of each year, each school district must count all children attending private schools located within the boundaries of the district;

(b) On December 1 of each year, each school district must count all children with disabilities attending private schools located within the boundaries of the district, in accordance with OAR 581-015-2475.

(4) School districts must report to the Department additional data as required by the Department for the preparation of reports to federal or state agencies. The Department will notify school districts of additional data needed to meet the requirements of federal or state law and the applicable reporting dates.

Stat. Auth.: ORS 343.041, 343.055, 20 USC § 1411(f)(2)(B)(i), 34 CFR 300.133(c)

Stats. Implemented: ORS 343.045, 343.157

Hist.: ODE 2-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0038, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2015

### Compliance Monitoring

School districts involved in the education of children with disabilities will be monitored by the Department on a regular basis to ensure compliance with the requirements of the Individuals with Disabilities Education

# ADMINISTRATIVE RULES

Act, Oregon Revised Statutes, and Oregon Administrative Rules. Monitoring procedures may include district self-assessment, data collection, analysis and reporting, on-site visits, review of policies and procedures, review of the development and implementation of IEPs, improvement planning, and auditing federal fund use.

Stat. Auth.: ORS 343.041, 343.045, 343.055  
Stats. Implemented: ORS 343.041, 343.055  
Hist.: IEB 15-1983, f. 11-23-83, ef. 11-25-83; EB 6-1993, f. & cert. ef. 2-11-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0048, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2020

### Recovery of Funds for Misclassified Children

(1) School districts must ensure that children identified on the special education child count under Part B of the Individuals with Disabilities Education Act are limited to eligible children.

(2) For purposes of this rule, an "eligible child" means a child aged three through school-age who:

(a) Is determined to be a child with a disability under OAR 581-015-2130 to 581-015-2180;

(b) Has a current IEP or IFSP that provides for special education and related services that is being implemented; and

(c) Is receiving a free appropriate public education.

(3) For the purposes of this rule, an "ineligible child" means a child for whom one or more of the requirements in subsection (2) is not met.

(4) The Department may recover funds for ineligible children included on a district's special education child count.

Stat. Auth.: ORS 343.041, 343.055  
Stats. Implemented: ORS 343.243  
Hist.: IEB 269, f. & ef. 12-22-77; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0049, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2025

### Advanced Payment to School Districts for Special Education Programs

(1) In accordance with ORS 343.670, the Department may make advance payments to a school district or education service district that operates a special education program approved by the State Superintendent of Public Instruction.

(2) Advance payments paid by the Oregon Department of Education to the school or education service district will be made quarterly.

(3) The first three advance payments will be calculated either upon the district's reimbursement for the prior year or the district's estimated costs for special education for the coming school year, at the discretion of the Department.

(4) The fourth payment will be based upon the district's approved reimbursement for the current claim less the three advance payments.

(5) In no event will the fourth payment be remitted until the Department has completed the final auditing of a district's claim.

Stat. Auth.: ORS 343.041, 343.055  
Stats. Implemented: ORS 343.670  
Hist.: IEB 269, f. & ef. 12-22-77; IEB 14-1979, f. 10-4-79, ef. 10-5-79; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0057, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2030

### Procedures for Complaints as Required by IDEA Regulations

(1) An organization or individual, including an organization or individual from another state, may file with the State Superintendent of Public Instruction a written, signed complaint that the Department, or a sub grantee, including but not limited to a regional program, an education service district or a local education agency is violating or has violated the Individuals with Disabilities Education Act or regulations under that Act.

(2) The complainant must send a copy of the complaint to the public agency serving the child at the same time the complainant files the complaint with the Department.

(3) Upon receipt of a complaint under this provision, the Department will provide a copy of the Notice of Procedural Safeguards to a parent or adult student who files a complaint.

(4) If a complaint alleges violations outside the scope of the Individuals with Disabilities Education Act, the complainant will be informed of alternative procedures that are available to address the complainant's allegations.

(5) The complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department.

(6) The complaint must include the facts on which the complaint is based. If the facts as alleged by the complainant would be considered a violation of the Individuals with Disabilities Education Act:

(a) The Superintendent will request the public agency to respond to the allegations. The Superintendent (or designee) may also initiate attempts

to resolve the complaint through mediation or alternative dispute resolution, including local resolution.

(b) The respondent must respond to the allegations and furnish any information or documents requested by the Superintendent within ten business days from the receipt of request for response from the Superintendent unless another time period is specified by the Superintendent. At the same time, the respondent must send a copy of the response and documents to the complainant. If the complainant does not otherwise have access to confidential information in the response, the respondent must provide the complainant with the non-confidential portion(s) of the response.

(7) The Superintendent will give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint or the public agency's response. The complainant must provide a copy of any further written information to the public agency that is the subject of the complaint, unless it would be a hardship to do so. In those situations, the Department will provide a copy of the written information to the public agency.

(8) The Superintendent will review all of the written information submitted by the complainant and the public agency to resolve the allegations in the complaint.

(9) The Superintendent may conduct further investigation, such as telephone or onsite interviews, to the extent necessary to resolve the complaint allegations.

(10) If a written complaint is received that is also the subject of a due process hearing under OAR 581-015-2345, or contains multiple issues of which one or more are part of that hearing, the Superintendent will set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process hearing will be resolved using the time limit and procedures in this rule.

(11) If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Superintendent will inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision will be resolved by the Superintendent.

(12) The Superintendent will issue a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions, and reasons for the Department's final decision within 60 days of receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and public agency agree in writing to extend the time to try mediation or local resolution.

(13) If the Superintendent finds a violation, the Superintendent's written decision will include any necessary corrective action to be undertaken as well as any documentation to be supplied by any party to ensure that the corrective action has occurred. If the decision is that a school district has failed to provide appropriate services, the Superintendent will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement or other corrective action appropriate to the needs of the child; and

(b) Appropriate future provision of services for all children with disabilities.

(14) Parties may seek judicial review of the final order under ORS 183.484. Judicial review may be obtained by filing a petition for review within 60 days of service of the final order with the Marion County Circuit Court or with the Circuit Court for the County where the party resides.

(15) Corrective action ordered by the Superintendent must be completed within the timelines established in the final order unless another time period is specified by the Department.

(16) At any time during the pendency of the complaint, if the Superintendent determines that there is a strong likelihood that the respondent has significantly breached the Individuals with Disabilities Education Act and that delay may cause irreparable harm, the Superintendent may order interim relief.

(17) If the respondent refuses to voluntarily comply with a plan of correction when so ordered, the Superintendent may take one or more of following actions:

(a) Disapprove in whole or part, the respondent's application for federal funding;

(b) Withhold or terminate further assistance to the respondent for an approved project;

(c) Suspend payments, under an approved project, to a respondent;

(d) Order, in accordance with a final state audit resolution determination, the repayment of specified federal funds; and

# ADMINISTRATIVE RULES

(e) Withhold all or part of a district's basic school support in accordance with ORS 327.103.

(18) Before the Superintendent denies or withholds funding or orders reimbursement as provided in Section (17) of this rule, the Superintendent will notify the respondent of the right to request a hearing in accordance with ORS 183.415.

(a) The hearing request must be made to the Superintendent within 30 days of receiving notice;

(b) The Superintendent will appoint a hearings officer who will conduct the hearing in accordance with ORS 183.413 to 183.470;

(c) The burden of proof at the hearing is on the Department;

(d) The Superintendent's decision is final, subject to appeal to the United States Secretary of Education or the Oregon Court of Appeals.

(19) No person may be subject to retaliation or discrimination for having filed or participated in this complaint procedure. Any person who believes that she or he has been subject to retaliation or discrimination may file a complaint under this rule with the Superintendent.

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.041, 34 CFR 300.151-153; 34 CFR 300.504(a)(2)

Hist.: 1EB 28-1980, f. & ef. 12-23-80; EB 26-1987(Temp), f. & ef. 11-17-87; EB 22-1988, f. & cert. ef. 5-24-88; EB 32-1988, f. & cert. ef. 8-3-88; EB 44-1990, f. & cert. ef. 9-12-90; EB 35-1992(Temp), f. & cert. ef. 11-24-92; EB 8-1993, f. & cert. ef. 3-25-93; ODE 15-1999, f. & cert. ef. 9-24-99, Renumbered from 581-001-0010; ODE 29-2000, f. & cert. ef. 12-11-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0054, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2040

### Free Appropriate Public Education (FAPE) and Age Ranges

(1) School districts must provide special education and related services to all resident school-age children with disabilities, except as provided in OAR 581-015-2045. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.

(2) An otherwise eligible person whose 21st birthday occurs during the school year is eligible for FAPE for the remainder of the school year.

(3) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from school in accordance with OAR 581-015-2410 to 581-015-2440.

(4) For purposes of this rule, residency is determined in accordance with ORS chapter 339.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 343.041, 339.115, 34 CFR 300.101

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0600, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2045

### Age Limitations and Exceptions to FAPE

(1) A district must admit an otherwise eligible student who has not yet reached 21 years of age on or before September 1 of the current school year.

(2) A student who receives a regular high school diploma is no longer entitled to FAPE. A regular education diploma does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or general educational development credential (GED).

(3) If a school district chooses to provide special education to a student with a regular high school diploma, that student remains eligible for FAPE.

(4) The obligation to make a FAPE available to individuals with disabilities 18 through 21 years old who have been convicted as adults and are incarcerated in an adult correctional facility applies only to those individuals who, in their last educational placement before their incarceration in the adult correctional facility:

(a) Were identified as being a child with a disability as defined in OAR 581-015-2000(4); or

(b) Had an individualized education program.

(5) For purposes of subsection (4) of this rule,

(A) "Adult correctional facility" means:

(A) A local correctional facility as defined ORS 169.005;

(B) A regional correctional facility as defined in ORS 169.620; or

(C) A Department of Corrections institution as defined in ORS 421.005;

(b) "Identified as being a child with a disability" means has been determined eligible or was involved in the process of determining the individual's disability and eligibility for special education and related services under OAR 581-015-2130 to 581-015-2180; and

(c) "Last educational placement" includes juvenile correctional facilities.

Stat. Auth.: ORS 343.055,

Stats. Implemented: ORS 339.115, 34 CFR 300.102

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0601, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2050

### Graduation

(1) Graduation with a regular high school diploma under OAR 581-022-1130 constitutes a change in placement, requiring written prior notice in accordance with OAR 581-015-2310.

(2) A school district is not required to conduct a reevaluation before terminating eligibility due to graduation with a regular high school diploma.

(3) In accordance with OAR 581-022-1130, a school district may award an alternative document as described in local school board policies to a student with a disability. Graduation with an alternative document does not terminate eligibility under OAR 581-015-2045(2), require an evaluation, or require written prior notice.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 339.115, 343.295

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0602, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2055

### Assistive Technology

(1) School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices to receive a free appropriate public education.

(3) School district policies govern liability, if any, for the loss or damage of assistive technology devices.

(4) School district policies govern transfer of an assistive technology device when a child with a disability using the device ceases to attend school in the district that purchased the device. "Transfer" means the process by which a school district that has purchased an assistive technology device may sell, lease or loan the device for the continuing use of a child with a disability who is ceasing to attend school in the district.

Stat. Auth.: ORS 343.041, 343.045 & 343.223

Stats. Implemented: ORS 343.045, 343.223, 34 CFR 300.105

Hist.: ODE 34-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0560, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2060

### Accessible Materials

(1) School districts must ensure the timely provision of print instructional materials, including textbooks, that comply with the National Instructional Materials Accessibility Standards (NIMAS) for students who are blind or print disabled, in accordance with OAR 581-022-1640.

(2) School districts must ensure the timely provision of instructional materials in accessible formats to children who need instructional materials in accessible formats, including those who are not blind or print disabled.

Stat. Auth.: ORS 343.041, 343.045,

Stats. Implemented: ORS 343.045, 34 CFR 300.172

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2065

### Extended School Year Services

(1) School districts must ensure that extended school year services are available as necessary to provide a free appropriate public education to a child with a disability.

(2) Extended school year services must be provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of free appropriate public education to the child.

(3) A school district may not:

(a) Limit extended school year services to particular categories of disability; or

(b) Unilaterally limit the type, amount, or duration of those services.

(4) The purpose of extended school year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behaviors.

(5) School districts must develop criteria for determining the need for extended school year services. Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence, on predictions according to the professional judgment of the team.

(6) For the purposes of section (5) of this rule:

# ADMINISTRATIVE RULES

(a) "Regression" means significant loss of skills or behaviors in any area specified on the IEP as a result of an interruption in education services;

(b) "Recoupment" means the recovery of skills or behaviors specified on the IEP to a level demonstrated before the interruption of education services.

(7) For the purposes of this rule, "extended school year services" means special education and related services that:

- (a) Are provided to a child with a disability:
- (A) Beyond the normal school year of the school district;
- (B) In accordance with the child's IEP; and
- (C) At no cost to the parents of the child; and
- (b) Meet the standards of the Department.

Stat. Auth.: ORS 343.055, 343.151

Stats. Implemented: ORS 343.151, 34 CFR 300.106

Hist.: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0605, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2070

### Nonacademic Services

(1) School districts must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in a manner to afford children with disabilities an equal opportunity for participation in those services and activities.

(2) Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045, 34 CFR 300.107

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 8-2004(Temp), f. & cert. ef. 5-11-04 thru 10-15-04; ODE 9-2004, f. & cert. ef. 7-9-04; Renumbered from 581-015-0062, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2075

### Charter Schools

(1) A school district must serve resident children with disabilities attending charter schools sponsored by the district in the same manner as the school district serves children with disabilities in its other schools, including:

(a) Providing supplementary and related services on site at the charter school to the same extent to which the school district has a policy or practice of providing such services on site to its other public schools.

(b) Providing IDEA funds to those charter schools on the same basis as the school district provides IDEA funds to other public schools in the district, including proportional distribution based on relative enrollment of children with disabilities, at the same time as funds are distributed to other public schools in the district.

(2) A school district is responsible for ensuring the provision of any required special education and related services for resident children with disabilities attending charter schools not sponsored by the district in accordance with ORS 338.165.

Stat. Auth.: ORS 338.165

Stats. Implemented: ORS 338.165, 343.045, 34 CFR 300.209

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2080

### Child Find

(1) School districts must identify, locate and evaluate all resident with disabilities, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services. The requirements of this rule apply to all preschool and school age children unless these children are no longer entitled to a free appropriate public education under OAR 581-015-2040 to 581-015-2050.

(2) The requirements of this rule apply to all resident children, including:

- (a) Highly mobile children with disabilities (such as migrant and homeless children),
- (b) Children who are wards of the state;
- (c) Indian preschool children who reside on reservations;
- (d) Children who are suspected of having a disability even though they are advancing from grade to grade;
- (e) Children enrolled in public charter schools;
- (f) Children who are home schooled;

(g) Children below the age of compulsory school attendance who are not enrolled in a public or private school program; and

(h) Children above the age of compulsory school attendance who have not graduated with a regular high school diploma.

(3) For purposes of this rule, residency is determined in accordance with ORS chapter 339.

Stat. Auth.: ORS 343.041, 343.045, 343.157

Stats. Implemented: ORS 343.045, 343.157, 34 CFR 300.111

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 14-1983, f. 11-23-83, ef. 11-25-83; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0037, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2085

### Child Find for Children Attending Private Schools

(1) Each school district must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located within the boundaries of the school district.

(2) The child find process for parentally-placed private school children must be designed to ensure the equitable participation of parentally-placed private school children with disabilities and an accurate count of such children.

(3) The school district's child find activities for parentally-placed private school children must be similar to, and completed within a comparable time period, to child find activities for public school children with disabilities.

(4) The cost of implementing child find activities, including individual evaluations, may not be considered in determining whether a school district has met its obligations to spend a proportionate share under OAR 581-015-2470.

(5) These child find requirements apply to all parentally-placed private school children, including those children who are residents of another state.

(b) Each school district must consult with appropriate representatives of private school children with disabilities on how to carry out these activities, in accordance with OAR 581-015-2480.

Stat. Auth.: ORS 343.041, 343.045, 343.157

Stats. Implemented: ORS 343.045, 343.157, 34 CFR 300.131

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2090

### Consent

(1) Consent for initial evaluation:

(a) The school district must provide notice under OAR 581-015-2310 and obtain informed written consent from the parent or adult student before conducting an initial evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2130 through 581-015-2180.

(A) Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services.

(B) The school district must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services.

(b) If a parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation, or does not respond to a request for consent for an initial evaluation, the school district may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

(c) Consent for initial evaluation for a child who is a ward of the state may be obtained under OAR 581-015-2095(2).

(2) Consent for initial provision of services:

(a) A school district must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If a parent or adult student does not respond or refuses to consent for initial provision of special education and related services, the school district may not seek to provide special education and related services to the child by using mediation or due process hearing procedures.

(d) If a parent or adult student refuses to grant consent for initial provision of special education and related services, or does not respond to a request to provide such consent:

(A) The school district will not be considered to be in violation of the requirement to make available a free appropriate public education to the

# ADMINISTRATIVE RULES

child for the failure to provide the child with the special education and related services for which the school district requests consent; and

(B) The school district is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district requests such consent.

(3) Consent for reevaluation:

(a) A school district must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2095.

(b) If a parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its obligations under 34 CFR 300.111 and 300.301-311 if it declines to pursue the reevaluation using these procedures.

(4) Revocation of consent: A parent or adult student may revoke consent at any time before the completion of the activity or action for which they have given consent. If a parent or adult student revokes consent, that revocation is not retroactive. A parent or adult student may revoke consent for evaluation or reevaluation that has not yet been conducted. A parent or adult student may revoke consent for initial provision of special education services before the initiation of those services.

(5) Other consent requirements:

(a) The school district must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2195(3).

(b) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent does not respond to a request for consent:

(A) The school district may not use mediation or due process hearing procedures to seek consent; and

(B) The school district is not required to consider the child as eligible for special education services.

(c) A refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the school district, except as provided in this rule.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.164

Stats. Implemented: ORS 343.155, 343.164, 34 CFR 300.9, 300.300

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 37-1978, f. & ef. 10-5-78; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0039, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2095

### Exceptions to Consent

(1) Written parent or adult student consent is not required before:

(a) Reviewing existing data as part of an evaluation or a reevaluation;

(b) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or

(c) Conducting evaluation tests, procedures or instruments that are identified on a child's IEP as a measure for determining progress; or

(d) Conducting a screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.

(2) Consent for initial evaluation for wards of the state: If a child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed written consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(a) Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(b) The rights of the parents of the child have been terminated in accordance with state law; or

(c) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) If, after reasonable efforts to obtain parent consent, the parent does not respond, the school district may conduct a reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality. "Reasonable efforts" means that the school district has used procedures consistent with OAR 581-015-2195(3).

(4) Written consent is not required if an administrative law judge determines under OAR 581-015-2375 that the evaluation or reevaluation is necessary to ensure that the child is provided with a free appropriate public education.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.164;

Stats. Implemented: ORS 343.155, 343.164, 34 CFR 300.300, 300.302

Hist.: ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0042, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2100

### Responsibility for Evaluation and Eligibility Determination

(1) For school-age children, school districts and juvenile and adult corrections education programs are the public agencies responsible for evaluating children and determining their eligibility for special education services.

(2) For preschool children,

(a) School districts are responsible for the eligibility evaluations of children for EI/ECSE services.

(b) Designated referral and evaluation agencies are responsible for determining the eligibility of children for EI/ECSE services.

(c) EI/ECSE programs are responsible for conducting any necessary evaluations other than for eligibility determination.

Stat. Auth.: ORS 343.041, 343.045, 343.055 & 343.157

Stats. Implemented: ORS 343.055, 343.157

Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0700, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2105

### Evaluation and Reevaluation Requirements

(1) General: A public agency must conduct an evaluation or reevaluation process in accordance with this rule and 581-015-2110 before:

(a) Determining that a child is a child with a disability under OAR 581-015-2130 through 581-015-2180;

(b) Determining that a child continues to have a disability under OAR 581-015-2130 through 581-015-2180;

(c) Changing the child's eligibility, or

(d) Terminating the child's eligibility as a child with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education under OAR 581-015-2045.

(2) Request for initial evaluation: Consistent with the consent requirements in OAR 581-015-2090, a parent or public agency may initiate a request for an initial evaluation to determine if a child is a child with a disability.

(3) When initial evaluation must be conducted:

(a) An initial evaluation must be conducted to determine if a child is eligible for special education services when a public agency suspects or has reason to suspect that:

(A) The child has a disability that has an adverse impact on the child's educational performance; and

(B) The child may need special education services as a result of the disability.

(b) The public agency must designate a team to determine whether an initial evaluation will be conducted.

(A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.

(B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2190.

(4) Reevaluation:

(a) The public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (b) and OAR 581-015-2110(2):

(A) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(B) If the child's parents or teacher requests a reevaluation.

(b) A reevaluation for each child with a disability:

(A) May occur not more than once a year, unless the parent and public agency agree otherwise; and

(B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.

(5) Summary of Achievement and Performance: For a student whose eligibility terminates due to graduation with a regular diploma or exceeding the age of eligibility, a school district must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals.

Stat. Auth.: ORS 343.041, 343.157

Stats. Implemented: ORS 343.146, 343.157, 34 CFR 300.301, 300.303

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

# ADMINISTRATIVE RULES

## 581-015-2110

### General Evaluation and Reevaluation Procedures

(1) Evaluation planning. Before conducting any evaluation or reevaluation, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.

(2) Notice and consent.

(a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2310 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.

(b) Before conducting any evaluation or reevaluation, the public agency must obtain informed written consent for evaluation in accordance with OAR 581-015-2090 and 581-015-2095.

(c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2310.

(d) Parents may challenge the public agency's refusal to conduct a reevaluation under OAR 581-015-2345.

(3) Conduct of evaluation. In conducting the evaluation, the public agency must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:

(A) Whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180; and

(B) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(4) Other evaluation procedures. Each public agency must ensure that:

(a) Assessments and other evaluation materials used to assess a child under this part:

(A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(B) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

(C) Are used for the purposes for which the assessments or measures are valid and reliable;

(D) Are administered by trained and knowledgeable personnel; and

(E) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(e) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and

(f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(5) Evaluation timelines:

(a) Initial. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.

(b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2095(3)(c)) to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.

(c) Exceptions. An evaluation may be completed in more than 60 school days under the following circumstances documented in the child's educational record:

(A) The parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the school district's control.

(B) The student is a transfer student in the process of reevaluation and the district and the parents agree in writing to a different length of time to complete the evaluation in accordance with subsection (d);

(C) The district and the parents agree in writing to extend the timeline for an evaluation to determine eligibility for specific learning disabilities in accordance with OAR 581-015-2170.

(d) Transfer students.

(A) When a child with disabilities transfers from one school district to another school district in the same school year, the previous and current school district must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.

(B) The exception under subsection (c)(B) only applies if the current school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current school district agree to a specific time for completion of the evaluation.

Stat. Auth.: ORS 343.041, 343.157,

Stats. Implemented: ORS 343.146, 343.157, 34 CFR 300.304, 300.305

Hist.: ODE 10-2007, F. & cert. ef. 4-25-07

## 581-015-2115

### Evaluation Planning

(1) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the child's IEP or IFSP team, and other qualified professionals, as appropriate, must:

(a) Review existing evaluation data on the child, including:

(A) Evaluations and information provided by the parents of the child;

(B) Current classroom-based, local, or state assessments, and classroom-based observations; and

(C) Observations by teachers and related services providers; and

(b) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(A) Whether the child is, or continues to be, a child with a disability;

(i) For a school-age child, under OAR 581-015-2130 through 581-015-2180; or

(ii) For a preschool child, under OAR 581-015-2780 or 581-015-2795;

(B) The present levels of academic achievement and related developmental needs of the child;

(C) Whether the child needs, or continues to need, EI/ECSE or special education and related services; and

(D) For reevaluation, whether the child needs any additions or modifications to special education and related services or, for a preschool child, any additions or modifications to ECSE services:

(i) To enable the child to meet the measurable annual goals in the child's IEP or IFSP; and

(ii) To participate, as appropriate, in the general education curriculum or, for preschool children, appropriate activities.

(2) Conduct of review. The team described in subsection (1) may conduct this review without a meeting. If a public agency holds a meeting for this purpose, parents must be invited to participate in conformance with OAR 581-015-2190 or, for parents of preschool children, with OAR 581-015-2750.

(3) Source of data. The public agency must administer tests and other evaluation materials as may be needed to produce the additional data identified under subsection (1)(b).

(4) Requirements if additional data are not needed.

(a) If the child's IEP or IFSP team determines that no additional data are needed to determine whether the child is or continues to be a child with a disability, and to determine the child's educational and developmental needs, the public agency must notify the child's parents:

(A) Of that determination and the reasons for it; and

(B) Of the right of the parents to request an assessment to determine whether, for purposes of services under this part, the child continues to be a child with a disability, and to determine the child's educational and developmental needs.

# ADMINISTRATIVE RULES

(b) The public agency is not required to conduct an assessment of the child unless requested to do so by the child's parents.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.157  
Stats. Implemented: ORS 343.146, 343.157, 34 CFR 300.305  
Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0701, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2120

### Determination of Eligibility

(1) Upon completing the administration of assessments and other evaluation materials, a team must determine whether the child is a child with a disability under OAR 581-015-2130 through 581-015-2180 and the educational needs of the child.

(a) The team must include the parent, in accordance with OAR 581-015-2190, and two or more qualified professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. This team may be the child's IEP team.

(b) For a child suspected of having a specific learning disability, the team must meet the requirements of OAR 581-015-2170.

(2) The team must prepare an evaluation report and written statement of eligibility.

(a) The evaluation report(s) must describe and explain the results of the evaluation conducted.

(b) The written statement of eligibility must include:

(A) A list of the evaluation data considered in determining the child's eligibility;

(B) A determination of whether the child meets the minimum evaluation criteria for one of the disability categories in OAR 581-015-2130 through 581-015-2180 or 581-015-2795;

(C) A determination of whether the primary basis for the suspected disability is:

(i) A lack of appropriate instruction in reading (including the essential components of reading) or math; or

(ii) Limited English proficiency;

(D) A determination of whether the child's disability has an adverse impact on the child's educational performance;

(E) A determination of whether, as a result of the disability, the child needs special education services; and

(F) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.

(c) For a child suspected of having a specific learning disability, the team's written report and documentation of determination of eligibility must meet the requirements of OAR 581-015-2170.

(3) The team must determine a child to be eligible under this rule if the child has a disability and needs special education and related services, even though the child is advancing from grade to grade.

(4) For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category. However, the child must be evaluated in all areas related to the suspected disability or disabilities, and the child's IEP must address all of the child's special education needs.

(5) The team may not find a child eligible for special education services if:

(a) The determinant factor for that eligibility decision is:

(A) Lack of appropriate instruction in reading, including the essential components of reading instruction, or lack of appropriate instruction in math; or

(B) Limited English proficiency; and

(b) The child does not otherwise meet the eligibility criteria under OAR 581-015-2130 through 581-015-2180.

(6) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent at no cost.

Stat. Auth.: ORS 343.045, 343.146, 343.157  
Stats. Implemented: ORS 343.035, 343.146, 343.157, 34 CFR 300.306, 300.308, 300.111  
Hist.: EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0053, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2125

### Interpretation of Evaluation Data

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under OAR 581-015-2130 through 581-015-2180, and the educational needs of the child, each team must:

(1) Draw upon information from a variety of sources, including but not limited to, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and

(2) Ensure that information obtained from all these sources is documented and carefully considered.

Stat. Auth.: ORS 343.041, 343.157;  
Stats. Implemented: ORS 343.157, 343.045, 343.146, 343.155; 34 CFR 300.306  
Hist.: IEB 269, f. & ef. 12-22-77; EB 22-1995, f. & cert. ef. 9-15-95; ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0073, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2130

### Autism Spectrum Disorder

(1) If a child is suspected of having an autism spectrum disorder, the following evaluation must be conducted:

(a) Developmental profile. A developmental profile that describes the child's historical and current characteristics that are associated with an autism spectrum disorder, including:

(A) Impairments in communication;

(B) Impairments in social interaction;

(C) Patterns of behavior, interests or activities that are restricted, repetitive, or stereotypic; and

(D) Unusual responses to sensory experiences.

(b) Observations. At least three observations of the child's behavior, at least one of which involves direct interactions with the child. The observations must occur in multiple environments, on at least two different days, and be completed by one or more licensed professionals knowledgeable about the behavioral characteristics of autism spectrum disorder.

(c) Communication assessment. An assessment of communication to address the communication characteristics of autism spectrum disorder, including measures of language semantics and pragmatics completed by a speech and language pathologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology or the Teacher Standards and Practices Commission;

(d) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;

(e) Behavior rating tool. An assessment using an appropriate behavior rating tool or an alternative assessment instrument that identifies characteristics associated with an autism spectrum disorder.

(f) Other.

(A) Any additional assessments necessary to determine the impact of the suspected disability:

(i) On the child's educational performance for a school-age child; or

(ii) On the child's developmental progress for a preschool child; and

(B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with an autism spectrum disorder, the child must meet all of the following minimum criteria:

(a) The team must have documented evidence that the child demonstrates all of the characteristics listed under subsection (1)(a). Each of these characteristics must be:

(A) Characteristic of an autism spectrum disorder;

(B) Inconsistent or discrepant with the child's development in other areas; and

(C) Documented over time and/or intensity.

(3) For a child to be eligible for special education services as a child with an autism spectrum disorder, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

(4) A child may not be eligible for special education services on the basis of an autism spectrum disorder if the child's primary disability is an emotional disturbance under OAR 581-015-2145. However, a child with autism spectrum disorder as a primary disability may also have an emotional disturbance as a secondary disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;  
Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: IEB 29-1978, f. & ef. 7-20-78; IEB 18-1983(Temp), f. & ef. 12-20-83; IEB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(1), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2135

### Communication Disorder

(1) If a child is suspected of having a communication disorder, the following evaluation must be conducted:

(a) Speech-language assessment. A speech and language assessment administered by a speech and language pathologist licensed by a State



# ADMINISTRATIVE RULES

Board of Examiners for Speech-Language Pathology and Audiology or the Teacher Standards and Practices Commission, including:

(A) When evaluating syntax, morphology, semantics or pragmatics, a representative language sample and comprehensive standardized tests that assess expression and comprehension;

(B) When a voice disorder is suspected, a voice assessment scale; and

(C) When a fluency disorder is suspected, an observation in at least two settings;

(b) Medical or health assessment statement. For a child suspected of having a voice disorder, a medical statement by an otolaryngologist licensed by a State Board of Medical Examiners. For other than a voice disorder, if a medical or health diagnosis is needed, a medical statement or health assessment statement describing relevant medical issues;

(c) Hearing evaluation or screening. An evaluation or screening of the child's hearing acuity and, if needed, a measure of middle ear functioning;

(d) Other.

(A) An evaluation of the child's oral mechanism, if needed;

(B) Any additional assessments necessary to determine the impact of the suspected disability:

(i) On the child's educational performance for a school-age child; or

(ii) On the child's developmental progress for a preschool child; and

(C) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with a specific communication disorder, the child must meet the following minimum criteria:

(a) Voice disorder:

(A) The child demonstrates chronic vocal characteristics that deviate in at least one of the areas of pitch, quality, intensity or resonance;

(B) The child's voice disorder impairs communication or intelligibility; and

(C) The child's voice disorder is rated as moderate to severe on a voice assessment scale.

(b) Fluency disorder:

(A) The child demonstrates an interruption in the rhythm or rate of speech that is characterized by hesitations, repetitions, or prolongations of sounds, syllables, words or phrases;

(B) The child has a fluency disorder that interferes with communication and calls attention to itself across two or more settings; and

(C) The child demonstrates moderate to severe vocal dysfluencies or the child evidences associated secondary behaviors, such as struggling or avoidance as measured by a standardized measure.

(c) Phonological or articulation disorder:

(A) The child's phonology or articulation is rated significantly discrepant as measured by a standardized test; and

(B) The disorder is substantiated by a language sample or other evaluation(s).

(d) Syntax, morphology, pragmatic or semantic disorder:

(A) The child's language in the area of syntax, morphology, semantics or pragmatics is significantly discrepant as measured by standardized test(s) or other evaluation data; and

(B) The disorder is substantiated by a language sample or other evaluation(s).

(C) For a child to be eligible with a syntax, morphology, pragmatic or semantic disorder, the disorder is not the result of another disability.

(3) For a child to be eligible for special education services as a child with a communication disorder, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;

Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: IEB 29-1978, f. & ef. 7-20-78; IEB 18-1983(Temp), f. & ef. 12-20-83; IEB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(2), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2140 Deafblindness

(1) If a child is suspected of having deafblindness, the following evaluation must be conducted:

(a) The minimum evaluation procedures for hearing impairment and vision impairment under OAR 581-015-2150 and 581-015-2180, respectively;

(b) If the child demonstrates inconsistent or inconclusive responses in an assessment of one sensory area, a functional assessment must be administered by a state licensed educator of the visually impaired, a state licensed educator of the hearing impaired or an audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology.

(2) To be eligible as a child with deafblindness, the child must meet one or more of the following minimum criteria:

(a) The child meets the minimum criteria for both vision impairment and hearing impairment under OAR 581-015-2150 and 581-015-2180, respectively; or

(b) The child meets the minimum criteria for either vision impairment or hearing impairment and demonstrates inconsistent or inconclusive responses in an assessment of the other sensory area; or

(c) The child meets the minimum criteria for either vision impairment or hearing impairment and has a degenerative disease or pathology that affects the acuity of the other sensory area.

(3) For a child to be eligible for special education services as a child having deafblindness, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;

Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: IEB 29-1978, f. & ef. 7-20-78; IEB 18-1983(Temp), f. & ef. 12-20-83; IEB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(3), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2145 Emotional Disturbance

(1) If a child is suspected of having an emotional disturbance, the following evaluation must be conducted:

(a) Social-emotional evaluation. An evaluation of the child's emotional and behavioral status, including a developmental or social history, when appropriate.

(b) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any physical factors that may be affecting the child's educational performance;

(c) Behavior rating scales. The completion of at least two behavior-rating scales, at least one of which is a standardized behavior measurement instrument;

(d) Observation. An observation in the classroom and in at least one other setting by someone other than the child's regular teacher;

(e) Other:

(A) Any additional assessments necessary to determine the impact of the suspected disability:

(i) On the child's educational performance for a school-age child; or

(ii) On the child's developmental progress for a preschool child; and

(B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with an emotional disturbance, the child must meet the following minimum criteria:

(a) The child exhibits one or more of the following characteristics over a long period of time and to a marked degree:

(A) An inability to learn at a rate commensurate with the child's intellectual, sensory-motor, and physical development;

(B) An inability to establish or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Excessive behaviors which may include hyperactive and impulsive responses or depression and withdrawal;

(D) Inappropriate types of behavior or feelings under normal circumstances; or

(E) A tendency to develop physical symptoms, pains, or fears associated with personal, social, or school problems.

(3) For a child to be eligible for special education services as a child with an emotional disturbance, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability;

(4) A child who is socially maladjusted may not be identified as having an emotional disturbance unless the child also meets the minimum criteria under this rule.

Stat. Auth.: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157;

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 343.035(1), ORS 343.045, ORS 343.146, ORS 343.157, 34 CFR 300.8; 34 CFR 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(4), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2150

### Hearing Impairment

(1) If a child is suspected of having a hearing impairment, the following evaluation must be conducted:

(a) Audiology assessment. An audiological assessment by an audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology;

(b) Medical or health assessment statement. A medical statement or a health assessment statement indicating that the hearing loss is sensory-neural or conductive, if the conductive loss has been determined to be untreatable by a physician;

(c) Other:

(A) Any additional assessments necessary to determine the impact of the suspected disability:

- (i) On the child's educational performance for a school-age child; or
  - (ii) On the child's developmental progress for a preschool child; and
- (B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with a hearing impairment, the child must meet one of the following minimum criteria:

(a) The child has a pure tone average loss of 25 dBHL or greater in the better ear for frequencies of 500 Hz, 1000 Hz, and 2000 Hz, or a pure tone average loss of 35 dBHL or greater in the better ear for frequencies of 3000 Hz, 4000 Hz, and 6000 Hz; or

(b) The child has a unilateral hearing impairment with a pure tone average loss of 50 dBHL or greater in the affected ear for the frequencies 500 Hz to 4000 Hz; and

(c) The loss is either sensorineural or conductive if the conductive loss has been determined to be currently untreatable by a physician.

(3) For a child to be eligible for special education services as a child with a hearing impairment, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;

Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(5), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2155

### Mental Retardation

(1) If a child is suspected of having mental retardation, the following evaluation must be conducted:

(a) Intelligence test. An individually administered standardized intelligence test meeting the reliability and validity standards of the American Psychological Association and administered by a licensed school psychologist, a psychologist licensed by the State Board of Psychological Examiners, or other individual assigned by a school district who has the training and experience to administer and interpret individually administered intelligence tests;

(b) Adaptive behavior scale. The administration of a valid adaptive behavior scale;

(c) Medical or health assessment statement. A medical statement or a health assessment statement indicating whether there are any sensory or physical factors that may be affecting the child's educational performance;

(d) Developmental history. A developmental history of the child;

(e) Other:

(A) Any additional assessments necessary to determine the impact of the suspected disability:

- (i) On the child's educational performance for a school-age child; or
  - (ii) On the child's developmental progress for a preschool child; and
- (B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with mental retardation, the child must meet all of the following minimum criteria:

(a) The child's intelligence test score is 2 or more standard deviations below the mean;

(b) The child has deficits in adaptive behavior coexistent with the child's impairment in intellectual functioning;

(c) The child's developmental level or educational achievement is significantly below age or grade norms; and

(d) The child's developmental or educational problems are not primarily the result of sensory disabilities or other physical factors.

(3) For a child to be eligible for special education services as a child with mental retardation, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;

Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(6), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2160

### Orthopedic Impairment

(1) If a child is suspected of having an orthopedic impairment, the following evaluation must be conducted:

(a) Medical or health assessment statement. A medical statement or a health assessment statement indicating a diagnosis of an orthopedic or neuromotor impairment or a description of the motor impairment;

(b) Motor assessment. A standardized motor assessment, including the areas of fine motor, gross motor and self-help, when appropriate, by a specialist knowledgeable about orthopedic or neuromotor development;

(c) Other:

(A) Any additional assessments necessary to determine the impact of the suspected disability:

- (i) On the child's educational performance for a school-age child; or
  - (ii) On the child's developmental progress for a preschool child; and
- (d) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with an orthopedic impairment, the child must meet all of the following minimum criteria:

(a) The child has a motor impairment that results in deficits in the quality, speed or accuracy of movement. These deficits must be documented by a score of two or more standard deviations below the mean in fine motor skills, gross motor skills, or self-help skills, or functional deficits in at least two of these three motor areas; and

(b) The child's condition is permanent or is expected to last for more than 60 calendar days.

(3) For a child to be eligible for special education services as a child with an orthopedic impairment, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;

Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(7), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2165

### Other Health Impairment

(1) If a child is suspected of having an other health impairment, the following evaluation must be conducted:

(a) Medical or health assessment statement. A medical statement or a health assessment statement, indicating a diagnosis of a health impairment or a description of the impairment, and a statement that the child's condition is permanent or is expected to last for more than 60 calendar days;

(b) Other:

(A) Any additional assessments necessary to determine the impact of the suspected disability:

- (i) On the child's educational performance for a school-age child; or
  - (ii) On the child's developmental progress for a preschool child; and
- (B) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with an other health impairment, the child must meet all of the minimum criteria:

# ADMINISTRATIVE RULES

(a) The child exhibits limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment;

(b) The child's limited strength, vitality or alertness is due to a chronic or acute health problem; and

(c) The child's condition is permanent or expected to last for more than 60 calendar days.

(3) For a child to be eligible for special education services as a child with an other health impairment, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;

Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(8), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2170

### Specific Learning Disability

(1) If a child is suspected of having a specific learning disability, the following evaluation must be conducted:

(a) Academic assessment. An assessment of the child's academic achievement toward Oregon grade-level standards;

(b) Review. A review of cumulative records, previous IEPs or IFSPs and teacher collected work samples;

(c) Observation. An observation of the child in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty, which must consist of:

(A) Information from an observation by a qualified professional in routine classroom instruction and monitoring of the child's performance before the child was referred for an evaluation; or

(B) An observation conducted by a qualified professional (who is a member of the evaluation team) of the child's academic performance in a regular classroom after the child has been referred for an evaluation and parent consent obtained; or

(C) For a child who is less than school age or out of school, an observation in an age-appropriate environment.

(d) Progress monitoring data, including:

(A) Data that demonstrate that before, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(B) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress that is directly linked to instruction.

(e) For a student evaluated using a response to intervention model as part of a comprehensive evaluation process to determine if the child has a specific learning disability, the evaluation must include documentation of:

(A) The type, intensity, and duration of scientific, research-based instructional intervention(s) provided in accordance with the district's response to intervention model;

(B) The student's rate of progress during the instructional intervention(s);

(C) A comparison of the student's rate of progress to expected rates of progress.

(D) Progress monitoring on a schedule that:

(i) Allows a comparison of the student's progress to the performance of peers;

(ii) Is appropriate to the student's age and grade placement;

(iii) Is appropriate to the content monitored; and

(iv) Allows for interpretation of the effectiveness of intervention.

(f) For a student evaluated using a model that is based on the student's strengths and weaknesses, the evaluation must include an assessment of the student's strengths and weaknesses in classroom performance and academic achievement, relative to age, Oregon grade-level standards, or intellectual development.

(g) Other:

(A) If needed, a developmental history;

(B) If needed, an assessment of cognition, fine motor, perceptual motor, communication, social or emotional, and perception or memory if the child exhibits impairment in one or more these areas;

(C) If needed, a medical statement or health assessment indicating whether there are any physical factors that may be affecting the child's educational performance; and

(D) Any other assessments required to determine the impact of the suspected disability:

(i) On the child's educational performance for a school-age child; or

(ii) On the child's developmental progress for a preschool child.

(2) For consideration of eligibility in the area of specific learning disabilities, the eligibility team must include:

(a) A group of qualified professionals and the parent;

(b) The child's regular classroom teacher or, if the child does not have a regular classroom teacher, a regular classroom teacher qualified to teach a child of his or her age, or, for a child of less than school age, a preschool teacher; and

(c) A person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or other qualified professional.

(3) To be eligible as a child with a specific learning disability, the child must meet the following minimum criteria:

(a) The child does not achieve adequately for the child's age or to meet Oregon grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or Oregon grade-level standards:

(A) Basic reading skills;

(B) Reading fluency skills;

(C) Reading comprehension;

(D) Mathematics calculation;

(E) Mathematics problem-solving;

(F) Written Expression;

(G) Oral expression; or

(H) Listening comprehension.

(b) For a student evaluated using a response to intervention model, in relation to one or more of the areas in subsection (3)(a), the student does not make sufficient progress to meet age or Oregon grade-level standards based on the student's response to scientific, research-based intervention.

(c) For a student evaluated using a model that is based on the student's strengths and weaknesses, in relation to one or more of the areas in subsection (3)(a), the student exhibits a pattern of strengths and weaknesses in classroom performance, academic achievement, or both, relative to age, Oregon grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.

(d) The child's rate of progress in subsection (3)(b) or pattern of strengths and weaknesses in subsection (3)(c) is not primarily the result of:

(A) A visual, hearing, or motor impairment; mental retardation or emotional disturbance;

(B) Cultural factors;

(C) Environmental or economic disadvantage; or

(D) Limited English proficiency.

(4) For a child to be eligible for special education services as a child with a specific learning disability, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

(5) The eligibility team must prepare an evaluation report and written statement of eligibility documenting its findings, including:

(a) The evaluation data considered in determining the child's eligibility;

(b) A determination of whether the child meets the minimum criteria for a specific learning disability;

(c) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(d) The educationally relevant medical findings, if any;

(e) If the child participated in a response to intervention process, documentation that the parents were notified in a timely manner about: the state's policies regarding the amount and nature of student performance data that would be collected, and the general education services that would be provided, as part of the response to intervention process; strategies for increasing the child's rate of learning; and the parent's right to request an evaluation.

(f) The determination of the team concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cul-

# ADMINISTRATIVE RULES

tural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(g) A determination of whether the primary basis for the suspected disability is:

- (A) A lack of appropriate instruction in reading or math; or
- (B) Limited English proficiency;

(h) A determination of whether the child's disability has an adverse impact on the child's educational performance;

(i) A determination of whether, as a result of the disability, the child needs special education services; and

(j) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;  
Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(9), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2175

### Traumatic Brain Injury

(1) If a child is suspected of having a traumatic brain injury, the following evaluation must be conducted:

(a) Medical or health assessment statement. A medical statement or a health assessment statement indicating that an event may have resulted in a traumatic brain injury as defined in subsection (2)(A);

(b) Psychological assessment. A comprehensive psychological assessment using a battery of instruments intended to identify deficits associated with a traumatic brain injury administered by a licensed school psychologist, a psychologist licensed by a State Board of Psychological Examiners, or other individuals who have the training and experience to administer and interpret the tests within the battery;

(c) Other.

(A) Other assessments including, but not limited to, motor assessments if the child exhibits motor impairments; communication assessments if the child exhibits communication disorders; and psychosocial assessments if the child exhibits changed behavior. These assessments must be completed by educators knowledgeable in the specific area being assessed;

(B) Other information relating to the child's suspected disability, including pre-injury performance and a current measure of adaptive ability;

(C) An observation in the classroom and in at least one other setting;

(D) Any additional assessments necessary to determine the impact of the suspected disability:

- (i) On the child's educational performance for a school-age child; or
- (ii) On the child's developmental progress for a preschool child; and
- (E) Any additional evaluations or assessments necessary to identify the child's educational needs.

(2) To be eligible as a child with a traumatic brain injury, the child must meet all of the following minimum criteria:

(a) The child has an acquired injury to the brain caused by an external physical force;

(b) The child's condition is permanent or expected to last for more than 60 calendar days;

(c) The child's injury results in an impairment of one or more of the following areas:

(A) Communication;

(B) Behavior;

(C) Cognition, memory, attention, abstract thinking, judgment, problem-solving, reasoning, and/or information processing;

(D) Sensory, perceptual, motor and/or physical abilities.

(3) For a child to be eligible for special education services as a child with a traumatic brain injury, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

(4) Students with brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma, are not eligible under the category of traumatic brain injury but may be eligible under a different category under this rule.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;  
Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(10), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2180

### Vision Impairment

(1) If a child is suspected of having a vision impairment, the following evaluation must be conducted:

(a) Medical statement. A medical statement by an ophthalmologist or optometrist licensed by a State Board of Examiners indicating whether the child has a vision impairment;

(b) Vision assessment. An assessment by a teacher of the visually impaired to identify the child's educational and compensatory needs, including a functional assessment of the child's residual visual acuity or field of vision.

(c) Other: Any additional assessments necessary to determine the impact of the suspected disability:

- (A) On the child's educational performance for a school-age child; or
- (B) On the child's developmental progress for a preschool child.

(2) To be eligible as a child with a vision impairment, the child must meet one or more of the following minimum criteria:

(a) The child's residual acuity is 20/70 or less in the better eye with correction;

(b) The child's visual field is restricted to 20 degrees or less in the better eye;

(c) The child has an eye pathology or a progressive eye disease which in the opinion of the ophthalmologist is expected to reduce either residual acuity or visual field according to the criteria stated in subsections (2)(a) or (b); or

(d) The assessment results of a licensed ophthalmologist or optometrist are inconclusive, and the child demonstrates inadequate use of residual vision.

(3) For a child to be eligible for special education services as a child with vision impairment, the eligibility team must also determine that:

(a) The child's disability has an adverse impact on the child's educational performance; and

(b) The child needs special education services as a result of the disability.

Stat. Auth.: ORS 343.035(1), 343.045, 343.146, 343.157;  
Stats. Implemented: ORS 343.035(1), 343.045, 343.146, 343.157, 34 CFR 300.8, 300.306  
Hist.: 1EB 29-1978, f. & ef. 7-20-78; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 7-1986, f. & ef. 2-24-86; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 22-1995, f. & cert. ef. 9-15-95; ODE 11-2000, f. 5-3-00, cert. ef. 7-1-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0051(11), ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2190

### Parent Participation – General

(1) School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.

(2) Meeting Notice:

(a) School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.

(b) The written notice must:

(A) State the purpose, time and place of the meeting and who will attend;

(B) Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child;

(C) Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and

(D) Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.

(3) The school district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(4) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(5) Conducting a meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the school district has given the parent notice under subsection (2), or, for IEP or placement meetings, in accordance with OAR 581-015-2195.

(6) Transfer of rights:

# ADMINISTRATIVE RULES

(a) The right to parent participation transfers to an adult student under OAR 581-015-2325.

(b) After the transfer of rights to an adult student under OAR 581-015-2325, the school district must provide written notice of meetings to the adult student and parent, if the parent can be reasonably located. A parent receiving notice of a meeting under this subsection is not entitled to attend the meeting unless invited by the adult student or by the school district.

Stat. Auth.: ORS 343.041, 343.055, 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.500, 300.327, 300.501(b)

Hist.: ODE 17-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0063, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2195

### Additional Parent Participation Requirements for IEP and Placement Meetings

(1) Parent Participation: School districts must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed on time and place.

(2) Other Methods to Ensure Parent Participation: If neither parent can attend, the school district must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits.

(3) Conducting an IEP/Placement Meeting without a Parent in Attendance: An IEP or placement meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.

(a) If the school district proceeds with an IEP meeting without a parent, the district must have a record of its attempts to arrange a mutually agreed on time and place such as:

(A) Detailed records of telephone calls made or attempted and the results of those calls;

(B) Copies of correspondence sent to the parents and any responses received; and

(C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(b) The Department considers school district attempts to convince parents to attend sufficient if the school district:

(A) Communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-2190(2) to confirm this arrangement; or

(B) Sends written notice required under OAR 581-015-2190(2) proposing a time and place for the meeting and states in the notice that the parent may request a different time and place, and confirms that the parent received the notice.

(c) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.

(4) Considering Transition: If a purpose of the meeting is to consider postsecondary goals and transition services for a student, the written notice required by OAR 581-015-2190(2) must also:

(a) Indicate this purpose;

(b) Indicate that the school district will invite the student; and

(c) Identify any other agency that will be invited to send a representative in accordance with OAR 581-015-2210(2)(b).

(5) The school district must give the parent a copy of the IEP at no cost to the parent. If the parent does not attend the IEP meeting, the school district must ensure that a copy is provided to the parent.

(6) When conducting IEP team meetings and placement meetings, the parent of a child with a disability and a school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: ORS 343.045, 343.155, 34 CFR 300.322, 300.500, 300.327, 300.328, 300.501(c)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 17-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0067, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2200

### Content of IEP

(1) The individualized education program (IEP) must include:

(a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.

(b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability.

(c) A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other children with disabilities and non-disabled children;

(e) The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.

(f) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and activities described in subsection (1)(d) of this rule.

(g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment:

(A) A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability, unless the parent has requested an exemption under OAR 581-022-0612.

(B) If the IEP team determines that the child must take an alternate assessment in any area instead of a regular State or district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment selected is appropriate for the child.

(2) For the purposes of transition, the IEP must include:

(a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:

(A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(B) The transition services (including courses of study) needed to assist the child in reaching those goals.

(b) Beginning at least one year before a student reaches age 18, or when the district obtains actual knowledge that within one year the student will marry or become emancipated before age 18, a statement that the district has informed the student that procedural rights will transfer to the student upon age 18, marriage or emancipation, whichever occurs first.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.151

Stats. Implemented: ORS 343.151, 34 CFR 300.320

Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0068, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2205

### IEP Team Considerations and Special Factors

(1) In developing, reviewing and revising the child's IEP, the IEP team must consider:

(a) The strengths of the child;

(b) The concerns of the parents for enhancing the education of their child;

(c) The results of the initial or most recent evaluation of the child; and

(d) The academic, developmental, and functional needs of the child.

(2) In developing, reviewing and revising the child's IEP, the IEP team must consider the following special factors:

(a) The communication needs of the child; and

# ADMINISTRATIVE RULES

(b) Whether the child needs assistive technology devices and services.

(3) In developing, reviewing and revising the IEP of children described below, the IEP team must consider the following additional special factors:

(a) For a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior;

(b) For a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(c) For a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child; and

(d) For a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

(4) If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.

(5) Nothing in OAR 581-015-2200 or this rule may be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.151  
Stats. Implemented: ORS 343.051, 34 CFR 300.320, 300.324(a)(1) & (2), (b)(2)  
Hist.: ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0568, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2210 IEP Team

(1) School districts must ensure that the IEP Team for each child with a disability includes the following participants:

(a) One or both of the child's parents, except as provided in OAR 581-015-2195;

(b) The child where appropriate;

(c) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, consistent with section (4) of this rule;

(d) At least one special education teacher of the child or, if appropriate, at least one special education provider of the child;

(e) A representative of the school district, who may also be another member of the team, who is:

(A) Qualified to provide, or supervise the provision of, specially designed instruction;

(B) Knowledgeable about the general education curriculum;

(C) Knowledgeable about district resources; and

(D) Authorized to commit district resources and ensure that services set out in the IEP will be provided.

(f) An individual who can interpret the instructional implications of the evaluation results (who may also be another member of the team);

(g) Other individuals, including related services personnel as appropriate, invited by:

(A) The parent, whom the parent determines to have knowledge or special expertise regarding the child; or

(B) The school district, whom the school district determines to have knowledge or special expertise regarding the child; and

(h) Transition services participants, as described in section (2) of this rule.

(2) If a purpose of the meeting will be consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals:

(a) The school district must invite the student. If the student does not attend the meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(b) To the extent appropriate, with consent of the parents or adult student, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) IEP team attendance:

(a) A member of the IEP team described in subsection (1)(c) through (1)(f) is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

(b) A member of the IEP team described in subsection (1)(c) through (1)(f) may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

(A) The parent and school district consent in writing to the excusal; and

(B) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.

(4) The regular education teacher of the child must participate as a member of the IEP team, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of:

(a) Supplementary aids and services, program modifications and supports for school personnel that will be provided for the child; and

(b) Appropriate positive behavioral interventions and supports, and other strategies for the child.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.151  
Stats. Implemented: ORS 343.151, 34 CFR 300.344, 300.321, 300.324(a)(3) & (b)(3)  
Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0066, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2215 Oregon Standard IEP

(1) Each school district must use the Oregon Standard IEP form in the development, review and revision of all IEPs, unless an alternate form is approved under subsection (4).

(2) A school district may use an alternate form in the development, review and revision of IEPs if the Department approves the alternate form.

(3) Criteria for approval. The criteria for approval of alternate forms includes, but is not limited to:

(a) Whether the alternate form meets the requirements for the contents of an IEP under OARs 581-015-2200, 581-015-2205, 581-015-2330, and 581-015-2065; and

(b) Whether use of the alternate form will reduce unnecessary or confusing paperwork.

(4) Approval process.

(a) Within 10 days of the established date of submission of the alternate form for approval, the Department will decide:

(A) Whether the alternate form is approved or disapproved; and

(B) Any conditions that apply to the use of the alternate form.

(b) A school district may ask for a reconsideration of the decision within 30 days of receiving the Department's decision in subsection (3). The Department will issue a written response to the district of the reconsideration within 30 days of receiving the request.

(c) If a school district changes or modifies the approved alternate form, the district must submit the form for approval before its use.

(d) The decisions of the Department under this rule are final.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.151  
Stats. Implemented: ORS 343.151  
Hist.: ODE 17-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0703, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2220 When IEPs Must Be In Effect

(1) General:

(a) At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction.

(b) School districts must provide special education and related services to a child with a disability in accordance with an IEP.

(2) Initial IEPs:

(a) A school district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education.

(b) As soon as possible following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP.

(3) Accessibility of IEPs. Each school district must:

# ADMINISTRATIVE RULES

(a) Ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation; and

(b) Inform each teacher and provider described in (3)(a) of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.

Stat. Auth.: ORS 343.041, 343.045, 343.055;

Stats. Implemented: ORS 343.151, 34 CFR 300.323, 300.324

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0064, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2225

### Review and Revision of IEPs

(1) Annual review: Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to:

(a) Determine whether the annual goals for the child are being achieved; and

(b) Revise the IEP, as appropriate, to address:

(A) Any lack of expected progress toward the annual goals described in OAR 581-015-2200 and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under OAR 581-015-2105;

(C) Information about the child provided to, or by, the parents;

(D) The child's anticipated needs; or

(E) Other matters.

(2) Agreement to amend or modify IEP

(a) In making changes to a child's IEP between annual IEP Team meetings, the parent of a child with a disability and the school district may agree not to hold an IEP Team meeting to make these changes, and instead may develop a written document to amend or modify the child's current IEP.

(b) If changes are made to the child's IEP in accordance with subsection (1), the district must ensure that the child's IEP team is informed of these changes.

(3) Amendments to IEP

(a) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in subsection (2) by amending the IEP rather than by redrafting the entire IEP.

(b) Upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.151

Stats. Implemented: ORS 343.151, 34 CFR 300.324(a)(4), (a)(5), (a)(6), (b)(1)

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2230

### Transfer Students

(1) In state: If a child with a disability (who had an IEP that was in effect in a previous school district in Oregon) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district either:

(a) Adopts the child's IEP from the previous school district; or

(b) Develops, adopts and implements a new IEP for the child.

(2) Out of state: If a child with a disability (who had an IEP that was in effect in a previous school district in another state) transfers to a new district in Oregon, and enrolls in a new school within the same school year, the new school district (in consultation with the child's parents) must provide a free appropriate public education to the child (including services comparable to those described in the child's IEP from the previous district), until the new district:

(a) Conducts an initial evaluation (if determined necessary by the new district); and

(b) Develops, adopts and implements a new IEP, if appropriate, that meets applicable requirements.

Stat. Auth.: ORS 343.041, 343.045, 343.055;

Stats. Implemented: ORS 343.045, 343.155, 34 CFR 300.323

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2235

### School District and Participating Agency Responsibilities for Transition Services

(1) If a participating agency, other than the school district, fails to provide agreed-upon transition services described in the IEP of a student with

a disability, the school district must, as soon as possible, initiate an IEP meeting to identify alternative strategies to meet the transition objectives for the student set out in the IEP and, if appropriate, to revise the student's IEP.

(2) Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

Stat. Auth.: ORS 343.045, 343.055

Stats. Implemented: ORS 343.045, 343.155, 343.195, 34 CFR 300.324(c)

Hist.: EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0070, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2240

### Requirement for Least Restrictive Environment

School districts must ensure that:

(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and

(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Stat. Auth.: ORS 343.041, 343.045, 343.055,

Stats. Implemented: ORS 343.045, 343.155, 34 CFR 300.114

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0059, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2245

### Alternative Placements and Supplementary Aids and Services

School districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum must:

(1) Include as alternative placements, instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions; and

(2) Make provision for supplementary aids and services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Stat. Auth.: ORS 343.041, 343.045 & 343.055,

Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.115

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0060, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2250

### Placement of the Child

School districts must ensure that:

(1) The educational placement of a child with a disability:

(a) Is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

(b) Is made in conformity with the Least Restrictive Environment (LRE) provisions of OAR 581-015-2240 to 581-015-2255.

(c) Is based on the child's current IEP;

(d) Is determined at least once every 365 days; and

(e) Is as close as possible to the child's home;

(2) The alternative placements under OAR 581-015-2245 are available to the extent necessary to implement the IEP for each child with a disability;

(3) Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled;

(4) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; and

(5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Stat. Auth.: ORS 343.041, 343.045 & 343.055,

Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.116, 300.327

Hist.: 1EB 269, f. & ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; ODE 31-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0061, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2255

### Nonacademic Settings

(1) In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities described in OAR 581-015-2070, each school

# ADMINISTRATIVE RULES

district must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child.

(2) School districts must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Stat. Auth.: ORS 343.041, 343.045 & 343.055,  
Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.117  
Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2260

### Rights of Children with Disabilities in Private Schools Placed or Referred by Public Agencies

Each public agency must ensure that a child with a disability who is placed in or referred to a private preschool, school or facility by the public agency as a means of providing early intervention/early childhood special education (EI/ECSE) or special education and related services:

(1) Is provided EI/ECSE or special education and related services in conformance with an IEP or IFSP, and at no cost to the parents;

(2) Is provided an education that meets the standards that apply to education provided by the public agency (except that private school teachers do not need to be highly qualified special education teachers); and

(3) Has all of the rights of a child with a disability who is served by the public agency.

Stat. Auth.: ORS 343.041, 343.045, 343.055  
Stats. Implemented: ORS 343.221, 34 CFR 300.148  
Hist.: ODE 12-2000, f. 5-3-00, cert. ef. 5-3-00; Renumbered from 581-015-0701, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2265

### Obligations of Public Agencies that Contract with Approved Private Schools

(1) For the purposes of this rule, "public agency" means school districts and other public agencies that contract to provide EI/ECSE or special education. Public agencies may contract with private schools or preschools that are approved by the Department as contractors for EI/ECSE or special education pursuant to OAR 581-015-2270 through 581-015-2280.

(2) For a child birth through age 21, the public agency must fulfill all federal and state requirements relating to the evaluation, IFSP or IEP development, and placement when determining whether the child shall be placed in an approved private preschool for EI/ECSE services. For children ages 3 through 21, the public agency also must determine whether placement in an approved private school or preschool constitutes a free appropriate public education in the least restrictive environment for each child.

(3) A public agency that proposes to place a child with a disability in an approved private school or preschool must ensure that:

(a) The school-aged child is a resident of the school district under Oregon law;

(b) The child is eligible to receive EI/ECSE or special education services.

(4) Before the public agency places a child with a disability in an approved private school or preschool:

(a) The public agency must initiate and conduct a meeting to develop an IFSP or IEP meeting.

(b) The public agency must ensure that a representative of the approved private school or preschool attends the meeting.

(c) If a representative of the approved private school or preschool is unable to attend the meeting, the public agency must use other methods to ensure participation including, but not limited to, individual or conference telephone calls, or individual meetings.

(5) After a public agency initially places a child in an approved private school or preschool, any subsequent meetings to review or revise the child's IFSP or IEP are the responsibility of the public agency.

(6) The public agency may request by written agreement that the approved private school or preschool initiate and conduct IFSP or IEP meetings. If the approved private school or preschool initiates and conducts these meetings at the request of the public agency, the public agency must ensure that the parents and a representative of the public agency:

(a) Are involved in any decision about the child's IFSP or IEP; and

(b) Agree to any proposed changes in the program before those changes are implemented.

(7) The public agency must conduct the meeting pursuant to OAR 581-015-2250 or, for ECSE, OAR 581-015-2845, to determine the annual educational placement of a child.

(8) The public agency placing a child age 3 through 21 in an approved private school or preschool must ensure that the child and the child's par-

ents receive all the rights and protections as required for children with disabilities served by public agencies as set forth in federal law and in OAR chapter 581, division 015.

(9) The school district where the child resides must ensure that transportation is provided to and from the approved private school or preschool.

Stat. Auth.: ORS 343.041, 343.045, 343.055;  
Stats. Implemented: ORS 343.221, 34 CFR 300.325  
Hist.: 1EB 40-1978, f. & ef. 10-5-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0141, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2270

### Standards for Approval of Private Schools for School-age Children

(1) Applicability:

(a) This rule applies to private schools that intend to provide special education and related services to school-age children with disabilities who are placed in the school by a school district.

(b) This rule does not apply to educational programs operated by public agencies at treatment centers under OAR 581-015-2570.

(c) This rule does not apply to private alternative schools registered under OAR 581-021-0072 if the contracting school district is providing the special education and related services in the student's IEP.

(2) Requirement for approval: Private schools that intend to provide special education under a written agreement with a school district must submit an application for initial approval and an annual application for renewal to the Department on a form provided by the Department in accordance with this rule.

(3) Initial approval: The application for initial approval must include:

(a) Documentation that the private school meets the following requirements:

(A) The applicable fire codes of the local or state fire marshal, including an annual inspection and documentation of correction of any violations;

(B) Facility occupancy and use standards set forth by the appropriate local building inspectors;

(C) Health standards of the county health department (including annual inspection and correction of any violations for environmental health, food service, and communicable disease); and

(D) OAR 581-022-1420 Emergency Plans and Safety Programs;

(E) If the private school acquired or leased a building after October 12, 1988, a copy of the Asbestos Management Plan in accordance with OAR 581-022-1430; and

(F) OAR 581-022-1440 Infectious Diseases including Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV), and Hepatitis B and C

(b) Documentation that the private school:

(A) Has in effect commercial general liability insurance with policy limits of at least \$500,000 per school site.

(i) The private school must provide the Department with the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy.

(ii) If policy will expire during the approval year, the private school must submit documentation to the Department before the expiration date to maintain approval status.

(B) Has procedures in place regarding staff hiring and evaluation that require:

(i) The careful checking of personal and professional references for all potential employees;

(ii) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees; and

(iii) A regular schedule of staff evaluations of the competencies of all employees to work with children.

(C) Has a policy of nondiscrimination;

(D) Provides hours of instruction that meet state standards;

(E) Grants credit toward high school graduation consistent with OAR 581-022-1130 Diploma Requirements and 581-022-1350(2) and (3) Alternative Education Programs, or, if appropriate, an alternate document of completion as permitted under ORS 343.295.

(c) Assurances that the private school:

(A) Uses curriculum content, teaching practices and equipment that do not violate the constitutional prohibition on religious entanglement;

(B) Implements the special education services as described in each child's individualized education program in accordance with the contract between the private school and the placing school district;

(C) Maintains the confidentiality of student records consistent with state and federal laws relating to student records;



# ADMINISTRATIVE RULES

(D) Notifies the Department and the contracting public agency of any written complaint it receives concerning the special education programs and services being provided;

(E) Notifies the contracting public agency of the need for any change in a child's educational program and does not make changes in a child's IEP or special education program or services, or placement, unless the contracting school district consents to the changes; and

(F) Initiates and convenes IEP meetings only when this assistance is requested by a written agreement with the contracting school district in accordance with OAR 581-015-2265;

(G) Evaluates a child only when this assistance is requested by a written agreement with the contracting school district;

(H) Has at least one individual qualified to provide special education and licensed according to rules established by the Teacher Standards and Practices Commission available to serve the population of students described in the application. Private schools may provide special education and related services to students with disabilities placed by public agencies by employing professionals who are licensed within their own specialties. Pursuant to OAR 584-036-0010, these personnel are not required to hold licensure from the Teacher Standards and Practices Commission.

(I) Ensures that students have the opportunity to participate in district-wide and state-wide assessments of student achievement; and

(J) Meets the state curriculum standards set pursuant to OAR 581-022-1210.

(4) Renewal: The annual application for renewal of approval must include:

(a) Documentation that the private school meets:

(A) The requirements in subsection (3)(a)(A) and (3)(a)(C);

(B) If remodeled since the previous approval, the requirement in subsection (3)(a)(B);

(b) Documentation that the private school has insurance in accordance with subsection (3)(b)(A);

(c) Assurances that the private school meets the requirements in subsection (3)(a) (D)-(F), (3)(b)(B)-(E); and (3)(c).

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: 343.221

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; ODE 10-2004, f. & cert. ef. 8-4-04; Renumbered from 581-015-0126, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2275

### Standards for Approval of Private Preschools

(1) Applicability:

(a) This rule applies to private preschools that intend to provide a preschool setting, early intervention (EI) or early childhood special education (ECSE) and related services, in accordance with an individual family service plan IFSP to children with disabilities ages birth to five placed in the preschool by the contractor or subcontractor.

(b) This rule does not apply to:

(A) Private preschools that include kindergarten (which must apply for approval under OAR 581-015-2265);

(B) Public agencies providing educational programs at treatment centers under OAR 581-015-0044;

(C) Public programs including preschools operated by school districts. Oregon Head Start Prekindergarten, Head Start, Migrant Seasonal Head Start, Tribal Head Start, Early Head Start, Migrant Education preschools, and Even Start Family Literacy programs.

(2) Requirement for approval:

(a) Private preschools that intend to provide EI or ECSE and related services and/or a preschool setting under a written agreement with an EI/ECSE contractor or subcontractor must submit an application for initial approval and an annual application for renewal to the Department on a form provided by the Department, in accordance with this rule.

(b) A current Certificate of Approval from the Department of Employment's Child Care Division may be submitted in place of certain requirements as specified below, provided that:

(A) The Certificate of Approval is maintained throughout the approval period; or

(B) If the Certificate of Approval will expire during the approval term, the private school submits a new Certificate of Approval to the Department before the expiration date to maintain approved status.

(3) Initial approval:

(a) The application for initial approval must include documentation that the private preschool meets the following requirements:

(A) The applicable fire codes of the local or state fire marshal, including an annual inspection and documentation of correction of any violations;

(B) A copy of the initial facility occupancy and use standards set forth by the appropriate local building inspector;

(C) Health standards of the county health department (including annual inspection and correction of any violations for environmental health, food service, and communicable disease);

(D) The requirements set by OAR 581-022-1420 Emergency Plans and Safety Programs; and

(E) Procedures for staff hiring and evaluation that require:

(i) The careful checking of personal and professional references for all potential employees;

(ii) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees and evidence that these have been completed; and

(iii) A regular schedule of staff evaluations of the competencies of all employees to work with children.

(b) The application for initial approval must also include the following:

(A) Documentation that the private preschool has in effect commercial general liability insurance with policy limits of at least \$500,000 per school site.

(i) The private preschool must provide the Department with the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy.

(ii) If policy will expire during the approval year, the private school must submit documentation to the Department before the expiration date to maintain approval status.

(B) The private school's policy of nondiscrimination.

(c) The application for initial approval must include assurances that the private preschool:

(A) Has at least one individual who is qualified to provide EI/ECSE and meets the requirements of OAR 581-015-1100(2) and (3);

(B) Uses curriculum content, teaching practices and equipment that do not violate the constitutional prohibition on religious entanglement;

(C) Implements each child's IFSP in accordance with the private preschool's written agreement with the EI/ECSE contractor or subcontractor responsible for the child's placement;

(D) Maintains the confidentiality of student records consistent with state and federal laws relating to student records;

(E) Notifies the Department and the contracting EI/ECSE contractor or subcontractor of any written complaint it receives for the EI/ECSE programs and services being provided;

(F) Notifies the contracting EI/ECSE contractor or subcontractor of the need for any change in a child's educational program and does not make changes in a child's IFSP, program, services, or placement, unless the contracting EI/ECSE contractor or subcontractor consents to the changes;

(G) Initiates and convenes the IFSP only when this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor in accordance with OAR 581-015-2265;

(H) Evaluates a child only when this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor; and

(I) Provides the opportunity for a child to participate in the Early Childhood assessment if this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor.

(d) A current Certificate of Approval may be submitted in place of the requirements in subsection (3)(a).

(4) Renewal: The annual application for renewal of approval must include:

(a) Documentation that the private preschool:

(A) Meets the requirements in subsection (3)(a)(A) and (C);

(B) If remodeled since the previous approval, meets the requirement in (3)(a)(B); and

(C) Has insurance in effect in accordance with subsection (3)(b)(A);

(b) Assurances that the private preschool meets the requirements in subsections (3)(a)(D)-(E), (3)(b)(B)-(C), and (3)(c).

(c) A current Certificate of Approval may be submitted in place of requirements in subsection (4)(a)(A)-(B).

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: ORS 343.465, 343.475, 343.495

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2280

### Process for Approval of Private School or Preschool as a Contractor with Public Agencies

(1) Initial approval: A private school or private preschool applying for initial approval may submit an application to the Department at any time

# ADMINISTRATIVE RULES

pursuant to OAR 581-015-2270 and 581-015-2275, respectively. The private school or preschool will be notified by the Department of its approval or denial as quickly as possible but no later than 45 days after receipt of the completed application. The period of approval of the private school or preschool receiving initial approval will be from the date of notification of approval by the Department until the 15th day of August.

(2) **Renewal:**

(a) After a private school or preschool receives initial approval of an application, the private school or preschool must submit annual applications for renewal in accordance with OAR 581-015-2270 and 581-015-2275, respectively.

(b) The Department will begin accepting a private school's or preschool's annual application for renewal on April 1 of each year. The Department will notify the private school or preschool of its decision to renew or deny renewal of approval within 45 days of receipt of the completed application. The period of approval for a private school requesting renewal will be one year beginning on the 15th day of August.

(3) **Amendment:**

(a) An approved private school or preschool may make major program changes only with written prior approval from the Department. A major program change consists of any change in the information contained in a private school's or preschool's approved application that would affect the school or preschool's approval or disapproval under this rule.

(b) To request and receive approval for program changes, the private school or preschool must submit an amendment to the current approved application describing the changes proposed and the reasons for the changes. In addition, the amendment must describe the effect the changes will have on the children currently served under contracts with public agencies.

(c) After submitting an amendment as described in subsection (4)(a) of this rule, the private school or preschool may operate the services under the provisions of the amendment with conditional approval until the Department notifies the private school of the approval or denial of the amendment. The Department will notify the private school or preschool of approval or denial within a reasonable period of time, but no more than 45 days after receipt of the amendment by the Department.

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: ORS 343.221, 343.475, 343.495

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 40-1988(Temp), f. & cert. ef. 11-15-88; EB 20-1989, f. & cert. ef. 5-15-89; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0131, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2285

### Suspension, Revocation or Refusal to Renew Approval

The Department may suspend, revoke or refuse to renew its approval of a private school or preschool to contract with public agencies for the provision of early intervention, early childhood special education or special education services if:

(1) The private school fails to maintain the approval standards in OAR 581-015-2270;

(2) The private preschool fails to maintain the approval standards in OAR 581-015-2275;

(3) The private school or preschool violates the rights of children with disabilities; or

(4) The private school or preschool refuses to implement corrective actions ordered by the Department after completion of a special investigation.

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: ORS 343.055

Hist.: ODE 18-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0711, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2290

### Appeal of Denial, Suspension, Revocation or Refusal to Renew Approval

A private school or preschool may appeal the Department's denial, suspension, revocation or refusal to renew approval of a private school or preschool to contract with public agencies for the provision of early intervention, early childhood special education or special education services by requesting a contested case hearing under the provisions of ORS 183.413 through 183.470.

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: ORS 343.055

Hist.: ODE 18-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0712, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2295

### Out-of-State Placements for Special Education

(1) Any private educational institution located outside the state of Oregon which provides special education to Oregon students eligible for special education pursuant to a contract with an Oregon district, ESD, or the Oregon Department of Education must first be approved by the state education agency of the state in which the educational institution is located.

(2) Documentation of such approval must be maintained by the district placing a child in an out-of-state program and made available to the Department upon request.

(3) Contractual arrangements for out-of-state special education services may be made when:

(a) It is determined that no appropriate in-state placement option is available; and

(b) Such a placement is made after the development of an IEP as specified in OAR 581-015-2190 through 581-015-2225.

(4) In the event the state does not have a formal, approved process, the school shall meet whatever requirements apply for private schools to serve publicly placed students in that state.

Stat. Auth.: ORS 343.041, 343.045

Stats. Implemented: ORS 343.041, 343.045

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2300

### Access to Student Education Records

(1) School districts must give parents of children with disabilities an opportunity to examine all student education records in accordance with OAR 581-021-0220 through 581-021-0440.

(2) This provision includes all education records with respect to:

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of a free appropriate public education to the child.

Stat. Auth.: ORS 343.041, 343.155

Stats. Implemented: ORS 343.155, 343.173, 34 CFR 300.501

Hist.: ODE 4-2000, f. & cert. ef. 2-1-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0606, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2305

### Independent Educational Evaluation

(1) A parent of a child with a disability or suspected disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

(a) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child.

(b) "Public expense" means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(2) If a parent requests an independent educational evaluation at public expense, the school district must provide information to parents about where an independent educational evaluation may be obtained, and the school district criteria applicable for independent educational evaluations.

(3) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation, the qualifications of the examiner, and cost, must be the same as the criteria the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(a) Except for the criteria in subsection (3), a school district may not impose conditions, or timelines related to obtaining an independent educational evaluation at public expense.

(b) The school district must provide parents an opportunity to demonstrate that unique circumstances justify an independent educational evaluation that does not meet the district's criteria.

(4) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay, either:

(a) Ensure that an independent educational evaluation is provided at public expense unless the school district demonstrates in a hearing under OAR 581-015-2345 that the evaluation obtained by the parent did not meet school district criteria in accordance with (3); or

(b) Initiate a due process hearing under OAR 581-015-2345 to show that its evaluation is appropriate.

(5) If the school district initiates a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

# ADMINISTRATIVE RULES

(6) If the parent requests an independent educational evaluation, the school district may ask why the parent disagrees with the public evaluation. The parent may, but is not required, to provide an explanation. The school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(7) If the parent obtains an independent educational evaluation at public expense or shares with the district an evaluation obtained at private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets the district's criteria, in any decision made with respect to the provision of a free appropriate public education to the child; and

(b) May be presented by any party as evidence at a due process hearing.

(8) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(9) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155

Stats. Implemented: ORS 343.155, 343.173, 34 CFR 300.502

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 21-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0094, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2310

### Prior Written Notice

(1) Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(2) Prior written notice must be given after a decision is made and a reasonable time before that decision is implemented.

(3) The content of the prior written notice must include:

(a) A description of the action proposed or refused by the school district;

(b) An explanation of why the district proposes or refuses to take the action;

(c) A description of any other options that the IEP team considered and reasons why those options were rejected;

(d) A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action;

(e) A description of any other factors that are relevant to the school district's proposal or refusal; and

(f) A statement that the parents of a child with a disability have procedural safeguards, and if it is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.

(4) The prior notice must be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(5) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) The parent understands the content of the notice; and

(c) There is written evidence that the requirements in subsections

(5)(a) and (b) of this rule has been met.

(6) If the proposed action requires prior written notice and written consent, the district may give notice at the same time it requests consent.

Stat. Auth.: ORS 343.045, 343.155

Stats. Implemented: ORS 343.155, 343.159, 34 CFR 300.503

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 18-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0075, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2315

### Notice of Procedural Safeguards

(1) School districts must give parents a copy of the Notice of Procedural Safeguards at a minimum only one time per year, except that a copy must be given to the parents:

(a) Upon initial referral or parent request for evaluation;

(b) Upon request by a parent; and

(c) Also to the child, at least a year before the child's 18th birthday.

(2) The procedural safeguards notice must include all of the content provided in the Notice of Procedural Safeguards published by the Department in the following areas:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to educational records;

(e) Mediation, complaints and due process hearings;

(f) The child's placement during pendency of due process proceedings;

(g) Procedures for students who are subject to placement in an interim alternative educational setting;

(h) Requirements for unilateral placement by parents of children in private school at public expense;

(i) Civil actions, including the time period for filing such actions;

(j) Attorney's fees; and

(k) Transfer of rights at age of majority.

(3) The Notice of Procedural Safeguards must be written in language understandable to the general public.

(4) The Notice of Procedural Safeguards must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(5) If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure:

(a) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) That the parent understands the content of the notice; and

(c) That there is written evidence that the district has met these requirements.

Stat. Auth.: ORS 343.055, 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.504

Hist.: ODE 19-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0079, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2320

### Surrogate Parents

(1) School districts must ensure that the rights of a child with a disability, or suspected of having a disability, are protected by appointing a surrogate parent not more than 30 days after a determination by the district that the child needs a surrogate because:

(a) No parent (as defined in OAR 581-015-2005(20)) can be identified or located after reasonable efforts;

(b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability; or

(c) The child is an unaccompanied homeless youth.

(2) The school district may not appoint a surrogate solely because the parent or adult student to whom rights have transferred is uncooperative or unresponsive to special education needs.

(3) Each school district must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The school district must ensure that each person approved to serve as a surrogate:

(a) Is not an employee of the school district or the Department or any other agency that is involved in the education or care of the child;

(b) Is free of any personal or professional interest that conflicts with representing the child's special education interests; and

(c) Has knowledge and skills that ensure adequate representation of the child in special education decisions.

(4) For an unaccompanied homeless youth, appropriate staff of emergency shelters, independent living programs and street outreach programs may be appointed as a temporary surrogate parent without regard to subsection (3)(a) until a surrogate can be appointed that meets all of the requirements of subsection (3).

(5) An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.

(6) A surrogate is not considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.

(7) The duties of the surrogate parent are to:

# ADMINISTRATIVE RULES

- (a) Protect the special education rights of the child;
  - (b) Be acquainted with the child's disability and the child's special education needs;
  - (c) Represent the child in all matters relating to the identification, evaluation, IEP and educational placement of the child; and
  - (d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.
- (8) A surrogate has the same rights granted to a parent in a hearing under OAR 581-015-2360, and the procedures regarding hearings in OAR 581-015-2340 through 581-015-2385 apply.
- (9) A parent, or an adult student to whom rights have transferred, may give written consent for a surrogate to be appointed.

(a) When a parent or an adult student requests that a surrogate be appointed:

(A) The parent or adult student retains all parental rights to receive notice under OAR 581-015-2190, 581-015-2195, 581-015-2310, and 581-015-2315 and all of the information provided to the surrogate.

(B) The surrogate, alone, is responsible for all matters relating to the special education of the child unless the parent or adult student revokes consent for the surrogate's appointment.

(b) The parent or adult student may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

(10) The school district may change or terminate the appointment of a surrogate when:

- (a) The person appointed as surrogate is no longer willing to serve;
- (b) Rights transfer to the adult student or the child graduates with a regular diploma;
- (c) The child is no longer eligible for special education services;
- (d) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;
- (e) A foster parent is identified who can carry out the role of parent under OAR 581-015-2000(20);
- (f) The parent, who previously could not be identified or located, is now identified or located;
- (g) The appointed surrogate is no longer eligible;
- (h) The child moves to another school district; or
- (i) The child is no longer a ward of the state or an unaccompanied homeless youth.

(11) A person appointed as surrogate will not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155  
Stats. Implemented: ORS 343.155, 34 CFR 300.519  
Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 23-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0099, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2325

### Transfer of Procedural Rights at Age of Majority

(1) When a child with a disability reaches the age of majority under ORS 109.510 or 109.520, or is emancipated pursuant to ORS 419B.550 to 419B.558, the rights accorded to the child's parents under the special education laws transfer to the child. A student for whom rights have transferred is considered an "adult student" under OAR 581-015-2000.

(2) Notwithstanding section (1) of this rule:

(a) Pursuant to a protective proceeding under ORS chapter 125, the Probate Court may find the child to be incapacitated to make educational decisions and may appoint a guardian to exercise these rights.

(b) Under ORS 419B.220 or 419C.220, the Juvenile Court may appoint a surrogate parent to exercise these rights if the child is a ward of the state.

(3) School districts are not responsible for the costs of a protective proceeding unless the school district is the Petitioner.

(4) Pursuant to OAR 581-015-2320(9), a child to whom rights transfer may request that a surrogate be appointed to exercise the child's special education rights.

(5) This rule applies to all students, including students who are incarcerated in a state or local adult or juvenile correctional facility or jail.

Stat. Auth.: ORS 343.055, 343.155  
Stats. Implemented: ORS 343.155, 343.181, 34 CFR 300.520  
Hist.: ODE 24-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0101, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2330

### Notice of Transfer of Rights at Majority

(1) The school district must provide notice to the child and the parent that rights will transfer at the age of majority. This notice must be provided at the IEP meeting and documented on the IEP:

(a) At least one year before the child's 18th birthday; or

(b) Upon actual knowledge that within a year the child will likely marry or become emancipated before age 18.

(2) The school district must provide written notice to the child and to the parent at the time of the transfer of rights.

Stat. Auth.: ORS 343.055, 343.155

Stats. Implemented: ORS 343.155, 343.181, 34 CFR 300.520

Hist.: ODE 25-1999, f. & cert. ef. 9-24-99; Renumbered from 581-015-0102, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2335

### Mediation

(1) The Department offers mediation at no cost to the parties to resolve special education disputes, including matters arising before the filing of a complaint or hearing request.

(2) Mediation:

(a) Must be voluntary on the part of the parties;

(b) Must not be used to deny or delay a parent's right to a due process hearing under OAR 581-015-2345, a complaint under OAR 581-015-2030 or other procedural safeguards; and

(c) Must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(3) The Department maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The parties to mediation participate in the selection of the mediator. Mediators are selected from the list on a random, rotational, or other impartial basis.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a legally binding written mediation agreement. The written agreement must:

(a) State the terms of the agreement;

(b) State that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(c) Be signed by the parent and a representative of the school district who has the authority to bind the district.

(6) The mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(7) Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

(8) Notwithstanding subsection (6), a mediation communication is not confidential if it relates to child or elder abuse and is made to a person who is required to report abuse, or threats of physical harm, or professional conduct affecting licensure.

(9) An individual who serves as a mediator:

(a) May not be an employee of:

(A) Any school district;

(B) The Department of Corrections;

(C) The Department of Education; and

(b) Must not have a personal or professional interest that conflicts with the person's objectivity.

(10) A person who otherwise qualifies as a mediator is not an employee under subsection (9)(a) of this rule solely because he or she is paid by the Department to serve as a mediator.

(11) The Department may request parents who are reluctant to use the mediation process to meet with a neutral party who would explain the benefits of the mediation process and encourage the parents to use the process. This meeting shall occur at a time and location convenient to the parents and at no cost to the parents. The Department or school district may not deny or delay a parent's right to a due process hearing if the parent fails to participate in this meeting.

Stat. Auth.: ORS 343.055, 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.506

Hist.: ODE 22-1999, f. & cert. ef. 9-24-99; Renumbered from 581-015-0095, ODE 10-2007, f. & cert. ef. 4-25-07

# ADMINISTRATIVE RULES

## 581-015-2340

### Procedural Rules for Due Process Hearings

(1) Pursuant to an interagency agreement with the Office of Administrative Hearings, the Office of Administrative Hearings will assign administrative law judges to conduct special education due process hearings.

(2) The Department of Justice's model rules for administrative hearings, OAR 137-003-0501 through 137-003-0700, apply to the extent consistent with federal law and these Division 15 regulations. The Department's interagency agreement with the Office of Administrative Hearings will identify delegations of authority and the application of the rules in this section.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155

Stats. Implemented: ORS 343.055, 343.155

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0097, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2345

### Hearing Request and Response

#### (1) Request for Hearing

##### (a) Parent Requests for a Due Process Hearing

(A) A parent may request a due process hearing in accordance with subsection(3) if the parent does not agree with the identification, evaluation, educational placement of a child, or the provision of a free appropriate education to a child who may be disabled.

(B) The parent, or the attorney representing the child, must provide notice to the school district and to the Department when requesting a hearing. The notice (which remains confidential) must, include:

(i) The child's name and address (or available contact information in the case of a homeless child);

(ii) The name of the school the child is attending;

(iii) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time.

##### (b) School District Requests for a Due Process Hearing:

(A) A school district may request a due process hearing regarding identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child.

(B) The school district requesting a due process hearing, or the attorney representing the district, must provide notice to the parent and to the Department in as described in subsection (1)(a)(B).

(c) A party may not have a hearing until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (1)(a)(B) or (1)(b)(B).

#### (2) Response to hearing request:

(a) School district: If the school district has not sent a prior written notice to the parent regarding the subject matter in the parent's due process request, the school district must, within ten days of receiving the request:

(A) Send to the parent a response that includes:

(i) An explanation of why the school district proposed or refused to take the action raised in the hearing request;

(ii) A description of other options that the IEP team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record or report the school district used as the basis for the proposed or refused action; and

(iv) A description of the factors relevant to the school district's proposal or refusal.

(B) The school district's response under subsection (2)(a)(A) may not be construed to preclude the school district from asserting that the parent's due process request was insufficient, where appropriate.

##### (b) Parent and school district:

(A) The party that did not file the hearing request must, within ten days of receiving the request for hearing, send to the other party a response that specifically addresses the issues raised in the hearing request.

(B) A school district providing a response to an issue under subsection (3)(a) is not required to respond to the same issue under (3)(b).

#### (3) Time limitation and exception:

(a) A special education due process hearing must be requested within two years after the date of the act or omission that gives rise to the right to request the hearing.

(b) This timeline does not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the

complaint, or the school district's withholding of information from the parent that the district was required to provide under Chapter 343.

(4) Information: The Department will inform a parent of any free or low-cost legal services and other relevant services available in the area if a parent requests the information.

Stat. Auth.: ORS 343.045, 343.055 & 343.155;

Stats. Implemented: ORS 343.165, 34 CFR 300.507, 300.508, 300.511(e)

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; EB 9-1993, f. & cert. ef. 3-25-93; ODE 20-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0081, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2350

### Sufficiency of Hearing Request

(1) A written request for hearing will be deemed sufficient unless the party receiving the request notifies the administrative law judge and the other party in writing, within 15 days of receipt of the hearing request, that the receiving party believes the notice does not meet the requirements of OAR 581-015-2345.

(2) Within five days of receiving notice that a party is objecting to the sufficiency of the other party's hearing notice, the administrative law judge must make a determination on the face of the hearing request of whether the hearing request meets the requirements of OAR 581-015-2345, and must immediately notify the parties in writing of that determination.

(3) A party may amend its hearing request only if:

(A) The other party consents in writing to the amendment and is given the opportunity to resolve the hearing request through a resolution meeting; or

(B) The administrative law judge grants permission, except that this permission may only be granted at any time not later than five days before a due process hearing occurs.

(4) If a party files an amended hearing request, the applicable timelines for the resolution session and resolution period begin again with the filing of the amended hearing request.

Stat. Auth.: ORS 343.045, 343.055, 343.155;

Stats. Implemented: ORS 343.165, 34 CFR 300.508(d)

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2355

### Resolution Process

#### (1) Resolution meeting:

(a) Within 15 days of receiving a parent's due process hearing request, the school district must hold a resolution meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint.

(b) The meeting:

(A) Must include a representative of the school district who has decision-making authority on behalf of the school district; and

(B) May not include an attorney for the school district unless the parent is accompanied by an attorney.

(c) The purpose of the meeting is for the parent of the child to discuss the hearing request, and the facts that form the basis of that request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(d) This resolution meeting need not be held if:

(A) The parent and school district agree in writing to waive the meeting; or

(B) The parent and school district agree to use the mediation process.

(e) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

#### (2) Resolution period:

(a) If the school district has not resolved the dispute to the satisfaction of the parents within 30 days of the receipt of the due process hearing request, the due process hearing may occur.

(b) The 45 day hearing timeline begins at the end of the 30 day resolution period except as provided in subsection (2)(c).

(c) The 45 day hearing timeline begins the next business day after any of the following circumstances.

(A) The parties agree in writing to waive the resolution session.

(B) After the mediation or resolution meeting starts but before the end of the 30 day resolution period, the parties agree in writing that no agreement is possible.

(C) Both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but later, the parent or school district withdraws from the mediation process.

# ADMINISTRATIVE RULES

(d) The failure of a parent requesting a due process hearing to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held, unless:

(A) The parties have agreed to waive the resolution session; or

(B) The parties have agreed to use mediation instead of the resolution meeting.

(e) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented (as in OAR 581-015-2195), the school district may, at the conclusion of the 30 day resolution period, request that a hearing officer or administrative law judge dismiss the parent's due process hearing request.

(f) If the school district fails to hold the resolution meeting within 15 days of receiving the parent's due process hearing request or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer or administrative law judge to begin the 45 day hearing timeline.

(3) Resolution agreement:

(a) If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding written agreement that is:

(A) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(B) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute a resolution agreement, either party may void the agreement within three business days of the agreement's execution.

Stat. Auth.: ORS 343.045, 343.055, 343.155, 343.165

Stats. Implemented: ORS 343.045, 343.155, 343.165, 34 CFR 300.510

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2360

### Pre-Hearing Conference, Notice of Hearing and Hearing Rights

(1) Upon receipt of a written request by a parent or the school district for a hearing regarding the identification, evaluation, individualized education program, educational placement of the child or the provision of a free appropriate public education to a child, the Superintendent will:

(a) Appoint an administrative law judge, in accordance with OAR 581-015-2365, to conduct the hearing.

(b) Provide the parent with a copy of the Notice of Procedural Safeguards;

(c) Inform the parties that mediation is available at no cost to the parents or school district; and

(d) Inform the parent of any free or low-cost legal services and other relevant services.

(2) Subject matter of hearing: The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the hearing request unless the other party agrees otherwise.

(3) Pre-Hearing Conference: The administrative law judge will require the parties to appear in person or by telephone for a pre-hearing conference for the purpose of:

(a) Identifying the issues to be resolved;

(b) Establishing the length and scheduling of the hearing;

(c) Deciding whether the hearing record will be a written or electronic verbatim record;

(d) Reviewing the parties' hearing rights and procedures; and

(e) Notifying the parties of the availability of mediation at no cost through the Department.

(4) Notice of Hearing:

(a) The administrative law judge will provide a notice to the parties of the hearing. The notice will be served by registered or certified mail.

(b) The hearing notice will include:

(A) A statement of the time and place of the hearing, the scheduling of pre-hearing exchange of documents and any other filing deadlines, and the date for issuance of the final order;

(B) A statement of the authority and jurisdiction under which the hearing is to be held;

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

(D) A short and plain statement of the matters asserted or charged;

(E) A statement that mediation is available to the parties at no cost from the Department;

(F) A statement of hearing rights as described in subsection (3).

(5) Due Process Hearing Rights: Parties to a due process hearing conducted under OAR 581-015-2360 (Notice of Hearing, Hearing Rights, and Pre-Hearing Conference) or 581-015-2400 through 581-015-2445 (Discipline for Students with Disabilities) have the following rights:

(a) During the pendency of any due process hearing or judicial appeal, the child must, remain in the present educational placement unless:

(A) The school district and the parent agree otherwise;

(B) If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;

(C) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to a weapon, illegal drug, or controlled substance incident or for serious bodily injury;

(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior; or

(E) The school district implements a disciplinary removal to an interim alternative educational setting for a student when the student's behavior is determined not to be a manifestation of the student's disability.

(b) Any party to a hearing has the right to:

(A) Be accompanied and advised by counsel and by individuals who have special knowledge or training with respect to the problems of children with disabilities;

(B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(C) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(D) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost to the parents; and

(E) Obtain a written or, at the option of the parents, electronic findings of fact and hearing decision at no cost to the parents.

(c) The parent involved in a hearing has the right to:

(A) Have the child present who is the subject of the hearing; and

(B) Open the hearing to the public.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.165

Stats. Implemented: ORS 343.155, 343.165, 343.177, 34 CFR 300.504, 300.507(b)(2), 300.511, 300.512, 300.518, 300.530, 300.533

Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 29-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; EB 11-1995, f. & cert. ef. 5-25-95; ODE 20-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0080, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2365

### Criteria for Administrative Law Judge

(1) An administrative law judge appointed to conduct a hearing regarding the identification, evaluation, educational placement of a child, or the provision of a free appropriate public education to a child who may have a disability must:

(a) Not be employed by the Department or a school district; and

(b) Not have a professional or personal interest that would conflict with the person's objectivity in the hearing.

(2) An administrative law judge must:

(a) Possess knowledge of, and the ability to understand, the provisions of state and federal special education laws, regulations, and legal interpretations by federal and state courts;

(b) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(c) Possess the knowledge and ability to render and write decisions in accordance with standard legal practice.

(3) For purposes of section 1(a) of this rule, a person who otherwise qualifies to conduct a hearing is not an employee of the Department or school district solely because the person is paid by the Department or school district to serve as a hearing officer.

(4) The Department keeps a list of the persons serving as administrative law judges, which includes a statement of the qualifications of each person.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.165

Stats. Implemented: ORS 343.165, 34 CFR 300.511(c)

Hist.: 1EB 269, f. & ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 11-1995, f. & cert. ef. 5-25-95; ODE 33-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0096, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2370

### Conduct of Hearing

(1) The hearing will be conducted by and under the control of the administrative law judge appointed under 581-015-2360.

(2) At the discretion of the administrative law judge, the hearing will be conducted in the following manner:

(a) Statement and evidence of the school district in support of its action;

# ADMINISTRATIVE RULES

(b) Statement and evidence of the parents disputing the school district action;

(c) Rebuttal testimony.

(3) The administrative law judge, counsel or other representatives of the parties, and the parents if the parents are not represented, have the right to question or cross-examine any witnesses.

(4) The hearing may be continued with recesses as determined by the administrative law judge.

(5) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

(6) Exhibits must be marked, and the markings must identify the person offering the exhibits. The exhibits will be preserved by the Superintendent as part of the record of the proceedings.

(7) Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.165

Stats. Implemented: ORS 343.155, 343.165, 34 CFR 300.512, 300.515(d)

Hist.: 1EB 269, f. & cert. ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0086, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2375

### Decision of Administrative Law Judge

(1) The decision of the hearing officer in a contested case will comply with ORS 343.167.

(2) The decision will be entered and mailed to the parties not later than 45 days after the expiration of the resolution period under OAR 581-015-2375 unless a specific extension has been granted by the administrative law judge at the request of a party.

(3) A copy of the hearing decision will be sent to the parent and school district accompanied by a statement describing the method of appealing the decision.

(4) The Department will submit a copy of the findings and hearing decision to the State Advisory Council for Special Education or a subcommittee of the Council, and make the findings and decisions available to the public, in such a manner so that personally identifiable information will not be disclosed.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.165

Stats. Implemented: ORS 343.167, 34 CFR 300.513, 300.515

Hist.: 1EB 269, f. & cert. ef. 12-22-77; 1EB 18-1979(Temp), f. & cert. ef. 11-15-79; 1EB 5-1980, f. & cert. ef. 2-22-80, f. & cert. ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0088, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2380

### Informal Disposition

Nothing contained herein shall be construed to preclude any system of consultations or conferences with parents that is used by school districts with regard to identification, evaluation or educational placement of a child with a disability. Such conferences or consultations, however, shall not be held in lieu of a hearing requested under OAR 581-015-0081 if one is requested. A request for a hearing shall not preclude informal disposition of the matter by stipulation, agreed settlement or consent order.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155

Stats. Implemented: ORS 343.155

Hist.: 1EB 269, f. & cert. ef. 12-22-77; EB 11-1995, f. & cert. ef. 5-25-95; Renumbered from 581-015-0091, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2383

### Failure to Appear at a Hearing

(1) When a parent, having requested a hearing, fails to appear at the specified time and place, the administrative law judge must enter a decision which supports the school district action.

(2) The decision supporting the school district's action must set forth the material on which the action is based, or the material must be attached to and made a part of the decision.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.165

Stats. Implemented: ORS 343.155 & 343.165

Hist.: 1EB 269, f. & cert. ef. 12-22-77; 1EB 18-1979(Temp), f. & cert. ef. 11-15-79; 1EB 5-1980, f. & cert. ef. 2-22-80, f. & cert. ef. 2-23-80; EB 11-1995, f. & cert. ef. 5-25-95; Renumbered from 581-015-0084, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2385

### Hearing Costs

(1) Costs of the Proceedings:

(a) The school district must reimburse the Department for the costs related to conducting the hearing, including pre-hearing conferences, scheduling arrangements, and other related matters.

(b) The school district must provide the parent with a written, or at the option of the parent, an electronic verbatim recording of the hearing, within a reasonable time of the close of the hearing.

(2) Attorney Fees: Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorney fees or costs of a party related to an action or proceeding under this rule.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.167;

Stats. Implemented: ORS 343.165, 343.167, 34 CFR 300.512, 300.517(b)

Hist.: EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0093, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2390

### Definitions for Hearings Under Section 504 of the Rehabilitation Act

The following definitions apply to OAR 581-015-2395:

(1) "Student with a disability under Section 504" means any student who has a physical or mental impairment that substantially limits one or more major life activities.

(2) As used in section (1) of this rule:

(a) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; endocrine; any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) "Qualified student with a disability under Section 504" means a student with a disability under Section 504 who is:

(a) Of an age during which non-disabled persons are provided educational services;

(b) Of any age during which it is mandatory under state law to provide such services to students with disabilities; or

(c) To whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.

(4) "School District" means a school district as defined in ORS 343.153.

Stat. Auth.: ORS 326, 323.055

Stats. Implemented: ORS 343.041

Hist.: EB 7-1987(Temp), f. & cert. ef. 5-11-87; EB 24-1988, f. & cert. ef. 5-24-88; ODE 6-2003, f. & cert. ef. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0108, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2395

### Procedures for a Hearing under Section 504 of the Rehabilitation Act of 1973

(1) The parent or guardian of a qualified student with a disability under section 504 may file a written request for a hearing with the State Superintendent of Public Instruction with respect to actions regarding the identification, evaluation, provision of a free appropriate education, or education placement of the student with the disability under Section 504, which the parent or guardian alleges to be in violation of Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, or any amendment thereof. In such event, the Superintendent will conduct a hearing.

(2) The school district involved in the hearing is responsible for the costs of the hearing.

(3) The prehearing and hearing procedures in OAR 581-015-2340 through 581-015-2383 apply to hearings conducted under Section 504 of the Rehabilitation Act.

(4) The parties are entitled to the procedural rights under OAR 581-015-2360 with the exceptions of the stay-put provision and the right to obtain at no cost a written or electronic verbatim record of the hearing, both of which do not apply to a hearing under this rule.

(5) Nothing in this rule is meant to prevent the parties from also seeking due process remedies under the Individuals with Disabilities Education Act as set forth in OAR 581-015-2340 through 581-015-2385.

Stat. Auth.: ORS 326, 343.055

Stats. Implemented: ORS 343.041

Hist.: EB 7-1987(Temp), f. & cert. ef. 5-11-87; EB 24-1988, f. & cert. ef. 5-24-88; EB 24-1990, f. & cert. ef. 5-18-90; EB 9-1993, f. & cert. ef. 3-25-93; ODE 6-2003, f. & cert. ef. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0109, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2400

### Definitions

For the purposes of OAR 581-015-2400 through 581-015-2445, the following definitions apply:

# ADMINISTRATIVE RULES

(1) "Behavioral intervention plan" means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.

(2) "Current educational placement" means the type of educational placement of the child as described in the child's "annual determination of placement" document at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g. regular classroom with support; regular classroom with resource room support; special class; special school; home instruction, etc.).

(3) "Disciplinary removal" means suspension, expulsion, or other removal from school for disciplinary reasons, including removals for mental health examinations for students who threaten violence or harm in public schools under ORS 339.250(4)(b)(C). It does not include:

(a) Removals by other agencies;

(b) Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);

(c) In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child's IEP, and continues to participate with nondisabled children to the extent they would in their current placement; or

(d) Bus suspensions, unless the student's IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.

(4) "Functional behavioral assessment" means an individualized assessment of the student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.

(5) "Suspension" means any disciplinary removal other than expulsion.

Stat. Auth.: ORS 343.041, 343.045, 343.155  
Stats. Implemented: ORS 343.155  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03;  
Renumbered from 581-015-0550, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2405

### Disciplinary Removals for Up to 10 School Days for Children with Disabilities

(1) School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement.

(2) During disciplinary removals described in section (1) of this rule:

(a) School districts are not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.

(b) School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.

(3) For the purpose of counting days of suspensions under OAR 581-015-2405 through 581-015-2445:

(a) Suspensions of a half day or less are counted as a half day; and

(b) Suspensions of more than a half-day are counted as a whole day.

(4) For the purposes of determining "current educational placement" in subsection (1) of this rule:

(a) Children who received special education services in another state and are found eligible for special education in Oregon are treated as initially placed in special education in Oregon, and any days of suspension accrued in the former state are not counted toward the ten days.

(b) For children who move from one school district to another school district in Oregon, any days of suspension from the former district carry over to the new school district unless the school district does not have actual knowledge of the previous suspensions.

Stat. Auth.: ORS 343.041, 343.045 & 343.155  
Stats. Implemented: ORS 343.155, 34 CFR 300.530  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03;  
Renumbered from 581-015-0551, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2410

### Additional Disciplinary Removals of Up to 10 School Days Each (No Pattern)

(1) School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to

an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities, if the removals do not constitute a pattern under section (2) of this rule. These removals are not considered a change in placement.

(2) School personnel must determine, on a case-by-case basis, whether the series of removals constitute a pattern:

(a) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(b) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another.

(3) Services. During removals described in section (1) of this rule:

(a) School districts must provide services that are necessary to enable the child:

(A) To continue to participate in the general education curriculum, although in another setting; and

(B) To progress toward meeting the goals in the child's IEP.

(b) School personnel, in consultation with at least one of the child's teachers, determine the extent to which the services described in subsection (3)(a) of this rule are needed, and the location for delivery of those services.

(c) School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.

(4) The determination in subsection (2) is subject to review under OAR 581-015-2445.

Stat. Auth.: ORS 343.041, 343.045 & 343.155  
Stats. Implemented: ORS 343.155, 34 CFR 300.530, 300.536  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03;  
Renumbered from 581-015-0552, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2415

### Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)

(1) A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if:

(a) The removal will be for more than 10 consecutive school days (e.g. expulsion); or

(b) The child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2).

(2) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal under subsection (1) for a child with a disability who violates a code of conduct.

(3) Manifestation determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district must determine whether the child's behavior is a manifestation of the student's disability in accordance with OAR 581-015-2420.

(4) Manifestation. If the determination under subsection (3) is that the child's behavior is a manifestation of the child's disability, the school district must:

(a) Return the child to the placement from which the child was removed, unless:

(A) The parent and school district agree to a change of placement as part of the modification of the behavioral intervention plan under subsection (4)(b);

(B) The school district removes the child to an interim alternative educational setting under OAR 581-015-2425 for a weapons or drug violation or for infliction of serious bodily injury; or

(C) The school district obtains an order from an administrative law judge under OAR 581-015-2430 allowing a change in placement to an interim alternative educational setting for injurious behavior; and

(b) Either:

(A) Conduct a functional behavioral assessment, unless the school district conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan; or

(B) If the student already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.

(5) No manifestation. If the determination under subsection (3) is that the child's behavior is not a manifestation of the child's disability:

(a) The school district may proceed with disciplinary action applicable to children without disabilities under section (1) of this rule, in the same



# ADMINISTRATIVE RULES

manner and for the same duration in which the procedures would be applied to children without disabilities.

(b) If the school district takes such action applicable to all children, the school district must:

(A) On the date on which the decision is made to remove the student under subsection (5), notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315.

(B) Provide services to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2435; and

(C) Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(6) Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination or any decision about placement related to the disciplinary removal in section (1) of this rule, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the disciplinary removal under subsection (1), whichever occurs first, unless the parent and school district agree otherwise.

Stat. Auth.: ORS 343.041, 343.045 & 343.155  
Stats. Implemented: ORS 343.155, 34 CFR 300.504(a)(3), 300.530, 300.531, 300.532, 300.533  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0553, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2420

### Manifestation Determination

(1) In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(2) If the school district, the parent, and relevant members of the IEP team determine that either subsection (1)(a) or (b) is applicable for the child, the conduct must be determined to be a manifestation of the child's disability.

(3) If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.

Stat. Auth.: ORS 343.041, 343.045 & 343.155;  
Stats. Implemented: ORS 343.155, 34 CFR 300.530(e)  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0554, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2425

### Removal to an Interim Alternative Educational Setting by School District

(1) Definitions:

(a) "Drug" means illegal drug or controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or otherwise legally possessed. It does not include alcohol or tobacco.

(b) "Drug violation" means the use, possession, sale or solicitation of drugs at school or a school function.

(c) "Serious bodily injury" means bodily injury, which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

(d) "Weapon" means a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that it does not include a pocket knife with a blade of less than 2 1/2 inches in length.

(e) "Weapon violation" means carrying a weapon to school or to a school function or acquiring a weapon at school.

(2) School districts may remove a child with disabilities from their current educational placement to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 school days in a school year without regard to whether the behavior is determined to be a manifestation of the child's disability for:

(a) A drug or weapon violation as defined in subsection (1); or

(b) If the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Department or a school district.

(3) A removal for a drug or weapon violation, or for inflicting serious bodily injury, is considered a change in placement.

(4) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a removal under subsection (2) for a child with a disability who violates a code of conduct.

(5) For removals described in subsection (2) of this rule, school districts must:

(a) On the date on which the decision is made to remove the student under subsection (2), notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315;

(b) Provide the services to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2345;

(c) Within 10 school days of any decision to remove a child under subsection (2), determine whether the child's behavior is a manifestation of the child's disability in accordance with OAR 581-015-2420; and

(d) Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(6) Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination, removal to the interim alternative educational setting, or any decision about placement related to a disciplinary removal under section (2) of this rule, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the removal under section (2), whichever occurs first, unless the parent and school district agree otherwise.

Stat. Auth.: ORS 343.041, 343.045 & 343.155  
Stats. Implemented: ORS 343.155, 34 CFR 300.504(a)(3), 300.530, 300.533, 300.536  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0555, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2430

### Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)

(1) "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.

(2) School districts may request an expedited due process hearing under OAR 581-015-2445 to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.

(3) The interim alternative educational setting must meet the requirements of OAR 581-015-2435(2).

(4) The procedures in subsection (2) may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injurious behavior.

(5) Nothing in this rule precludes a school district from seeking a court order to remove a child from the child's current educational placement to another placement if the district believes that the maintaining the child in the child's current educational placement is substantially likely to result in injurious behavior.

Stat. Auth.: ORS 343.041, 343.045 & 343.155  
Stats. Implemented: ORS 343.155, 34 CFR 300.532  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0556, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2435

### Requirements of an Interim Alternative Educational Setting

An interim alternative educational setting under OAR 581-015-2415 and 581-015-2425 must:

(1) Be determined by the child's IEP team; and

(2) Enable the child to:

(a) Continue to participate in the general curriculum, although in another setting; and

(b) Progress toward achieving the goals in the child's IEP.

Stat. Auth.: ORS 343.041, 343.045, 343.155  
Stats. Implemented: ORS 343.155, 34 CFR 300.530  
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; Renumbered from 581-015-0557, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2440

### Protections for Children Not Yet Eligible for Special Education

(1) The provisions of OAR 581-015-2400 through 581-015-2435 apply to children not yet identified as children with disabilities if the school district had knowledge that the child was a child with a disability.

# ADMINISTRATIVE RULES

(2) For the purposes of subsection (1) of this rule, a school district "had knowledge" if, before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the child expressed a concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;

(b) The parent of the child requested a special education evaluation of the child; or

(c) The teacher of the child, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or other supervisory personnel of the district.

(3) Notwithstanding subsections (1) and (2) of this rule, a school district will not be considered to have had knowledge that the child was a child with a disability if:

(a) The parent of the child has not allowed an evaluation of the child or has refused services under OAR 581-015-2090; or

(b) The child has been evaluated in accordance with OAR 581-015-2090 through 581-015-2180, and the child was determined not eligible.

(4) If the school district did not have knowledge before taking disciplinary action against the child, the district may take the same disciplinary actions as applied to children without disabilities who engaged in comparable behaviors. However:

(a) If a special education evaluation is requested or if the school district initiates a special education evaluation, the evaluation must be conducted in an expedited manner.

(b) Until the evaluation is completed, the child remains in the educational placement determined by school personnel, which can include suspension, expulsion, or placement in alternative education under OAR 581-021-0071.

(c) If, on completion of the evaluation, the child is determined to be a child with a disability, the school district must conduct an IEP meeting to develop an IEP and determine placement and must provide special education and related services.

(d) The provisions of OAR 581-015-2400 through 581-015-2435 and 581-015-2445 apply beginning on the date of the eligibility determination.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.534

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03;

Renumbered from 581-015-0558, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2445

### Expedited Due Process Hearings

(1) An expedited due process hearing must be held if a hearing is requested under OAR 581-015-2345 because:

(a) In a dispute over a disciplinary action for a child with a disability, the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding the child's educational placement; or

(b) The school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(2) Expedited due process hearings must meet the requirements of OAR 581-015-2340 through 581-015-2385; except that:

(a) Unless the parents and school district agree in writing to waive the resolution meeting in OAR 581-015-2355 or agree to use the mediation process in OAR 581-015-2335:

(A) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and

(B) The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process hearing request.

(b) The expedited hearing must occur within 20 school days of the date the hearing is requested and must result in a written decision within 10 school days after the hearing.

Stat. Auth.: ORS 343.041, 343.045 & 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.532

Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03;

Renumbered from 581-015-0559, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2450

### Definitions

For the purposes of OAR 581-015-2450 through 581-015-2515, the following definitions apply:

(1) "Enrolled in a public school or ECSE program" means enrolled in, attending, and, for children ages 7 to 18, not exempt from compulsory school attendance as a private school student.

(2) "IDEA funds" means federal funds allocated to the public agency under the Individuals with Disabilities Education Act.

(3) "Private school child with a disability" means a child with a disability or preschool child with a disability aged 3 to school-age who has been enrolled by a parent in a private school or facility, and who, if aged 7 to 18, is exempt from compulsory school attendance under ORS 339.115.

(a) This term includes school-age children who are exempt from compulsory school attendance under ORS 339.115, even if a school district permits the student to attend one or more classes pursuant to a district policy permitting partial enrollment.

(b) This term does not include:

(A) Children three years of age until the age of eligibility for public school who can be provided a free appropriate public education in a private preschool or child care setting selected and paid for by their parents; or

(B) Children who are exempt from compulsory school attendance under ORS 339.115 as a home schooled student; or

(C) Children who are not of compulsory school attendance age who have rejected public agency services but who are not attending a private school; or

(D) Children who are placed in a private school by the public agency.

(4) "Private school" means a private elementary or secondary school or facility, including a private religious school. A preschool is considered a private school under this provision only if it is part of a private elementary or secondary school.

(4) "Public agency" means:

(a) For school-aged children, the school district where the private elementary or secondary school is located; and

(b) For children aged 3 up to school-age, the EI/ECSE contractor where the private elementary school or secondary school is located.

(5) "Services plan" means a written statement that describes the special education and related services the school district will provide to a parentally-placed private school child with a disability who has been designated to receive services, including the location of services and any transportation necessary, consistent with OAR 581-015-2460. Unlike an IEP or IFSP, a service plan does not need to provide a free appropriate public education.

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stat. Implemented: ORS 343.055, 34 CFR 300.133

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03;

Renumbered from 581-015-0705, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2455

### Provision of services for Private School Children with Disabilities

(1) Each public agency must provide for participation in special education and related services to private school children with disabilities who are enrolled in private schools located within the school district boundaries, to the extent consistent with the number and location of these children.

(2) No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school

(3) Decisions about the services that will be provided to private school children with disabilities must be made in accordance with OAR 581-015-2460 and 581-015-2480.

(4) Special education and related services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public agency, except that private school teachers providing equitable services to private school children with disabilities do not have to meet the highly qualified special education teacher requirements.

(5) Special education and related services must be provided to private school children with disabilities by employees of the public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.

(6) Private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(7) Special education and related services may be provided to parentally-placed private school children on the premises of private, including religious, schools, to the extent consistent with law.

(8) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral and nonideological.

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: ORS 343.155, 34 CFR 300.132, 300.137, 300.138, 300.139

Hist.: IEB 28-1978, f. & ef. 7-20-78; IEB 25-1980, f. & ef. 11-7-80; EB 12-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; ODE 30-2000, f. & cert. ef. 12-11-00;

Renumbered from 581-015-0166, ODE 10-2007, f. & cert. ef. 4-25-07

# ADMINISTRATIVE RULES

## 581-015-2460

### Services Plan

(1) If a child with a disability is enrolled by a parent in private school and will receive special education or related services from a public agency, the public agency must:

(a) Initiate and conduct meetings to develop, review and revise a services plan for the child in accordance with subsection (3); and

(b) Ensure that a representative of the child's private school attends each meeting. If the representative cannot attend, the public agency must use other methods to ensure participation by the private school, including individual or conference telephone calls.

(2) The services plan must describe the specific special education and related services that the public agency will provide to the child in light of the services that the public agency has determined, through the consultation process described in OAR 581-015-2480, it will make available to private school children with disabilities.

(3) The services plan must, to the extent appropriate:

(a) Meet the requirements of OAR 581-015-2200 with respect to the services provided; and

(b) Be developed reviewed and revised consistent with OARs 581-015-2190 through 581-015-2210 and 581-015-2220(2) and (3).

(4) Transportation:

(a) Public agencies are not required to provide transportation from the child's home to the private school.

(b) If necessary for the child to benefit from or participate in the services provided by the public agency, the public agency must provide transportation to the child:

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

Stat. Auth.: ORS 343.041, 343.045, 343.055;

Stat. Implemented: ORS 343.155, 34 CFR 300.137 & 139

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0151, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2465

### Documentation Requirements

Each public agency must maintain in its records and provide annually to the Department the following information for parentally-placed private school children:

(1) The number of parentally-placed private school children evaluated;

(2) The number determined to be children with disabilities, and

(3) The number of children served.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stat. Implemented: ORS 343.155, 34 CFR 300.132

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2470

### Expenditures for Parentally-Placed Private School Children

(1) Formulas for determining funds available for provision of special education and related services to private school children with disabilities:

(a) For school-age children: Each school district must spend an amount that is the same proportion of the school district's total subgrant of IDEA funds as the number of school-age private school children with disabilities who are enrolled by their parents in private schools located within the boundaries of the school district is to the total number of school-age children with disabilities in its jurisdiction.

(b) For private school children with disabilities aged 3 up to school-age, the EI/ECSE contractor must spend:

(A) An amount that is the same proportion of the contractor's total IDEA fund subgrant under section 611(f) for ECSE children as the number of ECSE private school children with disabilities who are enrolled by their parents in private schools located within the boundaries of the ECSE service area is to the total number of ECSE children with disabilities in the service area; and

(B) An amount that is the same proportion of the contractor's total IDEA fund subgrant under section 619(g) as the number of ECSE private school children with disabilities who are enrolled by their parents in private schools located within the boundaries of the ECSE service area is to the total number of ECSE children with disabilities in the service area.

(2) If a public agency has not expended for equitable services all of the proportionate funds designated for that purpose by the end of the fiscal year the IDEA funds were appropriated, the public agency must obligate the remaining funds for special education and related services to parentally-

placed private school children with disabilities for a carry-over period of one additional year.

(3) Expenditures for child find activities described in OAR 581-015-2085 may not be considered in determining whether the public agency has met the requirements of section (1).

(4) A public agency is neither required to or prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy. State and local funds must not supplant the proportionate amount of federal funds required to be expended under subsection (1).

(5) The cost of the transportation described in OAR 581-015-2460(4)(b) may be included in calculating whether the public agency has met the requirement of section (1) of this rule.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.157,

Stat. Implemented: ORS 343.055, 34 CFR 300.133 & 139

Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0706, ODE 10-2007, f. & cert. ef. 4-25-07

## 81-015-2475

### Private School Child Count

Each public agency must:

(1) After timely and meaningful consultation with representatives of private school children consistent with OAR 581-015-2480, determine the number of private school children with disabilities attending private schools located within the boundaries of the public agency;

(2) Conduct the count on December 1 of each year; and

(3) Use the count to determine the amount that the public agency will spend on providing special education and related services to private school children with disabilities in the next fiscal year.

Stat. Auth.: ORS 343.055, 343.157;

Stat. Implemented: ORS 343.055, 34 CFR 300.133

Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2480

### Consultation with Representatives of Private School Children with Disabilities

(1) To ensure timely and meaningful consultation, public agencies must consult with representatives of private school children with disabilities during the design and development of special education and related services for the children, including regarding:

(a) The child find process, including how private school children suspected of having a disability can participate equitably, and how parents, teachers, and private school officials will be informed of the process;

(b) The determination of the proportionate share of IDEA funds available to serve private school children with disabilities, including the determination of how the proportionate share of funds was calculated;

(c) The consultation process among the public agency and representatives of private school children with disabilities, including how such process will operate throughout the school year to ensure that private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(d) How, where and by whom special education and related services will be provided for private school children with disabilities, including a discussion of the types of services (including direct services and alternate service delivery mechanisms), how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

(e) How, if the public agency disagrees with the views of private school officials on the provision of services or the types of services (whether provided directly or through a contract), the public agency will provide to the private school officials a written explanation of the reasons why the public agency chose not to provide services directly or through a contract.

(2) For the purposes of this rule, "representatives of private school children with disabilities" means representatives of parents of private school children with disabilities and private school officials or other private school representatives.

(3) The public agency makes the final decisions with respect to the services to be provided to eligible private school children.

Stat. Auth.: ORS 343.041, 343.045, 343.055;

Stat. Implemented: ORS 343.041, 343.055 & 34 CFR 300.134 & 137

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 13-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0171, ODE 10-2007, f. & cert. ef. 4-25-07

# ADMINISTRATIVE RULES

## 581-015-2483

### Written Affirmation

(1) When timely and meaningful consultation has occurred as described in OAR 581-015-2480, the public agency must obtain a written affirmation signed by the representatives of participating private schools.

(2) If the representatives do not provide the affirmations within a reasonable period of time, the school district must forward the documentation of the consultation process to the Department.

Stat. Auth.: ORS 343.041, 343.045, 343.055;  
Stats. Implemented: ORS 343.041, 343.055 & 34 CFR 300.135  
Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2485

### Complaint by Private School Official

(1) A private school official may submit a complaint to the Department under OAR 581-015-2030 that the public agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

(a) If the private school official wishes to submit a complaint, the official must provide the basis of the noncompliance by the public agency to the Department, and the public agency must forward the appropriate documentation to the Department.

(b) If the private school official is dissatisfied with the decision of the Department, the official may submit a complaint to the United States Secretary of Education by providing the basis of the noncompliance by the public agency to the Secretary, and the Department will forward the appropriate documentation to the Secretary.

(2) For the purposes of this rule, a "private school official" is an administrator of the private school.

Stat. Auth.: ORS 343.041, 343.045, 343.055  
Stat. Implemented: ORS 343.055, 34 CFR 300.136  
Hist.: ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2490

### Complaints and Due Process Hearings for Private School Children

(1) Due process hearing procedures do not apply to complaints that a public agency has failed to meet the requirements relating to the provision of services to and expenditures for private school children, including the provision of services indicated on the child's services plan.

(2) Due process hearing procedures do apply to complaints that a public agency has failed to meet the child find requirements, including the requirements regarding evaluation, determination of eligibility for special education services, and reevaluation. Any due process hearing request regarding the child find requirements must be filed with the public agency in which the private school is located and with the Department under OAR 581-015-2345.

(3) Complaints that a public agency has failed to meet any of the requirements related to private school children may be filed under OAR 581-015-2030.

Stat. Auth.: ORS 343.055, 343.155  
Stats. Implemented: ORS 343.055, 34 CFR 300.140  
Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0707, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2495

### Funds and Property Not to Benefit Private Schools

(1) A public agency may not use IDEA funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(2) The public agency must use IDEA funds to meet the special education needs of students enrolled in private schools, but not for:

- (a) The needs of a private school; or
  - (b) The general needs of the students enrolled in the private school.
- Stat. Auth.: ORS 343.041, 343.045, 343.055  
Stats. Implemented: ORS 343.155, 34 CFR 300.141  
Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0196, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2500

### Use of Personnel

(1) A public agency may use IDEA funds to make public agency personnel available in other than public facilities:

(a) To the extent necessary to implement any of the requirements related to private school children with disabilities; and

(b) If those services are not normally provided by the private school.

(2) A public agency may use IDEA funds to pay for the services of an employee of a private school to provide services to private school children if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

Stat. Auth.: ORS 343.055  
Stats. Implemented: ORS 343.055, 34 CFR 300.142  
Hist.: ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0708, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2505

### Separate Classes Prohibited

A public agency may not use IDEA funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

- (1) The classes are at the same site; and
- (2) The classes include students enrolled in public schools or ECSE programs and students enrolled in private schools.

Stat. Auth.: ORS 343.041, 343.045, 343.055  
Stats. Implemented: ORS 659.150; 34 CFR 300.143  
Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0191, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2510

### Property, Equipment, and Supplies

(1) A public agency must keep title to and exercise continuing administrative control of all property, equipment and supplies that the public agency acquires with IDEA funds for the benefit of private school children with disabilities.

(2) The public agency may place equipment and supplies in a private school for a period of time needed to implement the services plan of a private school child with disabilities or for child find purposes.

(3) The public agency must ensure that the equipment and supplies placed in a private school:

- (a) Are used only for the purposes identified in section (2); and
- (b) Can be removed from the private school without remodeling the private school facility.

(4) The public agency must remove equipment and supplies from a private school if:

- (a) The equipment and supplies are no longer needed for the purposes identified in section (2); or
- (b) Removal is necessary to avoid unauthorized use of the equipment and supplies.

(5) IDEA funds must not be used for repairs, minor remodeling, or construction of private school facilities.

Stat. Auth.: ORS 343.041, 343.045, 343.055  
Stats. Implemented: ORS 343.055, 34 CFR 300.144  
Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0186, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2515

### Reimbursement for Private Placement

(1) If a private school child with a disability has available a free appropriate public education and the parents choose to place the child in a private school, the public agency is not required to pay for the cost of the child's education, including special education and related services, at the private school. However, the public agency must include that child in the population whose needs are addressed as parentally-placed private school children consistent with OAR 581-015-2475.

(2) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures under OAR 581-015-2340 through 581-015-2385.

(3) If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or an administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made a free appropriate public education (FAPE) available to the child in a timely manner before that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the State standards that apply to education provided by public agencies.

(4) The cost of reimbursement described in paragraph (3) of this section may be reduced or denied if:

(a) At the most recent IEP or IFSP meeting that the parents attended before removal of the child from the public school or ECSE program, the

# ADMINISTRATIVE RULES

parents did not inform the IEP or IFSP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(b) At least ten business days (including any holidays that occur on a business day) before the removal of the child from the public school or ECSE program, the parents did not give written notice to the public agency of the information described in paragraph (4)(a) of this rule.

(5) The cost of reimbursement described in paragraph (3) of this section may also be reduced or denied if:

(a) Before the parents' removal of the child from the public school or ECSE program, the public agency informed the parents, through the notice requirements of OAR 581-015-2310, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(b) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(6) Notwithstanding the notice requirement in paragraph (4), the cost of reimbursement:

(a) Must not be reduced or denied for failure to provide the notice if:

(A) Compliance with paragraph (4) would likely result in physical harm to the child;

(B) The public agency prevented the parent from providing the notice; or

(C) The parents had not received notice of procedural safeguards under OAR 581-015-2315 informing them of this notice requirement; and

(b) May, in the discretion of a court or an administrative law judge, not be reduced or denied for failure to provide such notice if:

(A) The parent is illiterate and cannot write in English; or

(B) Compliance with paragraph (4) would likely result in serious emotional harm to the child.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155

Stats. Implemented: ORS 343.155, 34 CFR 300.148

Hist.: 1EB 28-1978, f. & cf. 7-20-78; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-2000, f. & cert. ef. 5-23-00; Renumbered from 581-015-0156, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2530

### Children with Disabilities Covered by Public Insurance

(1) A school district may use the Medicaid or other public insurance benefits programs in which a child with disabilities participates to provide or pay for special education and related services, as permitted under the public insurance program, except as provided in subsection (2) of this section.

(2) A school district using public insurance to provide special education or related services to a child with disabilities must:

(a) Obtain parent consent for releasing information to the state Medicaid agency necessary to access public insurance for the period of time covered by the student's IEP; and

(b) Notify parents that the parents' refusal to allow access to their public insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) With regard to services required to provide a free appropriate public education to a child with disabilities, the school district:

(a) May not require parents to sign up or enroll in public insurance programs in order for their child with disabilities to receive special education and related services under the IDEA;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for special education and related services, but may pay the cost that the parent otherwise would be required to pay; and

(c) May not use the child's benefits under a public insurance program if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(4) IDEA funds:

(a) If a school district is unable use a child's public insurance for a specified service required to ensure a free appropriate public education, the district may use its Part B funds to pay for the service.

(b) If the parent would incur a cost for the school district's use of public insurance, the district may use its Part B funds to pay the cost the par-

ents otherwise would have to pay to use the public insurance (e.g., the deductible or co-pay amounts).

(c) Proceeds from public insurance will not be treated as program income for purposes of 34 CFR 80.25.

(d) If a school district spends reimbursements from federal funds (e.g., Medicaid) for special education and related services those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions under the IDEA.

(5) Nothing in this rule should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: ORS 343.045 & 343.155, 34 CFR 300.154

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0607, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2535

### Children with Disabilities Covered by Private Insurance

(1) With regard to services required to provide FAPE to a child with disabilities, a school district may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this chapter.

(2) Each time the school district proposes to access the parent's private insurance proceeds, it must:

(a) Obtain parent consent in accordance with this rule; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(3) IDEA funds:

(a) If a school district is unable to obtain parental consent to use the parent's private insurance, to ensure FAPE, the district may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the school district may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(c) Proceeds from private insurance will not be treated as program income for purposes of 34 CFR 80.25.

Stat. Auth.: ORS 343.041, 343.045 & 343.055;

Stats. Implemented: ORS 343.164, 343.045, 343.155, 34 CFR 300.154

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0608, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2540

### Definitions for Regional Programs

The following definitions apply to OAR 581-015-2545 through 581-015-2565 unless otherwise indicated by the context.

(1) "Administrative Unit" means the school district or ESD within each region chosen to operate the regional program through contract with the Department of Education.

(2) "Consultation services" means technical assistance to or conferring with the local education agency and staff or early intervention/early childhood special education providers and staff or families to assist them to provide services to eligible children.

(3) "Department" means the Oregon Department of Education.

(4) "Direct services" means services provided to the child by regional specialists.

(5) "Eligible children" means children with low-incidence, high need disabilities who need the services of the regional program.

(6) "Low incidence, high need disabilities" means one or more of the following categories under OAR 581-015-2130 through 581-015-2180: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, and vision impairment. A child with an orthopedic impairment is eligible for regional services only if determined to be severely orthopedically impaired by his/her eligibility team based on eligibility tool(s) approved by the Department.

(7) "Regional program" means direct or consultative services funded through the Department provided on a single or multi-county basis that assist school districts and early intervention/early childhood special education providers in meeting the unique needs of eligible children.

(8) "Services" means early intervention services, early childhood special education and/or related services, and special education and/or related

# ADMINISTRATIVE RULES

services, as defined in OAR 581-015-2700 and 581-015-2000, respectively.

(9) "Superintendent" means the State Superintendent of Public Instruction.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0291, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2545

### Administration of Regional Programs

(1) The Superintendent may provide services to eligible children on a regional basis to the extent possible with funds allocated for this purpose:

(a) The Superintendent determines the number of regions and their boundaries;

(b) The Superintendent selects a local school district, education service district, and/or county school district to serve as the Administrative Unit in each region;

(c) The Superintendent may designate a Department employee to give general coordination to regional programs;

(d) The Superintendent may appoint an advisory committee to provide policy direction for regional programs. This committee reports to the State Board of Education through the regional program coordinator.

(2) The Administrative Unit provides general management to the regional program by:

(a) Preparing a regional plan that will include administrative structure, provision of direct and consultation services to eligible children, their families and staff, inservice activities, supervision of instruction, subcontracting and budget;

(b) Serving as fiscal agent for the region including arrangement of subcontracts; preparation of budgets for the receipt of local, state, and federal funds; provision of reports regarding child data, progress, and services; and the management of all fiscal functions including but not limited to, business services;

(c) Selecting, hiring, and directing regional employees using funds granted for that purpose and making employee benefits consistent with other district employees;

(d) Appointing a regional coordinator who will give general direction to the regional program and act as liaison to the Department; and

(e) Appointing a Regional Advisory Council to provide advice to the Administrative unit on program and policy direction.

(3) The Regional Advisory Council consists of seven to eleven members representing each county in the region. At least one person must represent each of the following categories:

(a) Superintendent of an education service district or local school district;

(b) Special education supervisor or teacher of an education service district or local school district;

(c) Individual who supervises or provides early intervention or early childhood special education services;

(d) Director on board of an education service district or local school district;

(e) Individual with a disability or parent of an eligible child.

(f) Regular education teacher or building administrator.

(4) The Administrative Unit governing board will request names from each education service district, school district, county school district, and early intervention and early childhood special education program in the area served by the regional program and make appointments to the council.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; Renumbered from 581-015-0292, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2550

### Eligibility for Regional Services

(1) The determination of a child's eligibility for services as a child with autism spectrum disorder, deafblindness, hearing impairment, traumatic brain injury, orthopedic impairment, or vision impairment is the responsibility of:

(a) The resident school district for children who are at the age of eligibility for kindergarten through age 21 in accordance with OAR 581-015-2130 through 581-015-2180; or

(b) The designated referral and evaluation agency for children who are at the age of eligibility for:

(A) Early intervention, from birth until the age of three in accordance with OAR 581-015-2780; and

(B) Early childhood special education, from the age of three until eligible for kindergarten in accordance with OAR 581-015-2795.

(2) Regional programs may assist the local district or designated referral and evaluation agency in evaluating and/or determining eligibility when the local district or the designated referral and evaluation agency does not have a person trained and experienced in the area of the suspected disability(ies).

(3) A child who is found eligible for services as a child with autism spectrum disorder, deafblindness, hearing impairment, traumatic brain injury, or vision impairment may be eligible for regional services if the child needs regional program services.

(4) A child who is found eligible for services as a child with orthopedic impairment may be eligible for regional services if the child is determined to be severely orthopedically impaired by his/her eligibility team based on eligibility tool(s) approved by the Department, and needs regional program services.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0293, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2555

### Referral for Regional Services

In referring a child to the regional program, the district or early intervention/early childhood special education program must provide the regional coordinator with the following information:

(1) A request for regional services;

(2) A statement of a child's eligibility in one of the following categories, if previously determined: autism spectrum disorder; deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, vision impairment, or;

(3) A statement from the child's eligibility team for a child who is severely orthopedically impaired, including eligibility tool(s) approved by the Department, if previously determined; and

(4) Additional information as the regional coordinator or other regional program representative may request.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0294, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2560

### Individualized Educational Program/Individualized Family Service Plan

(1) An eligible child must have an individualized educational plan (IEP) developed in accordance with OAR 581-015-2220 or an individualized family service plan (IFSP) in accordance with OAR 581-015-2815.

(2) The IEP/IFSP must be developed by an appropriately constituted team in accordance with OAR 581-015-2825 for preschool children, and OAR 581-015-2210 for school-age children. A designated regional program staff must be included in the development of the IEP/IFSP.

(3) The IEP/IFSP serves as the basis for determining the child's unique developmental or educational needs and the extent and nature of services to be provided, including services provided by the regional program.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; Renumbered from 581-015-0295, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2565

### Regional Program Services

(1) The resident school district has the primary responsibility for the education of an eligible school age child, and is responsible for all costs beyond the fiscal capacity of the regional program that result from the full implementation of the child's IEP.

(2) The Department, through its contractors and subcontractors, has the primary responsibility for early intervention and early childhood special education services for eligible children from birth until eligible for kindergarten, and is responsible for all costs beyond the fiscal capacity of the regional program which result from full implementation of the child's IFSP.

(3) Eligible children may receive one or more of the following regional services based upon the child's needs according to the IEP or IFSP and available resources of the regional program and agreement of the resident school district or EI/ECSE contractor:

# ADMINISTRATIVE RULES

(a) Direct services to the child as determined in the IEP/IFSP by an itinerant specialist up to full-time instruction in a self-contained classroom operated by the regional program;

(b) Consultation to providers of the child's educational or early intervention/early childhood special education program and/or the parents;

(c) Participation in developing the student's IEP or IFSP;

(d) Recommendations for classroom activities, materials, equipment, adaptations and modifications to instruction, and/or assessment;

(e) Evaluation and interpretation of assessment information;

(f) Audiological management;

(g) Inservice for staff and parents; and

(h) Provision of certain related services.

(4) Teachers and therapists employed by the regional program to serve eligible children must hold the appropriate special education or appropriate state licensure.

(5) Regional programs must be in compliance with all applicable statutes and administrative rules pertaining to the education of children with disabilities.

Stat. Auth.: ORS 343.236

Stats. Implemented: ORS 343.236

Hist.: EB 27-1988, f. & cert. ef. 6-9-88; EB 10-1996, f. & cert. ef. 6-26-96; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0296, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2570

### Criteria for Funding of Educational Programs for Children Placed by State Agencies for Psychiatric Day and Residential Treatment

(1) Definitions:

(a) "Contracting school district" means the school district, the education service district or a program under the auspices of the State Board of Higher Education that contracts with the Department of Education for the provision of educational services.

(b) "Education program" means those activities provided under contract between a school district or education service district and the Department of Education, which provide a public education to preschool or school-aged children in a treatment program;

(c) "Long-term" means 90 days or longer;

(d) "Psychiatric day treatment programs" are defined in OAR 309-032-1110(68);

(e) "Psychiatric residential treatment facility" is defined in OAR 309-032-1110(69).

(f) "Resident district" means the resident district as defined under ORS 339.133.

(g) "State agency" means the Department of Human Services or the Oregon Youth Authority.

(h) "Treatment program" means the long-term day or residential treatment services provided by a private nonprofit or public agency and provided under contract with a state agency or designee of the state agency. Intermediate care facilities are excluded from this definition;

(2) The purposes of the education program under this rule are as follows:

(a) To serve children placed for needs other than educational;

(b) To serve children who require schooling in a protected environment in order to protect the health and safety of themselves and/or others; and

(c) To extend the treatment process into the school day to fully implement the treatment plan.

(3) Eligibility criteria for funding:

(a) An agency may offer several different treatment programs serving different populations. For the purposes of determining eligibility for funding and funding levels for education programs, each program will be considered separately. Temporary shelter programs, which would not otherwise meet the definition of long-term provided in this rule, are eligible for funding only when attached to an eligible treatment program and the children served are primarily awaiting placement in such programs;

(b) To be eligible for an education program, a treatment program must meet all of the following criteria:

(A) Either:

(i) A letter of approval from the Office of Mental Health and Addiction Services certifying that the psychiatric day treatment program or psychiatric residential treatment facility meets standards applicable for intensive children's mental health services under OAR 309-032-1120; or

(ii) Documentation that the program provides long-term residential treatment of children placed by a state agency or designee of the state agency;

(B) Meet state licensing requirements for a private child-caring agency and serve seven or more children;

(C) Be operated by a nonprofit corporation or a political subdivision of the state;

(D) Demonstrate through client admissions, staff hiring practices, and client access to services that it meets requirements for ORS 659.150 relating to the prevention of discrimination; and

(E) Demonstrate through curriculum content, teaching practices, and facilities management that the constitutional requirements regarding no religious entanglement are met.

(4) Approval:

(a) The State Superintendent of Public Instruction is responsible for approving the educational program under this rule.

(A) The State Superintendent of Public Instruction must ensure that the contracting school district meets the requirements in subsection (4)(b).

(B) The contracting school district must ensure that the education program is operated in compliance with a written agreement with the Department that specifies the following services to be provided:

(i) Each child who is not a child with a disability under OAR 581-015-2130 through 581-015-2180: has a personalized educational plan that includes assessment, goals, services, and timelines;

(ii) Information pertaining to students and educational programs is provided to the Department in an accurate and timely manner;

(iii) Children have opportunities to be educated in the least restrictive environment; and

(iv) The education program is developed and implemented in conjunction with the treatment program.

(b) Final determinations concerning the eligibility of treatment programs for education funding are at the discretion of the State Superintendent of Public Instruction.

(5) Funding Guidelines:

(a) For the purpose of allocation of state school funds under this rule, the following definitions apply:

(A) "Average daily membership" means the membership of a school as defined in ORS 327.006(3);

(B) "Net operating expenditure" means the sum of expenditures as defined in ORS 327.006(6), divided by the average daily membership of the school district or in the case of an ESD, its districts, which contract for education services offered in the program;

(C) "Service level factors" means:

(i) 1.75 for students in Psychiatric Day Treatment Programs;

(ii) 2.00 for students in residential facilities.

(b) A formula will be employed to reflect the needs of the population served and will identify state school funds available for the development of an approved contract.

(A) The formula is: (Service level factors) x (the contracting district's average net operating expenditure) x (average daily membership as specified in the contract with the Department of Human Services or Oregon Youth Authority) = ODE contracted amount;

(B) The factor represents an equitable division of funds available to the Department for programs eligible under these criteria.

(c) A special needs fund is established at the Oregon Department of Education which will be up to five percent of the total monies made available for this program:

(A) Individual applications may be made to this fund to cover unexpected, emergency expenses;

(B) Funds not utilized under this subsection for the first year of the biennium will be carried forward to the next fiscal year.

(6) Funding Procedures: Upon receipt of an application for funding under this rule, the Department will:

(a) Within a reasonable time determine if the treatment program meets the criteria for funding in this rule;

(b) If necessary, request additional funding or a limitation for funding from the State Legislature; and

(c) Fund the program only when funds are forthcoming.

(7) Resident District Obligations:

(a) The resident district is responsible for the provision and/or payment of daily transportation to and from a psychiatric day treatment education program in which a resident student is enrolled:

(A) The resident district may directly transport or contract for transportation services with the agency, an adjacent school district, an education service district or a private carrier as long as the subcontractor is operating under the provision of ORS 801.455, 801.460, and 820.100 through 820.150, or is exempt from these regulations by operating under the Public Utility Commission, ORS Chapter 767, or city regulations included in ORS Chapter 221;

# ADMINISTRATIVE RULES

(B) Subject to agreement with the parent or guardian, the resident district may reimburse a parent or guardian for the transportation of a child at the per mile rate established by that district;

(C) Transportation must be provided by the resident district even though the education calendar of the psychiatric day treatment program differs from that of the resident district;

(b) The resident district may claim reimbursement for transportation costs under ORS 327.033;

(c) The resident district must participate in all individualized education program or personalized education plan meetings involving its students.

(8) Due Process Hearings:

(a) The contracting school district is the "school district" for the purposes of carrying out the procedures required by OAR 581-015-2340 through 581-015-2385;

(b) The issues of the hearing do not include the placement by the state agency or its designee for long-term treatment;

(c) Costs under OAR 581-015-2385 that are in excess of the contracted educational program budget will be paid by the Oregon Department of Education;

(d) The Oregon Department of Education and the Department of Human Services or Oregon Youth Authority, respectively, will be parties to such proceedings and will be responsible to provide additional services ordered by an administrative law judge that are beyond the funding provided to the contracting school district under this rule.

Stat. Auth.: ORS 343.961

Stats. Implemented: ORS 343.961

Hist.: 1EB 23-1986, f. & ef. 7-14-86; EB 7-1988, f. & cert. ef. 1-15-88; EB 22-1990, f. & cert. ef. 5-18-90; EB 10-1991(Temp), f. & cert. ef. 7-15-91; EB 31-1991, f. & cert. ef. 12-18-91; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0044, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2575

### School Programs in Private Hospitals

(1) For purposes of this rule:

(a) "Patient" means a school age child;

(b) "Specialized intensive treatment" means that the hospital maintains special facilities, equipment, and staff;

(c) "School district" means the school district in which the private hospital is located.

(2) Private hospitals not including psychiatric facilities may submit an application for approval of a school program to the State Superintendent of Public Instruction. The application submitted must include verification that:

(a) The hospital admits patients from throughout the state;

(b) The hospital provides specialized intensive treatment that is unique and generally not available in local community hospitals;

(c) The hospital provides services to patients who have severe, low incidence types of disabling conditions including but not limited to burns, orthopedic impairments, and head injuries, but not including drug and alcohol problems;

(d) The hospital admits patients who can be expected to be hospitalized for five days or more or readmitted frequently; and

(e) The facility is licensed as a hospital under OAR 333-500-0010(1)(a).

(3) Approval of the application by the State Superintendent of Public Instruction establishes the school district's eligibility to receive state funds to operate the hospital education program.

(4) All patients are eligible to receive educational services. Educational services must begin if a patient's hospital stay is expected to last five school days or longer and the hospital staff has determined the patient is medically able to receive educational services.

(5) The school district contracting to provide the education program must develop or implement an existing individualized education program that meets all applicable state and federal requirements for patients who meet eligibility criteria for a disability under OAR 581-015-2130 through 581-015-2180:

(6) The primary purpose of the school program for hospitalized patients is to maintain the patient's educational programs.

(7) The hospital must:

(a) Provide classroom space and facilities necessary to carry out the educational program for each patient;

(b) Coordinate with the school program in developing each patient's educational and medical treatment needs; and

(c) Assume responsibility for the transportation, care, treatment, and medical costs of each patient.

(8) All teachers in the hospital school program must have appropriate teacher licensure under rules of the Teacher Standards and Practices Commission.

(9) Upon initial application or approval of a school program in a private hospital, the Oregon Department of Education will review the application, inspect the school program facility and confer with hospital authorities as necessary. The Department will then notify the school district whether the school program is approved or disapproved and under what conditions; if approved, the date upon which funds will be available for operation of the school program, and the effective date and length of the approval. The school district may reapply for approval at the expiration of each approval period.

(10) The Department will monitor each program for compliance with applicable state and federal requirements.

(11) The State Superintendent of Public Instruction will ensure that the school district contracting to provide the educational program meets the following requirements:

(a) The program is operated under a written agreement with the Department of Education;

(b) Each nondisabled child has a personalized educational plan that includes goals, services, timelines, and assessment of progress.

(c) Information pertaining to the educational programs is provided to the Department in an accurate and timely manner; and

(d) The educational program is developed and implemented in conjunction with the medical treatment program.

Stat. Auth.: ORS 343.261

Stats. Implemented: ORS 343.261

Hist.: EB 29-1987, f. & ef. 11-19-87; EB 16-1990, f. & cert. ef. 4-5-90; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0017, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2580

### School Programs in State-Operated Hospitals

(1) For purposes of this rule:

(a) "Patient" means a school age child who is admitted to a state-operated hospital;

(b) "School district" means the school district in which the state-operated hospital or training centers is located.

(2) All patients admitted to state operated hospitals are eligible to receive educational services.

(3) Educational services in state operated hospitals must commence if a patient's hospital stay is expected to last five school days or longer and the hospital staff has determined the patient is medically able to receive educational services.

(4) The school district contracting to provide the education program shall develop or implement an existing individualized education program that meets all applicable state and federal requirements for patients who meet eligibility criteria under OAR 581-015-2130 through 581-015-2180.

(5) The primary purpose of the school program for patients in state-operated hospitals is to maintain the patients' educational programs.

(6) The hospital must:

(a) Provide classroom space and facilities necessary to carry out the educational program for each patient;

(b) Coordinate with the school program in developing each patient's educational and medical treatment needs; and

(c) Assume responsibility for the transportation, care, treatment, and medical costs of each patient.

(7) All teachers in hospital programs must have appropriate teacher licensure under rules of the Teacher Standards and Practices Commission.

(8) The Department will monitor each program for compliance with applicable state and federal requirements.

(9) The State Superintendent of Public Instruction will ensure that the school district contracting to provide the educational program meets the following requirements:

(a) The program is operated under a written agreement with the Department of Education;

(b) Each nondisabled child has a personalized educational plan that includes goals, services, timelines, and assessment of progress.

(c) Information pertaining to the educational programs is provided to the Department in an accurate and timely manner;

(d) The educational program is developed and implemented in conjunction with the medical treatment program.

Stat. Auth.: ORS 343.261

Stats. Implemented: ORS 343.261

Hist.: EB 28-1987, f. & ef. 11-19-87; EB 15-1990, f. & cert. ef. 4-5-90; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0016, ODE 10-2007, f. & cert. ef. 4-25-07



# ADMINISTRATIVE RULES

## 581-015-2585

### Youth (Juvenile) Corrections Education and Juvenile Detention Education Programs

#### (1) Definitions:

(a) "Youth Corrections Education Program" means the provision of educational services to youths in youth correction facilities of the Oregon Youth Authority, and includes secure regional youth facilities, regional accountability camps, residential academies and satellites, camps and branches of those facilities.

(b) "Juvenile Detention Education Program" means the provision of educational services to youths lodged overnight who receive educational services on consecutive days within a detention facility.

(2) Youth Corrections Education Program: The following administrative rules apply to education programs for youth housed in Oregon Youth Authority youth correctional facilities:

(a) Special Education Rules, OAR 581-015-2000 through 581-015-2070, 581-015-2080 through 581-015-2255, 581-015-2300 through 581-015-2445, 581-015-0607 through 581-015-2565, and 581-015-2585 through 581-015-2590.

(b) School Improvement and Professional Development Rules, OARs 581-020-0005 through 581-020-0200;

(c) School Governance and Student Conduct, OARs 581-021-0037 through 581-021-0440;

(d) Standards for Public Elementary and Secondary Schools, OARs 581-022-0102 through 581-022-0413, 581-022-0606, 581-022-0610, 581-022-0705, 581-022-1020 through 581-022-1210, 581-022-1310 through 581-022-1340, 581-022-1420, 581-022-1440, 581-022-1520, 581-022-1610 through 581-022-1670, 581-022-1710 through 581-022-1730;

(e) Funds to State and Local Agencies to Provide Employment and Training Services Under the Workforce Investment Act (formerly the Job Training Partnership Act (JPTA), OARs 581-060-0010 through 581-060-0020;

(f) Teacher Standards and Practices Commission Rules.

(3) Juvenile Detention Education Program: All rules applicable to education programs for OYA youth correction facilities, as set out in sections (1) of this rule, apply to educational programs for juvenile detention facilities.

(a) Students may not be suspended or expelled from juvenile detention education programs.

(b) Juvenile directors and the school district or education service district responsible for the education of students in a juvenile detention education program under contract with the Department will sign a letter of agreement establishing each agency's areas of responsibility and duties.

(4) Notwithstanding OAR 581-015-2190(6)(b), the school district or ESD responsible for the special education of students in a juvenile detention program or juvenile corrections program is not required to provide notice of meetings to the parent after rights transfer to the student pursuant to OAR 581-015-2325.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.695-326.712; 34 CFR 300.520(a)(2)

Hist.: EB 3-1997, f. & cert. ef. 4-25-97; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0301, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2590

### Required Days of Instruction

The Department will schedule and provide an annual school year consisting of a minimum 220 days of actual classroom instruction (time students are present for a major portion of a scheduled school day, engaged in learning experiences related to Department goals and under guidance of teachers). Up to five days of temporary closure due to extraordinary conditions may be counted toward the 220 days, subject to the Superintendent's approval.

Stat. Auth.: ORS 326.021

Stats. Implemented: ORS 326.695-326.712

Hist.: 1EB 255, f. & ef. 12-20-76; EB 3-1997, f. & cert. ef. 4-25-97; Renumbered from 581-015-0415, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2595

### Education Programs for Children at Residential Youth Care Centers

The purpose of this rule is to ensure that school districts meet the provisions outlined in ORS 336.580.

(1) Definitions: For the purposes of this rule, the following definitions apply:

(a) "Consultation" means scheduled opportunities for the residential youth care center director and the education representative of the district, or its contractor, to share information and concerns about the behavioral characteristics, learning styles, educational needs, and level of educational sup-

port for the children residing at the residential youth care center in order to develop, review, and agree upon the education plan;

(b) "District" means the school district in which the residential youth care center is located;

(c) "Least restrictive environment" means serving a child in the educational setting in which the child can reasonably be expected to learn while maintaining integration in the local community;

(d) "Open entry-open exit" means that the education program provides opportunities for students to make progress in obtaining school credits or otherwise meeting their educational goals even though they may enroll or exit at any time during the school year.

(e) "Residential youth care center" means a community program defined in ORS 420.855 and operated by a private agency. Residential youth care centers where resident children receive educational services funded under ORS 343.961 are not included under the provisions of this rule;

(2)(a) The school district in which the residential youth care center is located is responsible for developing a plan which meets the provisions outlined in ORS 336.580. The district may contract this responsibility to another school district or ESD. The delivery of educational services may be provided by the residential youth care center;

(b) The plan must be developed by the district or its contractor after consultation with the residential youth care center director and shall address behavioral characteristics, learning styles, and educational needs of the children pursuant to OAR 581-022-0602;

(c) The plan for an education program must provide for open entry-open exit and must provide opportunities for students to earn school credits in accordance with OARs 581-022-0317 and 581-023-0008, opportunities for earning a GED when appropriate, or appropriate skill development to ensure educational progress. A continuum of educational services must be available which assure placement of children in the least restrictive environment in which they can reasonably be expected to be successful until they are exempted from compulsory attendance or receive a high school diploma or an equivalent;

(d) The plan must be approved annually by the school district board in which the youth care center is located.

(3) The district must ensure compliance with sections (2) of this rule. If the district does not comply directly or through its contractor, the State Superintendent will find the district deficient and may apply the penalty provided in ORS 327.103.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.580

Hist.: EB 9-1988(Temp), f. & cert. ef. 2-17-88; EB 29-1988, f. & cert. ef. 7-5-88; ODE 2-1998, f. & cert. ef. 2-27-98; Renumbered from 581-015-0505, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2600

### Incarcerated Youth

(1) In accordance with OAR 581-015-2045, the obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to certain students aged 18 through 21 incarcerated in an adult correctional facility.

(2) For students with disabilities who are convicted as adults, incarcerated in adult correctional facilities, and otherwise entitled to a free appropriate public education:

(a) The following IEP requirements in OAR 581-015-2200 do not apply:

(A) The requirements relating to participation of children with disabilities in statewide and school district assessments; and

(B) The requirements relating to transition planning and transition services, with respect to the students whose eligibility will end, because of their age, before they will be eligible to be released from adult correctional facilities based on consideration of their sentence and eligibility for early release.

(b) The IEP team may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of OAR 581-015-2200 and 581-015-2240 do not apply with respect to these modifications.

(3) For purposes of this rule, "adult correctional facility" has the meaning in OAR 581-015-2045.

(4) Notwithstanding OAR 581-015-2190(6)(b), the public agency responsible for the special education of students in an adult correctional facility is not required to provide notice of meetings to the parent after rights transfer to the student pursuant to OAR 581-015-2325.

Stat. Auth.: ORS 343.055;

Stats. Implemented: ORS 339.115, 34 CFR 300.324(d)

# ADMINISTRATIVE RULES

Hist: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0603, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2605

### Plans to Serve Students in Local or Regional Correctional Facilities

A school district must have a plan, approved by the local school board, to provide or cause to be provided appropriate education for children placed in a local or regional correctional facility located in the school district.

Stat. Auth.: ORS 343.055

Stats. Implemented: ORS 339.129

Hist: ODE 3-2000, f. & cert. ef. 2-1-00; Renumbered from 581-015-0604, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2610

### Standards for Home, Hospital, Institutional or Other Regularly Scheduled Instruction

(1) School districts may provide home, hospital, institutional, or other regularly scheduled instruction to any eligible student with a disability.

(2) Funding: School districts that provide home, hospital, institutional, or other regularly scheduled instruction under section (1) of this rule may claim state school funding under OAR 581-023-0100.

(3) Criteria for Placement: School districts that propose to place a student with a disability in a home, hospital, institutional, or other regularly scheduled program must ensure that the following criteria are met:

(a) The student must be enrolled as a resident student of the school district;

(b) The home, hospital, institutional, or other regularly scheduled program must be appropriate to the unique educational needs of the student;

(c) The student must meet the minimum criteria established by the State Board of Education for determining eligibility to receive special education as set forth in OAR 581-015-2130 through 581-015-2180.

Stat. Auth.: ORS 343.041, 343.045, 343.055

Stats. Implemented: ORS 343.261

Hist.: 1EB 1 87, f. 3-6-75, ef. 3-25-75; Renumbered from 581-022-0155; 1EB 248, f. & ef. 9-23-76; EB 11-1995, f. & cert. ef. 5-25-95; Renumbered from 581-015-0015, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2700

### Definitions – EI/ECSE Program

For the purposes of OAR 581-015-2700 to 581-015-2910, the definitions in this rule and 581-015-2000 apply.

(1) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility.

(2) "Communication" means receptive or expressive language development.

(3) "Contractor" means the agency designated by the Department to administer the provision of EI and ECSE within selected service areas.

(4) "Department" means the Oregon Department of Education.

(5) "Designated referral and evaluation agency" means the agency in each county designated to be the referral point for parents and others who suspect that a child may need early intervention or early childhood special education, and to be responsible for assuring that all referred children suspected of having a disability receive evaluation for potential eligibility for early intervention and early childhood special education.

(6) "Early childhood special education (ECSE)" means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings, or both.

(7) "Early intervention and early childhood special education assistants" means individuals who implement program activities under the direct supervision of the professional personnel.

(8) "Early intervention and early childhood special education specialists" means professionals who implement or coordinate the implementation of individualized family service plans.

(9) "Early intervention (EI)" means services for preschool children with disabilities from birth until three years of age, including children who are homeless and their families that are:

(a) Based on scientifically-based research, to the extent practicable;

(b) Designed to meet the child's developmental needs and the needs of the family related to enhancing the child's development as identified by the IFSP team, in any one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development;

(c) Selected in collaboration with the parents;

(d) Provided:

(A) Under public supervision;

(B) By personnel qualified in accordance with criteria established by rules of the State Board of Education; and

(C) In conformity with an individualized family service plan.

(e) At no cost to parents;

(f) Meet all applicable state requirements; and

(g) Include: family training, counseling, in-home visits; special instruction; speech-language pathology and audiology services, and sign language and cued language services; occupational therapy; physical therapy; psychological services; service coordination; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the child to benefit from other early intervention services; social work services; vision services; assistive technology devices and services; and transportation and related costs that are necessary to enable a child and the child's family to receive another early intervention service.

(10) "Educational records" means those records that are:

(a) Directly related to a student; and

(b) Maintained by a primary contractor or subcontractor.

(11) "Evaluation" means the procedures used by qualified personnel to determine;

(a) A child's initial eligibility for EI or ECSE services;

(b) A child's continuing eligibility for EI or ECSE services; and.

(c) The nature and extent of the EI services or ECSE and related services that the child needs.

(12) "Independent educational evaluation (IEE)" means an evaluation conducted by a qualified examiner who is not employed by the Department, the contractor, or subcontractor responsible for the child in question.

(13) "Individualized family service plan (IFSP)" means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services under this chapter.

(14) "Informed clinical opinion" means the acquisition and interpretation of multiple sources of information as part of the evaluation and assessment process. This includes evaluation and assessment results, observation reports, previous testing results, medical data, parent reports, and other evaluative information. A review of this information is used in forming a determination regarding current developmental status and the need for EI.

(15) "Instruction" means providing families with information and skills that support the achievement of the goals and outcomes in the child's IFSP and working with preschool children with disabilities in one or more of the following developmental areas: communication development, social or emotional development, physical development, including vision and hearing, adaptive development, and cognitive development.

(16) "Monitoring" means activities carried out by the Department and its contractors which measure the subcontractor's compliance with state and federal mandates for the provision of EI and ECSE.

(17) "Natural environment" means settings that are natural or normal for the child's age peers who have no disability.

(18) "Other services" means those services that may be provided to preschool children with disabilities and to their families that are not EI or ECSE services and are not paid for with EI or ECSE funds.

(19) "Parent" means:

(a) For a child under age three, a parent of a preschool child with disabilities and includes a natural or adoptive parent of a child, legal guardian, other than a state agency, an individual acting as a parent in the absence of a parent or guardian, or a surrogate parent who has been appointed in accordance with OAR 581-015-2760. A foster parent may be treated as a parent without being appointed as a surrogate parent if:

(A) Parental rights have been terminated by court order, and

(B) The foster parent:

(i) Has an ongoing or intended long-term relationship with the child;

(ii) Is willing to make educational decisions; and

(iii) Has no interest that would conflict with the interests of the child.

(b) For a child age three and older, "parent" is defined in OAR 581-015-2000(20).

(20) "Periodic review" means a review of the IFSP for a child and the child's family. An EI or ECSE program or parent may request a review of the IFSP.

(21) "Physical development" means gross or fine motor development.

(22) "Preschool child with disabilities" means all children from:

# ADMINISTRATIVE RULES

(a) Birth until three years of age who are eligible for EI services under OAR 581-015-2780(3); or

(b) Three years of age to eligibility for public school who are eligible for ECSE services under OAR 581-015-2795.

(23) "Professional Development Plan" means a written document specifying the name of the employee, the position, current qualifications, current deficits, an accounting of steps to be taken to rectify deficits including timelines, persons responsible, and the final date by which the plan will be complete.

(24) "Public agencies" means school districts and public agency sub-contractors for EI and ECSE.

(25) "Related services" includes transportation and such developmental, corrective, and other supportive services, including orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling, social work services, parent counseling and training, and medical services, as may be required to assist a child with disabilities, three years of age until the age of eligibility for public school, to benefit from special education or early childhood special education and includes early identification and assessment of disabling conditions. Medical services shall be for diagnostic and evaluation purposes only. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).

(26) "Related services personnel" means professionals who consult, supervise, train staff, design curriculum, or implement related services.

(27) "Service coordination" means the activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards and services that are authorized under the state's EI program and to coordinate access to other services designated on the IFSP.

(28) "Subcontractor" means the agency or agencies selected by the contractor to provide services for EI and ECSE.

(29) "Supervision" means the activities carried out by the Department and its primary contractors to oversee the provision of EI and ECSE services.

(30) "Supervisors" means professionals who supervise and train staff, design curriculum, and administer EI or ECSE programs.

(31) The following words are defined in OAR 581-015-2000:

- (a) "Assistive technology device";
- (b) "Assistive technology service";
- (c) "Children with disabilities";
- (d) "Autism";
- (e) "Communication disorder";
- (f) "Deafblindness";
- (g) "Emotional disturbance";
- (h) "Hearing impairment";
- (i) "Mental retardation";
- (j) "Orthopedic impairment";
- (k) "Other health impairment";
- (l) "Specific learning disability";
- (m) "Traumatic brain injury";
- (n) "Visual impairment";
- (o) "Consent";
- (p) "Day";
- (q) "Department";
- (r) "General curriculum";
- (s) "Health assessment statement";
- (t) "Identification";
- (u) "Individualized education program (IEP)";
- (v) "Mediation";
- (w) "Medical statement";
- (x) "Native language";
- (y) "Order";
- (z) "Participating agency";
- (aa) "Personally identifiable information";
- (bb) "Placement";
- (cc) "Private school";
- (dd) "Regular school year";
- (ee) "School district";
- (ff) "Short term objectives";
- (gg) "Special education";
- (hh) "Specially designed instruction";
- (ii) "Supplementary aids and services";

(jj) "Superintendent";

(kk) "Surrogate parent"; and

(ll) "Ward of the state."

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 34 CFR 300.5 - 300.45

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0900, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2705

### Establishment of Service Areas

(1) The Department establishes service areas for the provision of EI and ECSE to ensure the provision of services to preschool children with disabilities.

(2) The service areas are designated by the Department and may include multiple counties.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0910, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2710

### Selection of Contractor

(1) The Department selects a contractor to provide administration and coordination of EI and ECSE in the selected service area.

(2) The contractor will be selected using criteria developed by the Department which include:

(a) Geographic location;

(b) Previous experience in the administration of special education, early intervention, or related programs; and

(c) Expressed willingness to administer the EI and ECSE program in their area in compliance with the applicable state and federal requirements.

(3) The contractor will administer the EI and ECSE programs under a contract from the Department. The contract for administration will include requirements for the following:

(a) Staffing expectations for the administration of the area program;

(b) Necessary reports to the Department;

(c) Development of an area service plan;

(d) Fiscal responsibility for the administration of contractor funds and the distribution of funds to subcontractors;

(e) Selection and monitoring of subcontractors including the designated referral and evaluation agency;

(f) Coordination of technical assistance to EI and ECSE programs in the contractor's service area;

(g) Assurances that written agreements exist between agencies to assure interagency coordination in each county of the designated service area;

(h) Assurances that a continuum of alternative placements is available to meet the needs of preschool children with disabilities enrolled in ECSE;

(i) Criteria for supervision of services provided by the contractor when no local subcontractor is available or appropriate; and

(j) Such other requirements as are determined necessary by the Department to assure the provision of EI and ECSE services as authorized by ORS 343.465 to 343.534.

(4) The contract will include timelines, criteria, and procedures to be used by the Department for withholding funds or terminating the contract for failure to comply with contract requirements.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.465, 343.475, 343.495

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00 Renumbered from 581-015-0920, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2715

### Role of Local Interagency Coordinating Council (LICC)

(1) Each contractor, in conjunction with subcontractor(s), must solicit the advice and assistance of the local interagency coordinating council (LICC) in each county within the contractor's service area, regarding:

(a) Identification of service needs;

(b) Coordination of services with other agency services;

(c) Procedures for resolving local disputes; and

(d) Development of local interagency agreements.

(2) The recommendations from each LICC must be used by the contractor and subcontractor in developing a plan for services required by the Department. This plan will include components described in section (1) of this rule, and be presented in a format provided by the Department, and must include:

(a) A written description of the process used in assisting each LICC in the development of their recommendations;

# ADMINISTRATIVE RULES

(b) The contractor's and subcontractor's proposal for implementing the recommendations from the LICC in each county;

(c) Recommendations from the LICC that the contractor and subcontractor(s) does not propose to implement, and the reason for that decision; and

(d) A written description of the process used to resolve disagreements between the LICC and the contractor and subcontractor(s).

(3) When there is unresolved conflict over the service plan, and recommendations from the LICC the Department will:

(a) Investigate the conflict; and

(b) Make the final decision regarding plan approval and implementation.

(4) The contractor(s) must provide, within available funds, fiscal and other support for the LICC to perform the functions described in this rule. The LICC must submit an annual budget to the contractor(s) to demonstrate the use of the funds.

(5) The LICC must collaborate with other agencies and programs in planning and implementing services for young children and their families in the local community.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.507

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0930, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2720

### Census and Data Reporting – EI/ECSE Program

Contractors and subcontractors must follow the rules and procedures in OAR 581-015-2010 for reporting to the Department all resident preschool children with disabilities with the following definition exception: "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495 & 343.513 - 343.533

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1045, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2725

### Compliance Monitoring – EI/ECSE Program

Contractors and subcontractors involved in the education of preschool children with disabilities will be monitored by the Department of Education on a regular basis as specified in Oregon's federally approved special education policies and procedures and Part C application to ensure compliance with the requirements of the Individuals with Disabilities Education Act, Oregon Revised Statutes, and Oregon Administrative Rules. Monitoring procedures may include program self-assessment, data collection, analysis and reporting, on-site visits, review of policies and procedures, review of the development and implementation of IFSPs, improvement planning, and auditing federal fund use.

Stat. Auth.: ORS 343.041, 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1110, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2730

### Parent Consent for EI

(1) The public agency must obtain written parental consent before conducting an initial evaluation or reevaluation.

(2) Written parental consent must also be obtained before the provision of EI services described in the IFSP. The parents of a child eligible for EI services must determine whether they, their child, or other family members will accept or decline any EI services, and may decline such a service after first accepting it, without jeopardizing other EI services. If the parents do not provide consent for a particular EI service or withdraw consent after first providing it, that service will not be provided. The EI services for which parental consent is obtained will be provided.

(3) If consent is not given, the public agency must make reasonable efforts to ensure that the parent:

(a) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(b) Understands that the child will not receive the evaluation and assessment or services unless consent is given.

(4) If a parent of a child who has been identified as having a disability or who is suspected of having a disability refuses to grant consent for an initial evaluation of the child, the Department may request a hearing under OAR 581-015-2870.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0938, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2735

### Parent Consent for ECSE

(1) Consent for initial evaluation:

(a) The public agency must provide notice under OAR 581-015-2745 and obtain informed written parental consent before conducting an initial ECSE evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2795. Consent for initial evaluation may not be construed as consent for the initial provision of ECSE services.

(b) The public agency must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for ECSE services.

(c) If a parent of a child enrolled in public preschool or seeking to be enrolled in public preschool does not provide consent for an initial evaluation, or does not respond to a request for consent for an initial evaluation, the public agency may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A public agency does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

(2) Consent for initial provision of services:

(a) The contractor or subcontractor must obtain informed consent from the parent of the child before the initial provision of ECSE services to the child.

(b) The contractor or subcontractor must make reasonable efforts to obtain informed consent from the parent for the initial provision of ECSE services to the child.

(c) If a parent does not respond or refuses to consent for initial provision of ECSE services, the contractor or subcontractor may not seek to provide ECSE services to the child by using mediation or due process hearing procedures.

(d) If a parent refuses to grant consent for initial provision of ECSE services, or does not respond to a request to provide such consent:

(A) The contractor or subcontractor will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the ECSE services for which the contractor or subcontractor requests consent; and

(B) The contractor or subcontractor is not required to convene an IFSP meeting or develop an IFSP for the child for the ECSE services for which consent is requested.

(3) Consent for reevaluation:

(a) The public agency must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2740(3).

(b) If a parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its obligations under 34 CFR 300.111 and 300.301-311 if it declines to pursue the reevaluation using these procedures.

(c) If, after reasonable efforts to obtain parent consent, the parent does not respond, the public agency may conduct the reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality.

(4) Revocation of consent: A parent may revoke consent at any time before the completion of the activity or action for which they have given consent. If a parent revokes consent, that revocation is not retroactive. A parent may revoke consent for evaluation or reevaluation that has not yet been conducted. A parent may revoke consent for initial provision of ECSE services before the initiation of those services.

(5) Other consent requirements:

(a) The public agency must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2755(2)(b).

(b) A parent's refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the contractor or subcontractor, except as provided in this rule.

(c) If a parent of a child who is placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent does not respond to a request for consent:

(A) The public agency may not use mediation or due process hearing procedures to seek consent; and

(B) The public agency is not required to consider the child as eligible for ECSE services.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 300.300

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0939, ODE 10-2007, f. & cert. ef. 4-25-07

# ADMINISTRATIVE RULES

## 581-015-2740

### Exceptions to Parental Consent – EI/ECSE Program

(1) Parental consent is not required before:

- (a) Reviewing existing data as part of an evaluation or a reevaluation;
- (b) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or
- (c) Conducting evaluation tests, procedures or instruments that are identified on a child's IFSP as a measure for determining progress; or
- (d) Conducting a screening of a child by an EI/ECSE specialist to determine appropriate instructional strategies for curriculum implementation.

(2) Consent for initial evaluation for wards of the state (for children age three and above): If a child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed written consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(a) Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

(b) The rights of the parents of the child have been terminated in accordance with state law; or

(c) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3) For children age three and above, if, after reasonable efforts to obtain parent consent, the parent does not respond, the contractor or subcontractor may conduct the reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality.

(4) For the purposes of (3) of this rule, "reasonable efforts" means the contractor or subcontractor has used procedures consistent with OAR 581-015-2755(2)(b).

(5) Parental consent is not required if an administrative law judge determines under OAR 581-015-2375 that the evaluation or reevaluation is necessary to ensure that the child is provided with appropriate EI services, or for children in ECSE, a free appropriate public education.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 300.300, 300.302

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0937, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2745

### Prior Written Notice and Notice of Procedural Safeguards – EI/ECSE Program

(1) Prior written notice must be given to the parent or surrogate parent a reasonable time before the contractor or subcontractor initiates or changes, or refuses to initiate or change, the identification, evaluation, placement of the child; or

(a) The provision of appropriate EI services if the child is from birth to age three; or

(b) The provision of a free appropriate public education to the child if the child is three years of age to eligibility for public school.

(2) Prior written notice must be given after a decision is made and a reasonable time before the decision is implemented.

(3) The content of the prior written notice must include:

(a) A description of the action proposed or refused by the contractor or subcontractor;

(b) An explanation of why the contractor or subcontractor proposed or refused to take the action;

(c) A description of any options that the IFSP team and reasons why those options were rejected;

(d) A description of each evaluation procedure, assessment, test, record, or report which is directly relevant to the proposal or refusal;

(e) A description of any other factors relevant to the contractor's or subcontractor's proposal or refusal;

(f) A statement that the parents of a child with a disability have procedural safeguards and, if it is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;

(g) Sources for parents to contact to obtain assistance in understanding their procedural safeguards; and

(h) For children in EI, a statement of the complaint procedures under OAR 581-015-2030, including a description of how to file a complaint and the timelines under those procedures.

(4) The prior notice must be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(5) If the native language or other mode of communication of the parent is not a written language, the contractor or subcontractor must take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) The parent understands the content of the notice; and

(c) There is written evidence that the requirements in subsections (5)(a) and (b) of this rule have been met.

(6) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

(7) If the proposed action requires prior written notice and written consent, the contractor or subcontractor may give notice at the same time it requests consent.

(8) Notice of Procedural Safeguards: Contractors and subcontractors must provide notice of Procedural Safeguards as described in OAR 581-015-2315.

Stat. Auth.: ORS 343.475, 343.531

Stats. Implemented: ORS 343.475, 343.527, 343.531, 34 CFR 300.503, 300.504

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0940, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2750

### Parent Participation – General – EI/ECSE Program

(1) For a child under age three, contractors or subcontractors must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child and the provision of appropriate EI services and transition to ECSE or other services. For IFSP meetings, contractors and subcontractors must also follow requirements of OAR 581-015-2755.

(2) For a child age three and older, contractors or subcontractors must provide parents with an opportunity to participate in meetings with respect to the identification, evaluation, IFSP, placement of the child, the provision of a free appropriate public education and transition to school age or other services. For IFSP and placement meetings, contractors and subcontractors must also follow requirements of OAR 581-015-2755.

(3) Contractors or subcontractors must provide parents and other participants with a written notice of the meeting sufficiently in advance to ensure that parents and others will have an opportunity to attend. The written notice must:

(a) State the purpose, time and place of the meeting and who will attend;

(b) Inform the parents that they or the agency may invite other individuals who they believe have knowledge or expertise regarding the child;

(c) Inform the parents of a child age three or older that the team may proceed with the meeting even if the parent is not in attendance; and

(d) Inform the parents of whom to contact before the meeting to provide information if they are unable to attend.

(4) The contractor or subcontractor must take whatever action is necessary to ensure that the parents understand the proceedings at a meeting, including:

(a) For a child under age three, conducting the meeting in the native language of the family or other mode of communication used by the family unless it is clearly not feasible to do so; and

(b) For a child age three and over, arranging for an interpreter for parents who are deaf or whose native language is other than English.

(5) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, instructional plans, or coordination of service provision if those issues are not addressed in the child's IFSP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response parent proposal that will be discussed at a later meeting.

(6) Conducting a meeting without a parent in attendance: A meeting may be conducted without a parent in attendance if the public agency has given the parent notice under subsection (3) or, for IFSP or placement meetings, in accordance with OAR 581-015-2755.

Stat. Auth.: ORS 343.475;

Stats. Implemented: ORS 343.475, 343.531, 34 CFR 300.501

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0962, ODE 10-2007, f. & cert. ef. 4-25-07

# ADMINISTRATIVE RULES

## 581-015-2755

### Additional Parental Participation Requirements for IFSP and Placement Meetings — EI/ECSE Program

- (1) For a child under age three:
  - (a) Contractors or subcontractors must schedule IFSP meetings in settings and at times that are convenient to families;
  - (b) If neither parent can attend, the contractor or subcontractor must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits; and
  - (c) The contents of the IFSP must be fully explained to the parents and informed written consent obtained from the parents before the provision of EI services described in the plan.
- (2) For a child age three and older:
  - (a) Contractors or subcontractors must take steps to ensure that one or both of the parents of a child with a disability are present at each IFSP or placement meeting or are afforded the opportunity to participate, including:
    - (A) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
    - (B) Scheduling the meeting at a mutually agreed on time and place.
  - (C) If neither parent can attend, the contractor or subcontractor must use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits;
    - (b) An IFSP or placement meeting may be conducted without a parent in attendance if the contractor or subcontractor is unable to convince the parents that they should attend. If the contractor or subcontractor proceeds with an IFSP or placement meeting without a parent in attendance, the contractor or subcontractor must have a record of its attempts to arrange a mutually agreed on time and place, such as:
      - (A) Detailed records of telephone calls made or attempted and the results of those calls;
      - (B) Copies of correspondence sent to the parents and any responses received; and
      - (C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
    - (c) The Department considers contractor or subcontractor attempts to convince parents to attend sufficient if the contractor or subcontractor:
      - (A) Communicates directly with the parent and arranges a mutually agreeable time and place, and sends written notice required under OAR 581-015-2750 to confirm this arrangement; or
      - (B) Sends written notice required under OAR 581-015-2750, proposing a time and place for the meeting and stating in the notice that the parent may request a different time and place, and confirms that the parent received the notice.
      - (C) "Sufficient attempts" may all occur before the scheduled IEP or placement meeting, and do not require the scheduling of multiple agreed-upon meetings unless the team believes this would be in the best interest of the child.
    - (3) The contractor or subcontractor must give the parent a copy of the IFSP at no cost to the parent. If the parent does not attend the IFSP meeting, the contractor subcontractor must ensure that a copy is provided to the parent.

Stat. Auth.: ORS 343.475, 343.521, 343.531  
Stats. Implemented: ORS 343.475, 343.495, 343.521, 343.531, 34 CFR 300.322, 34  
Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; CFR 300.501;  
Renumbered from 581-015-0966, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2760

### Surrogate Parents — EI/ECSE

- (1) Each contractor or subcontractor serving a child participating in EI or ECSE must ensure that the rights of the child are protected by appointing a surrogate parent not more than 30 days after a determination by the contractor or subcontractor that the child needs a surrogate because:
  - (a) No parent (as defined in OAR 581-015-2700(19)) can be identified or located after reasonable efforts; or
  - (b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability.
- (2) In determining the need for a surrogate, the contractor or subcontractor must consider whether it is likely to take any action regarding the child that would require notice under OAR 581-015-2745 to the parents.
- (3) Each contractor or subcontractor must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child. The contractor or subcontractor must ensure that each person approved to serve as surrogate:
  - (a) Is not an employee of the contractor or subcontractor or the Department or any other agency involved in the early intervention, education or care of the child;

- (b) Does not provide EI/ECSE services to the child or to any family members of the child;
- (c) Is free of any personal or professional interest that conflicts with representing the child's early intervention or special education interests; and
- (d) Has the necessary knowledge and skills to protect the special education rights of the child.
- (4) An appointed surrogate parent has all of the special education rights and procedural safeguards available to the parent.
- (5) A surrogate is not considered an employee of a contractor or subcontractor solely on the basis that the surrogate is compensated from public funds.
- (6) The duties of the surrogate parent are to:
  - (a) Protect the early intervention or special education rights of the child;
  - (b) Be acquainted with the child's disability and the child's EI or ECSE needs; and
  - (c) Represent the child in all matters relating to the identification, evaluation and assessment, IFSP services, or the provision of a free appropriate public education to the child receiving ECSE and any other EI/ECSE rights.
- (7) A surrogate has the same rights granted to a parent in a hearing under OAR 581-015-2870 if the identification, evaluation, IFSP or placement of the child is contested.
- (8) A parent may give written consent for a surrogate to be appointed. When a parent requests that a surrogate be appointed, the parent retains all parental rights to receive notice under OAR 581-015-2745 through 581-015-2755 and all of the information provided to the surrogate. The surrogate, alone, is responsible for all matters relating to the special education of the child unless the parent revokes consent for the surrogate's appointment. If a parent gives written consent for a surrogate to be appointed, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment.
- (9) The contractor or subcontractor may change or terminate the appointment of a surrogate when:
  - (a) The person appointed as surrogate is no longer willing to serve;
  - (b) The child is no longer eligible for EI or ECSE services;
  - (c) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;
  - (d) A foster parent is identified who can carry out the role of parent under OAR 581-015-2700;
  - (e) The appointed surrogate is no longer eligible;
  - (f) The child moves to another subcontractor area; or
  - (g) The child is no longer a ward of the state.
- (10) A person appointed as surrogate will not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.
- (11) The contractor or subcontractor must not appoint a surrogate solely because the parent is uncooperative or unresponsive to the EI or ECSE needs of the child.

Stat. Auth.: ORS 343.475, 343.531,  
Stats. Implemented: ORS 343.475 & 343.531; 34 CFR 300.519  
Hist.: EB 12-1993, f. & cert. ef. 3-25-93; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04;  
Renumbered from 581-015-0935, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2765

### Independent Education Evaluation – ECSE

- (1) Any parent of a preschool child with disabilities three years of age through the age of eligibility for public school may request an independent education evaluation at the expense of:
    - (a) The school district if the parent disagrees with an evaluation obtained by the school district; or
    - (b) The contracting agency if the parent disagrees with an evaluation obtained by the contractor or subcontractor.
  - (2) Agencies from (1)(a) and (b) of this rule must follow the procedures in OAR 581-015-2305 when responding to a parent request for an independent education evaluation.
- Stat. Auth.: ORS 343.475, 343.531  
Stats. Implemented: ORS 343.475, 343.495, 343.531, 34 CFR 300.502  
Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0962, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2770

### Confidentiality of Records for Preschool Children with Disabilities

Contractors and subcontractors must follow the rules and procedures in OAR 581-021-0265 for confidentiality of records for preschool children

# ADMINISTRATIVE RULES

with disabilities with the following exception: "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475, 343.485

Stats. Implemented: ORS 343.485

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1010, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2775

### EI Evaluation

(1) General.

(a) A public agency must conduct an evaluation or reevaluation process in accordance with this rule before determining that a child qualifies for early intervention (EI) services, changing the child's eligibility, or terminating the child's eligibility under OAR 581-015-2780.

(b) EI evaluations and reevaluations must be conducted in accordance with OAR 581-015-2790(8) and (9)(b)-(f).

(2) Request for initial evaluation. Consistent with the consent requirements in OAR 581-015-2730, a parent or public agency may initiate a request for an initial evaluation to determine if a child qualifies for EI services.

(3) When initial evaluation must be conducted. An initial evaluation must be conducted to determine if a child is eligible for EI services when a public agency suspects or has reason to suspect that the child has a disability, developmental delay, or condition likely to result in developmental delay.

(4) Evaluation planning. Before conducting any evaluation or reevaluation, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.

(5) Notice and consent.

(a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2745 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.

(b) Before conducting any evaluation or reevaluation, the public agency must obtain written consent for evaluation in accordance with OAR 581-015-2730 and 581-015-2740.

(c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2745.

(d) Parents may challenge the public agency's refusal to conduct an evaluation or reevaluation under OAR 581-015-2870.

(6) EI Evaluation requirements: An EI evaluation or reevaluation must:

(a) Be conducted by a team representing two or more disciplines or professions, including persons who are knowledgeable about the child;

(b) Assess the child's level of functioning in all the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development;

(c) Be based on informed clinical opinion;

(d) Be completed in time to conduct the initial IFSP meeting within 45 calendar days from the date of referral; and

(e) Include:

(A) For a child suspected of having autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury, or visual impairment, the evaluation requirements in OAR 581-015-2130 through 581-015-2180 for the respective disability; or

(B) A diagnosis of a physical or mental condition as described under in OAR 581-015-2780(3)(b); or

(C) An evaluation for determining a developmental delay as follows:

(i) At least one norm-referenced, standardized test addressing the child's level of functioning in each of the following developmental areas: cognitive; physical (including vision and hearing); communication; social or emotional; and adaptive.

(ii) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay listed in subsection (6)(e)(C)(i) of this rule;

(iii) At least one 20-minute observation of the child;

(iv) A review of previous testing, medical data and parent reports; and

(v) Other evaluative information as necessary to determine eligibility.

(7) Reevaluation. A public agency must conduct a reevaluation of a child receiving early intervention services in accordance with OAR 581-015-2115 if the public agency determines that the EI needs of the child warrant a reevaluation, or, subject to subsection (5), if the child's parent or EI specialist requests a reevaluation.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0945, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2780

### EI Eligibility

(1) Upon completing the administration of tests and other evaluation materials, the designated referral and evaluation agency must determine, through a team, whether a child is eligible for EI services by following the procedures in this rule.

(2) The team must include the parents, in accordance with OAR 581-015-2750, and individuals from two or more disciplines, including persons who are knowledgeable about the child.

(3) To be eligible for EI services, the child must meet the minimum criteria for subsection (a), (b) or (c), below:

(a) Categorical:

(A) The child meets the minimum criteria for one of the following disability categories in OAR 581-015-2130 through 581-015-2180: autism spectrum disorder, deafblindness, hearing impairment, orthopedic impairment, traumatic brain injury or visual impairment.

(B) If the child meets the disability criteria for a categorical eligibility in subsection (A), the child's disability does not need to be presently adversely affecting the child's development for the child to be eligible for EI services.

(b) Medical: The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, as documented by a physician licensed by a State Board of Medical Examiners.

(c) Developmental delay: The child experiences a developmental delay and as a result needs EI services. Developmental delay means two standard deviations or more below the mean in one or more of the following developmental areas, or 1.5 standard deviations below the mean in two or more of the developmental areas:

(A) Cognitive development;

(B) Physical development;

(C) Communication development;

(D) Social or emotional development;

(E) Adaptive development.

(4) The team must prepare an evaluation report and a written statement of eligibility.

(a) The evaluation report(s) must describe and explain the results of the evaluation conducted.

(b) The written statement of eligibility must include:

(A) A list of the evaluation data considered in determining the child's eligibility;

(B) A determination of whether the child meets the minimum criteria for EI as described in (3) of this part; and

(C) The signature of each member of the team signifying his or her concurrence or dissent.

(5) For a child who may have disabilities in more than one category, the team need only qualify the child for EI services under one disability category, however:

(a) The child must be evaluated in all areas of development and areas of suspected disability; and

(b) The child's IFSP must address all of the child's early intervention needs.

(6) The team must give the parents a copy of the eligibility statement and evaluation report.

(7) The contractor or subcontractor must notify the child's resident district upon determination of eligibility for EI services.

(8) A child found eligible under this rule is eligible for regional services if the child meets the criteria under OAR 581-015-2550 for vision impairment, hearing impairment, autism spectrum disorder, severe orthopedic impairment or traumatic brain injury.

Stat. Auth.: ORS 343.513

Stats. Implemented: ORS 343.513

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0946, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2785

### Provision of EI Services Before an Evaluation and Assessment Are Completed

Early intervention services for an eligible child and the child's family may begin before the completion of the evaluation and assessment process described in OAR 581-015-2775 if the following conditions are met:

(1) Parental consent for evaluation and services is obtained;

(2) An interim IFSP is developed that includes:

# ADMINISTRATIVE RULES

(a) The name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

(b) The EI services that have been determined to be needed immediately by the child and the child's family; and

(c) The evaluation and assessment are completed within the 45 calendar days as required in OAR 581-015-0945(1)(d).

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0949, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2790

### ECSE Evaluation

(1) General. A public agency must conduct an evaluation or reevaluation process in accordance with this rule before:

(a) Determining that a child is a child with a disability under OAR 581-015-2795; or

(b) Determining that a child continues to have a disability under OAR 581-015-2795; or

(c) Changing the child's eligibility, or

(d) Terminating the child's eligibility as a child with a disability.

(2) Request for initial evaluation. Consistent with the consent requirements in OAR 581-015-2735, a parent or public agency may initiate a request for an initial evaluation to determine if a child qualifies for ECSE services.

(3) When initial evaluation must be conducted.

(a) An initial evaluation must be conducted to determine if a child is eligible for ECSE services when a public agency suspects or has reason to suspect that:

(A) The child has a disability that has an adverse impact on the child's education or development; and

(B) The child may need ECSE services as a result of the disability.

(b) The public agency must designate a team to determine whether an initial evaluation will be conducted.

(A) The team must include the parent and at least two professionals, at least one of whom is a specialist knowledgeable and experienced in the evaluation and education of children with disabilities.

(B) The team may make this decision without a meeting. If a meeting is held, parents must be invited to participate in accordance with OAR 581-015-2750.

(4) Evaluation planning. Before conducting any evaluation or reevaluation, the public agency must conduct evaluation planning in accordance with OAR 581-015-2115.

(5) Notice and consent.

(a) Before conducting any evaluation or reevaluation, the public agency must provide notice to the parent in accordance with OAR 581-015-2745 that describes any evaluation procedures the agency proposes to conduct as a result of the evaluation planning process.

(b) Before conducting any evaluation or reevaluation, the public agency must obtain written consent for evaluation in accordance with OAR 581-015-2735 and 581-015-2740.

(c) If the public agency refuses an evaluation or reevaluation requested by the parent, the public agency must provide the parent with prior written notice under OAR 581-015-2745.

(d) Parents may challenge the public agency's refusal to conduct an evaluation or reevaluation under OAR 581-015-2870.

(6) ECSE evaluation requirements: For a child suspected of being eligible for ECSE services, the following evaluation must be conducted:

(a) For a child suspected of having any of the following disabilities, an evaluation in all areas of the suspected disability following OAR 581-015-2130 through 581-015-2180, respectively:

(A) Autism spectrum disorder;

(B) Communication disorder;

(C) Deafblindness;

(D) Emotional disturbance;

(E) Hearing impairment;

(F) Mental retardation;

(G) Orthopedic impairment;

(H) Other health impaired;

(I) Specific learning disability;

(J) Traumatic brain injury;

(K) Visual impairment; or

(b) For a child suspected of having a developmental delay, an evaluation that includes:

(A) At least one norm referenced, standardized test in each area of suspected delay;

(B) At least one additional procedure to confirm the child's level of functioning in each area of suspected delay;

(C) At least one 20-minute observation of the child;

(D) Review of previous testing, medical data, and parent reports; and

(E) Other evaluative information as necessary to determine eligibility.

(7) Reevaluation.

(a) Public agencies must ensure that a reevaluation of each child with a disability is conducted in accordance with OAR 581-015-2115, subject to subsection (5) and (7)(b) in this rule:

(A) If the public agency determines that the ECSE needs of the child warrant a reevaluation; or

(B) If the child's parent or ECSE specialist requests a reevaluation.

(b) A reevaluation for each child with a disability:

(A) May occur not more than once a year, unless the parent and public agency agree otherwise; and

(B) Must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.

(8) Conduct of evaluation. In conducting the evaluation, the public agency must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:

(A) Whether the child is eligible for EI/ECSE services; and

(B) The content of the child's IFSP, including information related to enabling the child to be involved in and progress in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(9) Other evaluation procedures. Each public agency must ensure that:

(a) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(b) Assessments and other evaluation materials used to assess a child under this part:

(A) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(B) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

(C) Are used for the purposes for which the assessments or measures are valid and reliable;

(D) Are administered by trained and knowledgeable personnel; and

(E) Are administered in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(e) The evaluation is sufficiently comprehensive to identify all of the child's EI/ECSE and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and

(f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

(10) Evaluation timelines:

(a) Initial. An initial evaluation must be completed within 60 school days from written parent consent to the date of the meeting to consider eligibility.



# ADMINISTRATIVE RULES

(b) Reevaluation. A reevaluation must be completed within 60 school days from written parent consent (or from the date the evaluation is initiated under OAR 581-015-2740(3) to the date of the meeting to consider eligibility, continuing eligibility or the student's educational needs.

(c) Exceptions. An evaluation may be completed in more than 60 school days under the following circumstances documented in the child's educational record:

(A) The parents of a child repeatedly fail or refuse to produce the child for an evaluation, or for other circumstances outside the school district's control.

(B) The student is a transfer student in the process of reevaluation and the public agency and the parents agree to a different length of time to complete the evaluation in accordance with subsection (d);

(C) The public agency and parent agree to extend the timeline for an evaluation to determine eligibility for specific learning disabilities in accordance with OAR 581-015-2170.

(d) Transfer students.

(A) When a child with disabilities transfers from one EI/ECSE program to another EI/ECSE program in the same school year, the previous and current EI/ECSE programs must coordinate any pending assessments as necessary and as expeditiously as possible to ensure prompt completion of the evaluation.

(B) The exception under subsection (10)(c) only applies if the current EI/ECSE program is making sufficient progress to ensure a prompt completion of the evaluation and the parent and current EI/ECSE program agree to a specific time for completion of the evaluation.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 6-2003, f. 4-29-03, cert. ef. 4-30-03; Renumbered from 581-015-0941, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2795

### ECSE Eligibility

(1) Upon completing the administration of tests and other evaluation materials, the designated referral and evaluation agency must determine, through a team, whether a child is eligible for ECSE services by following the procedures in this rule.

(2) The team must include the parents, in accordance with OAR 581-015-2750, and two or more professionals, at least one of whom is knowledgeable and experienced in the evaluation and education of children with the suspected disability. The team may be the child's IFSP team.

(3) In determining eligibility for a child suspected of having a specific learning disability, the team must also include:

(a) The child's preschool teacher or, if the child does not have a preschool teacher, a preschool teacher qualified to teach a child of his or her age; and

(b) A person qualified to conduct individual diagnostic examinations of children, such as a psychologist, speech-language pathologist, or other qualified personnel.

(4) To be eligible for ECSE services, the child must meet the following minimum criteria:

(a) Categorical. The child meets the minimum criteria for one of the disability categories in OAR 581-015-2130 through 581-015-2180; or

(b) Developmental delay.

(A) The child has a developmental delay of 1.5 standard deviations or more below the mean in two or more of the developmental areas listed under OAR 581-015-2780(3)(c);

(B) The child's disability has an adverse impact on the child's developmental progress; and

(C) The child needs ECSE services.

(5) The team must prepare an evaluation report and a written statement of eligibility.

(a) The evaluation report(s) must describe and explain the results of the evaluation conducted.

(b) The written statement of eligibility must include:

(A) A list of the evaluation data considered in determining the child's eligibility;

(B) A determination of whether the child meets the minimum criteria for ECSE as described in (4) of this part;

(c) A determination of whether the primary basis for the suspected disability is:

(A) Lack of instruction in reading or math; or

(B) Limited English proficiency.

(d) A determination of whether the child's disability has an adverse impact on the child's developmental progress;

(e) A determination of whether, as a result of the disability the child needs ECSE services; and

(f) The signature of each member of the team indicating agreement or disagreement with the eligibility determination.

(6) When determining eligibility for a child suspected of having a specific learning disability, the team must prepare a written report following the procedures in OAR 581-015-2170.

(7) The team may not determine that a child is eligible for ECSE services if:

(a) The determinant factor for that eligibility determination is:

(A) Lack of appropriate instruction in reading (including the essential components of reading) or math; or

(B) Limited English proficiency; and

(b) The child does not otherwise meet the eligibility criteria under this rule.

(8) For a child who may have disabilities in more than one category, the team need only qualify the child for ECSE services under one disability category, however;

(a) The child shall be evaluated in all areas of suspected disability; and

(b) The child's IFSP shall address all of the child's special education needs.

(9) The team must give the parents a copy of the eligibility statement and evaluation report.

(10) The contractor or subcontractor must notify the child's resident school district upon determination of eligibility for ECSE services.

Stat. Auth.: ORS 343.513

Stats. Implemented: ORS 343.513

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; EB 27-1995, f. & cert. ef. 12-11-95; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0943, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2800

### Termination of Eligibility – EI/ECSE

(1) A school district must evaluate a child with a disability in accordance with OAR 581-015-2775 and 2790 before determining that the child is no longer a child with a disability.

(2) The contractor or subcontractor must provide written notice under OAR 581-015-2745 when a team determines that a child is no longer eligible for EI or ECSE services.

Stat. Auth.: ORS 343.475, 343.513

Stats. Implemented: ORS 343.475, 343.513

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0955, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2805

### EI and ECSE Transition

(1) Transition from EI to ECSE or other services:

(a) Before a child reaches the age of eligibility for ECSE, the school district must obtain parental consent for initial evaluation under OAR 581-015-2735 and conduct an initial evaluation under OAR 581-015-2790.

(b) With the approval of the child's family and in accordance with OAR 581-015-2810, a transition meeting to establish a transition plan must be held at least 90 calendar days, and at the discretion of the parties, up to nine months before the child's third birthday and must include:

(A) Discussions with and training of parents regarding future services, placements and other matters related to the child's transition;

(B) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting or, if appropriate, steps to exit from the program;

(C) A review of the child's program options for the period from the child's third birthday through the remainder of the school year; and

(D) With parental consent, the transmission of information about the child to the ECSE subcontractor or other service provider, if different than the child's EI subcontractor including:

(i) Evaluation and assessment information; and

(ii) Copies of IFSPs that have been developed and implemented.

(c) For children eligible for ECSE services under OAR 581-015-2795, contractors or subcontractors must initiate and conduct an IFSP meeting on or before the child's third birthday to:

(A) Review and revise the IFSP;

(B) Determine placement; and

(C) Obtain parent consent for initial placement in special education. This is the initial consent for placement in special education for school-age students.

(2) Transition from ECSE to School-age Special Education Services:

(a) Before a child reaches the age of eligibility for public school, the district must:

# ADMINISTRATIVE RULES

(A) For children previously eligible with a developmental delay and suspected of having a disability under OAR 581-015-2130 through 581-015-2180, conduct an evaluation and determine eligibility for school age special education services; or

(B) For children previously eligible in a disability category under OAR 581-015-2130 through 581-015-2180, continue the child's eligibility for school age special education services. The school district may conduct a reevaluation and reconsider eligibility for special education services.

(b) The school district and contractor or subcontractor must hold a meeting during the year before the child is eligible to enter public school:

(A) To determine steps to support the child's transition from ECSE to public schooling or other educational setting; and

(B) For a child eligible for school age special education services, to develop an IEP that is in effect at the beginning of the school year.

Stat. Auth.: ORS 343.473, 343.521

Stats. Implemented: ORS 343.521, 34 CFR 300.124

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; Administrative Correction 12-1-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0960, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2810

### IFSP Meeting Procedures and Timelines

(1) Contractors or subcontractors must conduct a meeting to develop an initial IFSP within:

(a) Forty-five calendar days from the date the child is referred for EI services; and

(b) Thirty calendar days from the date the child is determined eligible for ECSE services.

(2) Contractors or subcontractors must initiate and conduct a meeting to review and revise the IFSP every 365 days to:

(a) Determine whether the annual goals for the child are being achieved; and

(b) Revise the IFSP as appropriate to address:

(A) Any lack of expected progress toward the annual goals and appropriate activities;

(B) The results of any reevaluation;

(C) Existing information about the child provided to, or by, the parents;

(D) The child's anticipated needs; or

(E) Other matters.

(3) For a child under age three:

(a) Contractors or subcontractors must initiate and conduct a review of the IFSP, with the participation of the child's parents consistent with OAR 581-015-2750 and 581-015-2755, every six months or more frequently if conditions warrant or if the family requests such a review.

(b) The purpose of this review is to determine:

(A) The degree to which progress on major outcomes or annual goals is being made; and

(B) Whether revision of major outcomes or goals or services is needed.

(c) This review may be carried out by a meeting or by another means that is acceptable to the parents and other participants. However, if IFSP revisions are necessary, an IFSP meeting must be conducted.

(4) Contractors or subcontractors must initiate and conduct, with the approval of the child's family, an IFSP meeting to plan the child's transition to ECSE services or other preschool services at least 90 calendar days, and at the discretion of the parties, up to nine months, before the child's third birthday.

(5) For children eligible for ECSE services under OAR 581-015-2795, contractors or subcontractors must initiate and conduct an IFSP meeting on or before the child's third birthday in accordance with OAR 581-015-2805.

(6) Contractors or subcontractors must conduct an IFSP meeting if they believe that a change in the IFSP may be necessary to ensure the provision of appropriate EI services for a child under age three or a free appropriate public education to a child over age three.

(7) A parent may request a meeting at any time to review or revise the IFSP.

(8) In response to a parent request for IFSP meeting, the contractor or subcontractor must hold an IFSP meeting within a reasonable time.

Stat. Auth.: ORS 343.475, 343.521

Stats. Implemented: ORS 343.475, 343.521, 34 CFR 300.101

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 15-2003, f. & cert. ef. 8-14-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0968, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2815

### IFSP Content

(1) Contractors or subcontractors must use IFSP forms and directions published by the Oregon Department of Education.

(2) Oregon Department of Education IFSP forms combine the content requirements for IEPs under Part B of IDEA, IFSPs under Part C of IDEA, and IFSPs under ORS 343.521.

(3) Each individualized family service plan must contain:

(a) A statement of the child's present level of development, including how the child's disability affects the child's participation in appropriate activities for the child's age. For a child under age three, the statement must include present levels of physical development including vision, hearing and health status, cognitive development, communication development, social development and adaptive development. The statement must be based on professionally acceptable objective criteria.

(b) A statement of major outcomes or annual goals and short-term objectives expected to be achieved for the child and family related to:

(A) Meeting the child's needs that result from the child's disability to enable the child to participate in appropriate activities;

(B) Meeting each of the child's other developmental needs that result from the child's disability.

(c) For a child under age three, a statement of the specific early intervention services, based on peer-reviewed research to the extent practicable, to be provided for the child and to the family to advance toward attaining the major outcomes or annual goals (including pre-literacy, language, and numeracy skills, as developmentally appropriate for the child).

(d) For a child age three and older, a statement of ECSE and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) To participate in appropriate activities and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other children with disabilities and nondisabled children.

(e) With concurrence of the family, a statement of the family's resources, priorities, concerns and goals related to enhancing the development of the child.

(f) The projected dates for initiation of services and modifications and the anticipated frequency, location, intensity, method and duration of the services and modifications described in subsection (3)(d) of this rule and the payment arrangements, if any.

(g) The name of the service coordinator from the profession, including service coordination, most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable EI/ECSE responsibilities) responsible for coordinating the involvement of the family and agencies in implementing early intervention and other services, including transition services. The contractor or subcontractor may:

(A) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation; or

(B) Appoint a new service coordinator.

(h) For a child under age three:

(A) The natural environments in which early intervention services will be provided; and

(B) A justification of the extent, if any, to which services will not be provided in a natural environment.

(i) For a child age three and older, an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and activities described in subsection (3)(d) of this rule.

(j) A statement of:

(A) How the progress toward major outcomes or annual goals will be measured, including the criteria, procedures and timelines used to determine:

(i) The degree to which progress toward achieving the outcomes or goals is being made; and

(ii) Whether revisions of the outcomes or goals or services are necessary.

(B) For a child age three and older, how the child's parents will be regularly informed of:

(i) Their child's progress toward major outcomes or annual goals; and

(ii) The extent to which that progress is sufficient to enable the child to achieve the outcomes or goals by the annual IFSP review date.

(k) The steps to be taken to support the transition of the child from early intervention services to early childhood special education or other

# ADMINISTRATIVE RULES

appropriate services, in accordance with OAR 581-015-2805, 581-015-2750, and 581-015-2810.

(l) The steps to be taken to support the transition of the child from early childhood special education to public schooling or other education setting, in accordance with OAR 581-015-2805, 581-015-2750, and 581-015-2810.

(m) A statement of other services, such as medical services, that the child may need but are not early intervention or early childhood special education services including the funding sources used in paying for those services or the steps to be taken to secure those services through public or private sources. This provision does not apply to routine medical services (e.g., immunizations, and "well-baby" care) unless a child needs those services and the services are not otherwise available or being provided.

Stat. Auth.: ORS 343.475, ORS 343.521

Stats. Implemented: ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0970, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2820

### IFSP Team Consideration and Special Factors

(1) In developing, reviewing and revising the child's IFSP, the IFSP team must consider:

(a) The strengths of the child and the concerns of the parents for enhancing the development of their child; and

(b) The results of the initial or most recent evaluation of the child; and

(c) For a child age three and older, the academic, developmental and functional needs of the child.

(2) For children age three and older, in developing, reviewing and revising the child's IFSP the IFSP team must consider the following special factors:

(a) The communication needs of the child; and

(b) Whether the child requires assistive technology devices and services.

(3) For children age three and older, in developing, reviewing and revising the IFSP of children described below, the IFSP team must consider the following additional special factors:

(a) For a child whose behavior impedes his or her development or that of others, consider strategies, positive behavioral interventions and supports to address that behavior;

(b) For a child or family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child's IFSP;

(c) For a child who is blind or visually impaired, instruct the child in pre-literacy or readiness activities related to the use of Braille unless the IFSP determines, after an evaluation of the child, that this instruction is not appropriate for the child;

(d) For a child who is deaf or hard of hearing, consider the child's language and communication needs, including developmental level, full range of needs, and opportunities for direct instruction and direct communications with peers and professional personnel in the child's language and communication mode.

(4) If, in considering these special factors, the IFSP team determines that a child needs a particular device or service (including intervention, accommodation or other program modification) for the child to receive free appropriate public education, the IFSP team must include a statement to that effect in the child's IFSP.

(5) Nothing in OAR 581-015-2815 or this rule may be construed to require the IFSP team to include information under one component of a child's IFSP that is already contained under another component of the child's IFSP.

Stat. Auth.: ORS 343.475, 343.521

Stats. Implemented: ORS 343.475, 343.521

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0972, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2825

### Participants for IFSP Team Meetings and Reviews

(1) Each initial and annual IFSP meeting must include the following participants:

(a) The child's parents;

(b) The child's EI or ECSE specialist and, as appropriate, persons who will be providing services to the child or family;

(c) A representative of the contractor or subcontractor who may be another member of the team and who is:

(A) Qualified to provide or supervise the provision of EI or ECSE services to meet the unique needs of children with disabilities;

(B) Knowledgeable of typical child development and appropriate activities for infants and young children; and

(C) Knowledgeable about the availability of resources.

(d) For a child eligible for EI services, the service coordinator who is responsible for implementation of the IFSP and may be the child's EI specialist;

(e) For a child who is eligible for ECSE services, the child's preschool teacher if the child is or may be participating in a regular preschool;

(f) Family members and/or advocates as requested by the parents;

(g) Other individuals, including related services personnel as appropriate, invited by the parent, primary contractor, or subcontractor who have knowledge or special expertise regarding the child;

(h) An individual, who may be another member of the team who:

(A) Was involved in conducting the evaluation of the child;

(B) Is knowledgeable about the child's disability; and

(C) Can interpret the developmental or instructional implications of the evaluation; and

(i) A representative of the school district in which the child resides during the year before the child enters school.

(2) The regular preschool teacher must participate, to the extent appropriate, in the development, review and revision of the child's IFSP, including assisting in the determination of:

(a) Necessary modifications to appropriate preschool activities in the classroom and participation in the preschool environment;

(b) Supplementary aids and services, program modifications or supports for preschool personnel that will be provided for the child; and

(c) Appropriate positive behavioral interventions and strategies for the child.

(3) IFSP team attendance for children age 3 and older:

(a) A member of the IFSP team described in subsection (1)(b) through (1)(e) is not required to attend an IFSP meeting, in whole or in part, if the parent of a child with a disability and the contractor or subcontractor agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

(b) A member of the IFSP team described in subsection (1)(b) through (1)(e) may be excused from attending an IFSP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

(A) The parent and contractor or subcontractor consent in writing to the excusal; and

(B) The member submits, in writing to the parent and the IFSP team, input into the development of the IFSP before the meeting.

(4) Each review must include the participants in subsections (1)(a), (b), (d) and, if feasible to do so (f) of this rule. When the review indicates any changes in the IFSP, then the individualized meeting must follow all IFSP procedural requirements.

(5) For the purposes of subsection (1)(h), if such an individual is unable to attend the meeting, arrangements must be made for the person's involvement through other means, including:

(a) Participating in a telephone conference call;

(b) Having a knowledgeable authorized representative attend the meeting; or

(c) Making pertinent records available at the meeting.

Stat. Auth.: ORS 343.475, ORS 343.521

Stats. Implemented: ORS 343.475, ORS 343.521

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0980, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2830

### Implementation of the IFSP

(1) An IFSP must:

(a) Be written before EI services or ECSE and related services are provided to the child;

(b) Begin as soon as possible following the meeting; and

(c) Be provided year round for children receiving EI services, unless agreed to otherwise by the parents; or

(d) Be in effect by the child's third birthday and at the beginning of the school year for children receiving ECSE services.

(2) If a child's third birthday occurs during the summer, the child's IFSP team must determine when services begin under the IFSP.

(3) Contractors and subcontractors must:

(a) Ensure that the IFSP is available to each regular preschool teacher, EI/ECSE specialist, related service provider and other service provider who is responsible for its implementation; and

# ADMINISTRATIVE RULES

(b) Inform each teacher and provider described in (2)(a) of his or her specific responsibilities for implementing the child's IFSP and the specific accommodations, modifications and supports that must be provided for on behalf of the child in accordance with the IFSP.

(4) Contractors or subcontractors must provide EI or ECSE and related services to a child with a disability in accordance with an IFSP.

(5) Nothing in this rule limits a parent's right to ask for revisions of their child's IFSP or to invoke due process procedures.

Stat. Auth.: ORS 343.475, 343.521

Stats. Implemented: ORS 343.475, 343.521, 34 CFR 300.101.

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; Renumbered from 581-015-0990, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2835

### Natural Environments in EI

Contractors or subcontractors must ensure that:

(1) To the maximum extent appropriate to the needs of the child and family, EI services are provided in natural environments, including the home and community settings in which children without disabilities participate; and

(2) EI services are provided in a setting other than a natural environment only when EI services cannot be achieved satisfactorily for the child in a natural environment, as determined by the parent and the IFSP team.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-0995, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2840

### Service Coordination

(1) For a child under age three, the contractor or subcontractor must:

(a) Provide service coordination as an EI service; and

(b) Appoint a service coordinator as soon as possible when a referral is received.

(2) For a child age three and older, contractors and subcontractors may provide service coordination as an ECSE service.

(3) The service coordinator must:

(a) Coordinate all services across agency lines by serving as a single point of contact in helping parents obtain the services and assistance they need;

(b) Assist parents of eligible children in gaining access to EI services and other services identified in the IFSP;

(c) Facilitate the timely delivery of available services;

(d) Continuously seek the appropriate services in situations necessary to benefit the development of each child being served for the duration of the child's eligibility;

(e) Coordinate the performance of evaluation and assessments;

(f) Facilitate and participate in the development, review, and evaluation of IFSPs;

(g) Assist families in identifying available service providers;

(h) Coordinate and monitor the delivery of available services;

(i) Inform families of the availability of advocacy services;

(j) Coordinate with medical and health providers; and

(k) Facilitate the development of a transition plan to ECSE services or other early childhood service, if appropriate.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.523

Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1120, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2845

### Placement and Least Restrictive Environment in ECSE

(1) Contractors or subcontractors must ensure that:

(a) The placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(b) To the maximum extent appropriate to the needs of the child, ECSE services are provided in the least restrictive environment as defined in OAR 581-015-2240, including home and community settings in which children without disabilities participate.

(2) Each child's placement must be:

(a) Determined at least every 365 days;

(b) Based on the IFSP; and

(c) As close as possible to the child's home.

(3) Unless the IFSP of a child with a disability requires some other arrangement, the child must be educated in the public school or public program, if any, that he or she would attend if not disabled.

(4) The contractor must ensure that a continuum of alternative placements is available to meet the needs of preschool children with disabilities for special education and related services.

(a) The continuum must include placements in the home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(b) The continuum must provide for supplementary services to be provided in conjunction with regular preschool placement.

(5) In determining the least restrictive environment, the team must consider the continuum of alternative placements and the following:

(a) Modifications needed to implement the child's IFSP;

(b) The level of support needed by the child;

(c) Any potential harmful effect on the child or on the quality of services which he or she needs;

(d) A child with a disability must not be removed from education in age appropriate classrooms or settings solely because of needed modifications.

(6) The team must ensure that, to the maximum extent appropriate to the needs of that child, ECSE services are provided in settings in which children without disabilities participate, including nonacademic services and activities.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1000, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2850

### Free Appropriate Public Education (FAPE) for ECSE

(1) Contractors and subcontractors must provide ECSE and related services to all resident children from three years of age until the age of eligibility for public school.

(2) The requirements of this rule also apply to children with disabilities who have been suspended or expelled from preschool in accordance with OAR 581-015-2410 through 581-015-2440.

(3) For purposes of this rule, a preschool child with a disability is considered resident of the service area where the child is currently living, including children living in public or private residential programs, hospitals, and similar facilities. ORS 343.475(3)

(4) For purposes of this rule, "school district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475

Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1002, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2855

### Extended Year Services for ECSE

(1) Contractors and subcontractors must ensure that extended year services are available as necessary to provide a free appropriate public education to children eligible for ECSE services.

(2) Extended year services must be provided only if the child's IFSP team determines, on an individual basis, in accordance with OAR 581-015-2755 and 581-015-2810 through 581-015-2830, that services are necessary for the provision of free appropriate public education to the child.

(3) A contractor or subcontractor may not:

(a) Limit extended year services to particular categories of disability;

or

(b) Unilaterally limit the type, amount, or duration of those services.

(4) The purpose of extended year services is the maintenance of the child's learning skills or behavior, not the teaching of new skills or behavior.

(5) Contractors or subcontractors must develop criteria for determining the need for extended year services. The criteria must include:

(a) Regression and recoupment time based on documented evidence;

or

(b) If no documented evidence, on predictions according to the professional judgment of the team.

(6) For the purposes of section (5) of this rule:

(a) "Regression" means significant loss of skills or behaviors in any area specified on the IFSP as a result of an interruption in ECSE services; and

(b) "Recoupment" means the recovery of skills or behaviors specified on the IFSP to a level demonstrated before the interruption of education services.

(7) For the purposes of this rule, "extended year services" means ECSE services and related services that:

(a) Are provided to a child with a disability;

# ADMINISTRATIVE RULES

(A) Beyond the normal service year of the contractor or subcontractor;

- (B) In accordance with the child's IFSP; and  
(C) At no cost to the parents of the child; and  
(b) Meet the standards of the Department.

Stat. Auth.: ORS 343.475  
Stats. Implemented: ORS 343.475  
Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1003, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2860

### Assistive Technology for ECSE

(1) Contractors or subcontractors must follow the rules and procedures in OAR 581-015-2055 to ensure that assistive technology devices or assistive technology services, or both, are available to preschool children with a disabilities age three through the age of eligibility for public school, if required as a part of the child's special education, related services or supplementary aids and services.

(2) For the purposes of this rule, "school district" means contractors or subcontractors.

(3) For the purposes of this rule, "IEP" means IFSP.

Stat. Auth.: ORS 343.475  
Stats. Implemented: ORS 343.475  
Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1005, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2865

### Mediation

(1) The Department offers mediation, in accordance with OAR 581-015-2335, at no cost to the parties to resolve disputes involving any EI/ECSE matter, including matters arising before the filing of a complaint or hearing request.

(2) For the purposes of this rule, "school district" means contractors and subcontractors.

Stat. Auth.: ORS 343.475, 343.531  
Stats. Implemented: ORS 343.475, 343.531  
Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1020, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2870

### Due Process Hearings

(1) OAR 581-015-2360 through 581-015-2385 apply for EI and ECSE programs with the following exceptions:

- (a) "School District" means contractors and subcontractors;  
(b) Parents may not seek reimbursement or attorney fees under ORS 343.175 for EI hearings;

(c) If a parent disagrees with their child's initial placement in an ECSE program, any previous EI services are not considered stay put for the child; and

(d) The Department must submit a copy of the hearing decision to the State Advisory Council for Special Education and the State Interagency Coordinating Council.

Stat. Auth.: ORS 343.475, 343.531  
Stats. Implemented: ORS 343.475, 343.531  
Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 4-1995, f. & cert. ef. 1-24-95; EB 10-1996, f. & cert. ef. 6-26-96; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1030, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2875

### Discipline of Children with Disabilities for ECSE

Contractors or subcontractors must follow the rules and procedures in OAR 581-015-2400 through 581-015-2445 for discipline of children with disabilities age three through the age of eligibility for public school with the following definition exceptions:

(1) "General curriculum" means appropriate activities engaged in by typical children of the same age;

(2) "IEP" means IFSP; and

(3) "Day" means calendar days excluding weekends, holidays, and ECSE program vacation days.

(4) "School district" means contractors or subcontractors.

Stat. Auth.: ORS 343.475, 343.531  
Stats. Implemented: ORS 343.475, 343.531  
Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2001, f. & cert. ef. 1-29-01; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1008, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2880

### Private Placement – ECSE

Contractors or subcontractors must follow the rules and procedures in OAR 581-015-2450 through 581-015-2515 for ECSE children placed by their parents in private schools.

Stat. Auth.: ORS 343.475  
Stats. Implemented: ORS 343.475, 343.495  
Hist.: ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1125, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2885

### Preschool Children with Disabilities Covered by Public Insurance

(1) A contractor or subcontractor may use the Medicaid or other public insurance benefits programs in which a preschool child participates to provide or pay for special education and related services, as permitted under the public insurance program, except as provided in subsection (3) of this section.

(2) A contractor or subcontractor using public insurance to provide EI/ECSE services to a child with disabilities must:

(a) Obtain parent consent for releasing information to the state Medicaid agency necessary to access public insurance for the period of time covered by the child's IFSP; and

(b) Notify parents that the parents' refusal to allow access to their public insurance does not relieve the contractor or subcontractor of responsibility to ensure that all required services are provided at no cost to the parents.

(3) With regard to services required to provide FAPE to a preschool child with disabilities, the contractor or subcontractor:

(a) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;

(b) May not require parents to incur an out-of-pocket expense such as the payment of deductible or co-pay amount incurred in filing a claim for services provided pursuant to this chapter, but may pay the cost that the parent otherwise would be required to pay; and

(c) May not use a child's benefits under a public insurance program if that use would:

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is receiving ECSE services;

(C) Increase premiums or lead to the discontinuation of insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(4) If a contractor or subcontractor is unable to use a child's public insurance for a specified service required under this chapter, to ensure FAPE the contractor or subcontractor may use its Part B funds to pay for the service.

(5) If the parent would incur a cost for the contractor or subcontractor's use of public insurance, the contractor or subcontractor may use its Part B funds to pay the cost the parents otherwise would have to pay to use the public insurance (e.g., the deductible or co-pay amounts).

(6) Proceeds from public insurance will not be treated as program income for purposes of 34 CFR 80.25.

(7) If a contractor or subcontractor spends reimbursements from federal funds (e.g., Medicaid) for special education and related services, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions in this chapter.

(8) Nothing in this section should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, or any other public insurance program.

Stat. Auth.: ORS 343.475  
Stats. Implemented: ORS 343.475, 343.495  
Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1051, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2890

### Preschool Children with Disabilities Covered by Private Insurance

(1) With regard to services required to provide FAPE to a preschool child with disabilities, a contractor or subcontractor may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this chapter.

(2) Each time the contractor or subcontractor proposes to access the parent's private insurance proceeds, it must:

(a) Obtain parent consent in accordance with this rule; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

# ADMINISTRATIVE RULES

(3) If a public agency is unable to obtain parental consent to use the parent's private insurance, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

(4) To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts.)

(5) Proceeds from private insurance will not be treated as program income for purposes of 34 CFR 80.25.

Stat. Auth.: ORS 343.475

Stats. Implemented: ORS 343.475, 343.495

Hist.: ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1052, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2895

### Health and Safety

EI and ECSE services may be provided to eligible children in a variety of settings including, but not limited to, home, hospitals, institutions, special schools, classrooms, and community child care, or preschool settings. If services are provided in any setting other than the family home, the contractor shall assure that each subcontractor meets all applicable state and local requirements including:

(1) The applicable state health, and safety regulations;

(2) Assurances that the subcontractor has policies or procedures in place regarding staff hiring that include careful checking of personal and professional references for all potential employees, with regularly scheduled evaluations to evaluate the employee's competence to work with young children;

(3) The provision of adequate space to assure the full participation of all children, regardless of ability or mobility; and

(4) The applicable personnel standards outlined in OAR 581-015-2900.

Stat. Auth.: ORS 343.475, 343.495

Stats. Implemented: ORS 343.475, 343.495

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; ODE 24-2000, f. & cert. ef. 10-16-00; Renumbered from 581-015-1090, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2900

### Personnel Standards

(1) Personnel employed to provide EI or ECSE services include:

(a) Supervisors;

(b) EI and ECSE specialists;

(c) Related services personnel; and

(d) EI and ECSE assistants.

(2) Supervisors must meet the following criteria:

(a) Possess a minimum of a masters degree in early childhood, special education or a related field, and have three years experience with infants, toddlers, young children, and families.

(b) Hold a TSPC administrative endorsement or, within 12 months of employment, complete authorization as an Early Childhood Supervisor under OAR 581-015-2910; and

(c) Have a professional development plan based on the content of the EI/ECSE competencies.

(3) EI and ECSE specialists must meet the following criteria:

(a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field;

(b) Have a professional development plan based on the content of the EI/ECSE competencies; and

(c) Hold one of the following credentials:

(A) TSPC licensure or endorsement in EI/ECSE;

(B) TSPC licensure or endorsement in related field; or

(C) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-015-2905.

(4) Related services personnel must possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon. Related services personnel who also provide service coordination as outlined in OAR 581-015-2840 must have:

(a) TSPC licensure in their area of discipline; or

(b) State licensure in their area of discipline; and

(c) A professional development plan based on the content of the EI/ECSE competencies.

(5) EI and ECSE assistants must be at least 18 years old, have a high school diploma or equivalent, experience working with young children. EI/ECSE assistants must have a professional development plan based on the content of the EI/ECSE competencies.

Stat. Auth.: ORS 343.055, 343.475

Stats. Implemented: ORS 343.055, 343.475

Hist.: EB 23-1992, f. & cert. ef. 6-23-92; EB 10-1997, f. & cert. ef. 6-26-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-1100, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2905

### Authorization of Early Childhood Specialist

(1) This rule establishes an alternative to Teacher Standards and Practices Commission (TSPC) licensure or endorsements for individuals to serve as Early Childhood Specialists for Programs. Individuals with TSPC issued endorsements in EI/ECSE or a related field are not covered by sections (4)-(12).

(2) Responsibilities of the Early Childhood Specialist may include but are not limited to:

(a) Coordination of EI/ECSE services to children and their families;

(b) Assessment of children in EI/ECSE programs;

(c) Development and implementation of IFSP;

(d) Development and implementation of data collection systems;

(e) Provision of consultation and support, as necessary, to families and staff;

(f) Training of EI/ECSE assistants;

(g) Compliance with procedural safeguards; and

(h) Provision of specialized instruction.

(3) Early Childhood Specialists must possess a minimum of a bachelor degree in early childhood education, special education or a related field.

(4) Individuals without a TSPC endorsement in EI/ECSE or a related field must successfully demonstrate competency at the specialist level in the following areas, which are described in the document, "Competencies for Professionals Working in EI/ECSE in Oregon":

(a) Typical/Atypical Childhood Development;

(b) Assessment;

(c) Family;

(d) Service Delivery;

(e) Program Management;

(f) Service Coordination;

(g) Research; and

(h) Professional Development Values/Ethics.

(5) Candidates for the Early Childhood Specialist authorization must complete an application and portfolio that documents their mastery level of each component within the competency areas listed in section (4) of this rule.

(6) The candidate must submit the application and portfolio to the Oregon Department of Education for review. Specialist employed on or after October 1, 1998, must complete the authorization within 12 months of employment. The Office of Special Education will convene a panel at least two times per year to review the candidate's portfolio. The panel will consist of a minimum of three professionals representing the Oregon Department of Education, higher education, and EI/ECSE service providers. The panel will recommend approval or non-approval of the Early Childhood Specialist authorization for the candidate to the State Superintendent of Public Instruction.

(7) The Superintendent will approve or deny the candidate's application considering the recommendation of the panel:

(a) Each approved candidate will receive authorization from the Department as an Early Childhood Specialist;

(b) Each nonapproved candidate will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.

(8) If a candidate is unable to complete the authorization process within a 12-month period, the EI/ECSE contractor may request a waiver from the Oregon Department of Education for up to one year to allow for the candidate's completion of the authorization process.

(9) Initial authorization is valid for a period of three years. Subsequent authorization is valid for a period of five years.

(10) Applicant renewal of the Early Childhood Specialist authorization must include the following:

(a) For initial renewal, a minimum of two years experience between issuance of initial authorization and renewal application;

(b) For subsequent renewal, a minimum of three years experience between previous renewal and current application.

(c) Written verification by the applicant's supervisor documenting:

(A) Completion of a minimum of 75 Professional Development Units for initial reauthorization or a minimum of 125 Professional Development Units for subsequent reauthorization;

(B) Completion of a Professional Development Plan developed with the applicant's supervisor; and

# ADMINISTRATIVE RULES

(C) Development of a new Professional Development Plan developed with the applicant's supervisor.

(11) The Department will deny or revoke authorization of an Early Childhood Specialist under any of the following conditions:

(a) The individual has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or

(b) The individual has made a false statement as to the conviction of a crime.

(12) The Department may deny or revoke authorization for an Early Childhood Specialist if the individual is charged with a breach of professional responsibilities, which is verified by his/her immediate supervisor.

(13) Individual whose authorization has been revoked will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.

(14) All specialists employed by EI/ECSE contractors or subcontractors must have a professional development plan based on the content of the EI/ECSE Competencies as listed in section (4) of this rule.

(15) A temporary waiver may be requested by the EI/ECSE contractor when an emergency arises due to a misassignment or unsuccessful recruitment efforts. The request for the waiver must be submitted to the Oregon Department of Education and must include:

(a) Documentation of efforts to employ personnel who meet the required competencies;

(b) The name, position, and qualifications of the employed personnel;

(c) A copy of the professional development plan as described in section (13) of this rule; and

(d) Assurances that the plan will be implemented.

Stat. Auth.: ORS 343.055, 343.475

Stats. Implemented: ORS 343.055, 343.475

Hist.: EB 15-1997, f. & cert. ef. 12-29-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2003, f. 6-9-03, cert. ef. 6-10-03; Renumbered from 581-015-1105, ODE 10-2007, f. & cert. ef. 4-25-07

## 581-015-2910

### Authorization of Early Childhood Supervisor

(1) This rule establishes an alternative to a Teacher Standards and Practices Commission (TSPC) administrative license for individuals to serve as Early Childhood Supervisors for Programs. Individuals with a TSPC issued administrative license and who hold a masters degree in early childhood education, special education or a related field with three years of experience working with infants, toddlers, young children and families are not covered by sections (4) through (12) of this rule.

(2) Responsibilities of the Early Childhood Supervisor may include but are not limited to:

(a) Oversight of EI/ECSE services;

(b) Supervision and training of personnel in EI/ECSE programs;

(c) Serving as administrative representative at IFSP meetings;

(d) Facilitating meetings with personnel and families; and

(e) Facilitating interagency collaboration.

(3) Early Childhood Supervisors must possess a minimum of a master's degree in early childhood education, special education or a related field.

(4) Individuals without a TSPC administrative license must successfully demonstrate competency at the supervisor level in the following areas, which are described in the document, "Competencies for Professionals Working in EI/ECSE in Oregon":

(a) Typical/Atypical Childhood Development;

(b) Assessment;

(c) Family;

(d) Service Delivery;

(e) Program Management;

(f) Service Coordination;

(g) Research;

(h) Professional Development Values/Ethics.

(5) Candidates for the Early Childhood Supervisor authorization must complete an application and portfolio that documents their mastery level of each component within the competency areas listed in section (4) of this rule.

(6) The candidate must submit the application and portfolio to the Oregon Department of Education for review. Supervisors employed on or after October 1, 1998, must complete the authorization within 12 months of employment. The Office of Special Education will convene a panel at least two times per year to review candidate portfolios. The panel will consist of a minimum of three professionals representing the Oregon Department of Education, higher education, and EI/ECSE service providers. The panel

will recommend approval or non-approval of the Early Childhood Supervisor authorization for the candidate to the State Superintendent of Public Instruction.

(7) The Superintendent will approve or deny the candidate's application considering the recommendation of the panel:

(a) Each approved candidate will receive authorization from the Department as an Early Childhood Supervisor;

(b) Each non-approved candidate will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.

(8) Initial authorization is valid for a period of three years. Subsequent authorization is valid for a period of five years.

(9) Applicants renewal of the Early Childhood Supervisor authorization must include the following:

(a) For initial renewal, a minimum of two years experience between issuance of initial authorization and renewal application;

(b) For subsequent renewal, a minimum of three years experience between previous renewal and current application.

(c) Written verification by the applicant's supervisor documenting:

(A) Completion of a minimum of 75 Professional Development Units for initial reauthorization or a minimum of 125 Professional Development Units for subsequent reauthorization;

(B) Completion of a Professional Development Plan developed with the applicant's supervisor; and

(C) Development of a new Professional Development Plan developed with the applicant's supervisor.

(10) The Department will deny or revoke authorization of an Early Childhood Supervisor under any of the following conditions:

(a) The individual has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number; or

(b) The individual has made a false statement as to the conviction of a crime.

(11) The Department may deny or revoke authorization for an Early Childhood Supervisor if the individual is charged with a breach of professional responsibilities, which is verified by his/her immediate supervisor.

(12) Individuals whose authorization has been revoked will receive notice from the Department. The notice will include the reasons for denial and the right of appeal to the State Board of Education.

(13) All supervisors employed by EI/ECSE contractors or subcontractors must have a professional plan based on the content of the EI/ECSE competencies as listed in section (4) of this rule.

(14) A temporary waiver may be requested by the EI/ECSE contractor when an emergency arises due to a misassignment or unsuccessful recruitment efforts. The request for the waiver must be submitted to the Oregon Department of Education and must include:

(a) Documentation of efforts to employ personnel who meet the required competencies;

(b) The name, position, and qualifications of the employed personnel;

(c) A copy of the professional development plan as described in section (13) of this rule; and

(d) Assurances that the plan will be implemented.

Stat. Auth.: ORS 343.055, 343.475

Stats. Implemented: ORS 343.055, 343.475

Hist.: EB 15-1997, f. & cert. ef. 12-29-97; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 8-2003, f. 6-9-03, cert. ef. 6-10-03; ODE 14-2003, f. & cert. ef. 8-14-03; Renumbered from 581-015-1106, ODE 10-2007, f. & cert. ef. 4-25-07

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**Rule Caption:** Requirements for registration of interscholastic activity organizations and establishing interscholastic districts or leagues.

**Adm. Order No.:** ODE 11-2007

**Filed with Sec. of State:** 4-25-2007

**Certified to be Effective:** 4-25-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 581-021-0032

**Rules Amended:** 581-021-0034

**Subject:** The proposed amendments to OAR 581-021-0034 would establish requirements for being approved to administer interscholastic activities. The amendments specifically would require approved organizations to provide records of decisions to the State Board and to adopt procedures for establishing interscholastic activity districts or leagues. The proposed rule, OAR 581-021-0032 would define the process for establishing activity districts or leagues and

# ADMINISTRATIVE RULES

would specify criteria that must be considered in making activity district decisions.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-021-0032

### Establishing Interscholastic Activity Districts

(1) Effective July 1, 2007, interscholastic activity organizations that are approved by the state board must comply with the requirements of ORS 339.430(3) and the requirements of this rule when placing schools into interscholastic activity districts. Placement of schools into interscholastic activity districts prior to July 1, 2007 are not subject to this rule

(2) Organizations that divide the state into subdivisions, such as districts or leagues, on the basis of geography, school population or other relevant factor, must adopt criteria for making subdivision decisions. Criteria must include, but are not limited to:

(a) Safety of student participants and spectators, parents and other spectators, and school and other personnel;

(b) Minimizing loss of student instructional time;

(c) Minimizing the expenditure of school district and student and parent participant funds; and

(d) School enrollment data.

(3) Organizations must first consider and address the four criteria set out in subsection (2) of this rule before considering supplemental criteria, if any, adopted by the organization. Decisions to establish district or leagues and placement of schools into districts or leagues must be based on the criteria adopted pursuant to this rule.

(4) A plan for placing schools into interscholastic activity districts must assign all schools within a single school district that are in the same size classification to the same activity district unless the school board of the effected school district agrees to a different assignment.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.430

Hist.: ODE 11-2007, f. & cert. ef. 4-25-07

## 581-021-0034

### Administration of Interscholastic Activities

(1) The following definitions apply to OAR 581-021-0032 and this rule unless otherwise indicated in the context:

(a) "Student": A person of school age enrolled or seeking enrollment in an Oregon public school or a person who is home schooled and who meets the eligibility requirements of OAR 581-021-0033;

(b) "Interscholastic Activity": A public school activity with optional student participation which complements the curriculum, encourages students' physical, academic or social development, is supervised by school personnel and generally is conducted outside the instructional day. Interscholastic activity does not include those activities which utilize school facilities as authorized under ORS 332.172;

(c) "Organization": Any voluntary state or national body which administers an interscholastic activity for Oregon public schools and which is not chartered or otherwise regulated by the Department of Education;

(d) "State Board": Oregon State Board of Education;

(e) "Department": Oregon Department of Education.

(2)(a) An organization may apply to the State Board for approval to administer interscholastic activities by submitting:

(A) The application forms provided by the Department;

(B) A statement of the organization's purpose, as set out in its charter, constitution, or articles of incorporation;

(C) The organization's rules and bylaws;

(D) The organization's most recent set of financial statements; and

(E) The organization's rules that specify the criteria for the placement of a school into an interscholastic activity district.

(b) Any change in documents required by subsection (a) (A, B, C and E) of this section shall be submitted to the Department for approval by the State Board of Education at least 90 days prior to the effective date for the change and the State Board must approve the change prior to implementation.

(3) To gain approval, the applicant organization must submit all required information and assure that the organization will:

(a) Comply with state and federal laws relating to Oregon public school students and administrative rules of the State Board;

(b) Not discriminate as discrimination is defined in ORS 659.150;

(c) Complement, through its actions and activities, the State Board rules and functions as defined in ORS 326.051(1)(a);

(d) Maintain minutes or other official records of meetings of organization governing bodies, including boards, committees and other voting assemblies; and

(e) Send minutes or other official records referred to in section 3 (d) to the Oregon Department of Education within 30 days of issuance of final records.

(4) Approval shall be for five school years, unless a subsequent rule or statute modifies the approval period, beginning with July 1 of the application year and ending on June 30 of the fifth year. Unless specifically stated otherwise, the organization shall at all times remain in compliance with laws and rules, including those changed or added during the approval period.

(5) Review of the organization's approved status may be ordered at anytime by the State Superintendent of Public Instruction or the State Board, and shall be ordered by the State Superintendent upon receipt of a written complaint alleging violation of section (3) of this rule.

(6)(a) An organization's authority to administer interscholastic programs may be revoked or suspended by the State Board or its designee if it is determined that the organization has not met the provisions of section (3) of this rule;

(b) No suspension or revocation shall be effective until the organization has had opportunity for a hearing under the provisions of ORS Chapter 183.

(7) Any final determination of an organization which determines a student to be ineligible to participate in interscholastic activities is appealable to the State Superintendent under procedures set forth at OAR 581-021-0035. "Final determination" is defined at OAR 581-021-0035(1).

(8) The Department shall maintain a list of those organizations approved by the State Board to administer interscholastic activities in Oregon public schools.

(9) The application form, Interscholastic Activity Organizations, Application for Approval by the Oregon State Board of Education, 2007-20012, is adopted by reference.

Stat. Auth.: ORS 326, 339.030 & 339.035

Stats. Implemented: ORS 326.051 & 339.430

Hist.: EB 13-1988, f. & cert. ef. 3-15-88; EB 26-1992, f. & cert. ef. 7-28-92; ODE 13-2006(Temp), f. & cert. ef. 6-16-06 thru 12-11-06; Administrative correction 12-16-06; ODE 11-2007, f. & cert. ef. 4-25-07

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**Rule Caption:** Clarifies existing requirements and establishes new requirements for public and private alternative programs and schools.

**Adm. Order No.:** ODE 12-2007

**Filed with Sec. of State:** 4-25-2007

**Certified to be Effective:** 4-25-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 581-021-0073

**Rules Amended:** 581-021-0072, 581-022-1350

**Subject:** The proposed amendments would clarify the purposes, requirements and reporting for private and public alternative education programs that receive public funds. The proposed new rule would also establish a process to deny, suspend or revoke registration of private alternative programs who fail to meet requirements.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-021-0072

### Registration of Private Alternative Programs/Schools

(1) For the purposes of ORS 336.635(1), all private alternative education programs receiving public school funds must comply with Private Alternative Education Standards established by the Oregon State Board of Education. Before contracting with or receiving public funds from any public school district, each private alternative program must register with the Oregon Department of Education (ODE) under this rule and must have an institution identification number assigned by the Department.

(2) New registration and renewal applications must be received by March 31 each year, beginning in 2008. Annually by March 1, the Oregon Department of Education will provide registration renewal application forms to private alternative programs registered with the Department.

(3) Each private alternative education program must apply to the Department for approval of registration renewal and the application for registration or renewal of registration must include information or documentation as required by the Department that the private alternative program meets:

(a) Local and state fire, safety, health and occupancy codes and standards;

(b) Health and safety standards and rules including, but not limited to, sanitation and prevention of communicable disease;

(c) The requirements of:



# ADMINISTRATIVE RULES

- (A) OAR 581-022-1420 (emergency plans and safety programs);
  - (B) OAR 581-022-1430 (asbestos management plans);
  - (C) OAR 581-022-1440 (infectious diseases);
  - (D) ORS 339.870 and OAR 581-021-0037 (administration of medications);
  - (E) OAR 437-002-1910.1030 (Oregon Occupational Safety and Health Division – blood borne pathogens);
  - (F) OAR 581-022-0705 (health services);
  - (G) ORS 337.150, 339.141, 339.147 and 339.155 (tuition and fees);
  - (H) ORS 181.539, 326.603, 326.607, 336.631, and 342.232 (criminal records checks);
  - (I) ORS 433.235 through 433.284 and OAR 333-050-0010 through 333-050-0120 (immunization records and reports); and
  - (J) ORS 659.850 and 659.855 (discrimination).
- (4) The annual application must also include assurances and verifying documentation, as required by the Department, that the private alternative program:
- (a) Has a mission statement;
  - (b) Maintains commercial general liability insurance with policy limits of at least \$1,000,000 and annually provides ODE with requested information or documentation showing the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy;
  - (c) Identifies the grade levels to be served;
  - (d) Identifies which students will be served consistent with OAR 581-022-1350 (4)(a)(A);
  - (e) Assists the contracting district in meeting its planned K-12 instructional program in compliance with OAR 581-022-1210;
  - (f) Provides instruction in the academic content standards adopted by the State Board of Education and that students participate in district and state assessments of achievement for the grade level(s) the program serves;
  - (g) Assists students in earning diploma credits consistent with OAR 581-022-1130 and 581-022-1131;
  - (h) Uses curriculum content, teaching practices, facilities, and management practices that do not violate constitutional prohibitions on religious entanglement;
  - (i) Develops, implements, and, if necessary, modifies an education plan consistent with OAR 581-022-1120(3)(a) and (b), and 581-022-1130(3), Diploma Requirements, for each student approved for placement in the program by the student's contracting district;
  - (j) In cooperation with each student's contracting district and parent, guardian, or other responsible adult, includes criteria in the student's education plan for determining if, how, when, and where the student may transition from the alternative education program;
  - (k) At least annually reports the results of each student's performance on district-wide and state-wide assessments to the student, the student's parents or legal guardians, and to the student's contracting district;
  - (l) Collects and reports to each contracting district and the state the student's local and state assessment, attendance, behavior, graduation, dropout, and other data required by the district and the state;
  - (m) If providing special education services or related services identified in any child's IEP, is approved by the ODE under OAR 581-015-0126;
  - (n) Maintains the confidentiality of student records consistent with the Family Educational Rights and Privacy Act, 34 CFR \_ 99 et. seq. and maintains student records in compliance with Oregon Administrative Rules on student records;
  - (o) Has procedures in place regarding staff hiring and evaluation that require:
    - (A) checking personal and professional references for all potential employees;
    - (B) criminal background checks in compliance with OAR 581-022-1730 and ORS 181.539, 326.603, 326.607 and 342.232 for all employees;
    - (C) a regular schedule of staff evaluations of the competencies of all employees that work with children; and
    - (D) Staff licensing/registration by the Oregon Teacher Standards and Practices Commission in compliance with OAR 584-036-0015;
  - (p) For purposes of claiming state school funds, has policies and procedures to ensure that:
    - (A) Students enrolled in a public school district and receiving instruction in the district's comprehensive planned K-12 curriculum consistent with OAR 581-022-1210 and who are individually placed by the school district in the alternative education program under ORS 336.635 are accounted for in compliance with OAR 581-023-0006(7);
    - (B) Students enrolled in schools consistent with ORS 336.135 and students enrolled in nonpublic schools or taught by a private teacher or par-

ent under ORS 339.035 and who are supplementing their home, private, or other instruction by attending the alternative program part-time are accounted for in compliance with OAR 581-023-0006(6)(a); and

(C) The activities claimed for state school funds by the program are one or more of those in OAR 581-023-0008 as approved by the contracting school district; and

(q) Complies with each statute, rule or school district policy specified in a contract between the school district board and the private alternative education program; and

(r) Notifies the ODE and each contracting public school district of any written complaint it receives alleging non-compliance with this private alternative program registration rule.

(5) Each annual renewal application must include a copy of the written annual evaluation of the applicant private alternative program completed by each contracting public school district for the prior school year.

(6) Each private alternative program must provide an annual statement of program expenditures to each contracting district consistent with ORS 336.635(2).

(7) The Oregon Department of Education may monitor the procedure used by the private alternative program for reporting Full Time Equivalent (FTE) student enrollment for the purposes of basic school support.

(8) The Department of Education may deny, suspend, or revoke a private alternative program registration consistent with OAR 581-021-0073.

(9) As of the effective date of this rule, the Private Alternative Education Standards adopted by the State Board of Education December 5, 2002, are rescinded and replaced by sections (2)-(5) of this rule.

Stat. Auth.: ORS 326.051, 327.125, 336.625

Stats. Implemented: ORS 181.539, 326.603, 326.607, 327.109, 336.615 - 336.665, 337.150, 339.141, 339.147, 339.155, 339.250, 339.870, 342.232, 433.235 through 433.284, 659.850, 659.855

Hist.: EB 27-1990, f. & cert. ef. 5-18-90; ODE 2-1998, f. & cert. ef. 2-27-98; ODE 16-2003, f. & cert. ef. 8-26-03; ODE 12-2007, f. & cert. ef. 4-25-07

## 581-021-0073

### Denial, Suspension, or Revocation of Registration of Private Alternative Program/School Procedure

(1) A registration applied for or issued under OAR 581-021-0072, Registration of Private Alternative Programs/Schools, may be denied, suspended, or revoked or renewal thereof denied, if:

(a) the private alternative program/school fails to comply with the requirements of OAR 581-021-0072;

(b) the program or its agents intentionally or knowingly make false, deceptive, inaccurate, or misleading representations of fact in any oral, written, visual, or electronic presentation in connection with the registration under OAR 581-021-0072; or

(c) requested information is not furnished when required.

(2) Suspension of private alternative school/program registration may be for a period of up to one year from the time of the suspension.

(3) Revocation of private alternative school/program registration will be for a period of one year from the time of the revocation.

(4) Consistent with ORS 336.631, a school district may not contract with or distribute public school funds to a private alternative program whose registration has been denied, suspended, or revoked under this rule. A contract with a private alternative program must provide that non-compliance with a statute or rule, or suspension or revocation of registration under this rule will result in termination of the contract.

(5) Denial, suspension or revocation of private alternative education school/program registration may be appealed under the provisions of ORS 183.484.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.615 - 336.665, 183.413 - 183.497

Hist.: ODE 12-2007, f. & cert. ef. 4-25-07

## 581-022-1350

### Alternative Education Programs

(1) Sections (2)-(9) of this rule apply to each public or private alternative education program approved by a school district board on or after July 1, 2008. For the purposes of this rule, the term "program" includes "school."

(2) In order to provide innovative and more flexible ways of educating children, school districts may establish alternative education options within the public school system.

(3) School districts must adopt policies and procedures for the approval and at least annual evaluation of public and private alternative education programs under ORS 336.615-336.665 (Alternative Education Programs) that receive public funds. Those policies and procedures must provide that:

# ADMINISTRATIVE RULES

(a) The district's approval and at least annual evaluation must require that a public alternative program complies with all state statutes, rules and federal law applicable to public schools;

(b) Before contracting with or distributing any public school funds to a private alternative education program, the district must document that:

(A) The program is registered with the Oregon Department of Education (ODE) under the provisions of OAR 581-021-0072 by receiving a copy of the Department's written notice that the program's registration is approved for the current school year;

(B) The ODE has assigned the private alternative program an institution identification number;

(C) Before contracting with or distributing any public school funds to any private alternative education program for special education services identified in a child's IEP, the program is approved by the Department in compliance with OAR 581-015-0126;

(D) The program complies with the individual education plan for each student who is eligible to receive special education services;

(E) An education plan and education profile that meet the requirements of OAR 581-022-1120(3)(a) and (b) and 581-022-1130(3) are designed and implemented with each student in the program;

(F) The education plan includes criteria for determining if, when, where, and how the student may transition from the alternative program;

(G) A transportation plan is in place ensuring that the program is accessible to each student approved for placement in the program;

(H) The program assists the district in meeting its comprehensive K-12 instructional program in compliance with OAR 581-022-1210;

(I) The program assures that it provides an instruction based on academic content standards adopted by the State Board of Education and that students participate in district and state assessments of achievement for the grade level(s) the program serves;

(J) The program assists students in earning diploma credits consistent with OAR 581-022-1130 and 581-022-1131;

(K) The program collects and reports to the district each student's local and state assessment, attendance, behavior, graduation, dropout, and other data required by the district and the state;

(L) Student data is included in the district's at least annual evaluation of the program;

(M) The program complies with federal law; and

(N) If applicable, the private alternative education program is in compliance with its existing district contract.

(4) The contract between a school district and a private alternative education program must state that non-compliance with a rule or statute under this rule (OAR 581-022-1350) will result in the termination of the contract, and suspension or revocation of registration by the Department will terminate the district's contract with the private alternative program and that the private alternative education program's annual statement of expenditures is reviewed in the districts' evaluation in accordance with ORS 336.635(2).

(5) School districts shall adopt policies and procedures to approve placing students in district approved public alternative education programs and district approved private alternative education programs. Such policies and procedures must ensure that:

(a) Students placed in alternative education programs are those whose educational needs and interests are best served by participation in such programs and will include:

(i) Students identified pursuant to ORS 339.250;

(i) Who are being considered for suspension or expulsion pursuant to ORS 339.250(9);

(ii) Who have been suspended or expelled pursuant to ORS 339.250(4);

(iii) Whose attendance patterns have been found to be so erratic that the students are not benefiting from the regular educational program; or

(iv) Who have had a second or subsequent occurrence within any three-year period of a severe disciplinary problem;

(B) Students identified pursuant to ORS 329.485(4) and (5) and OAR 581-022-1110(5) who do not meet the standards or who exceed all of the standards at any benchmark level;

(C) Students admitted to the district pursuant to ORS 339.115(2) who have not yet turned 21 prior to the start of the school year and who need additional instruction to earn a diploma in compliance with OAR 581-022-1130;

(D) Students whose parents or legal guardians apply for the student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030 (2) and OAR 581-021-0076; and

(E) Others who are individually approved for placement consistent with the district's board policies regarding the placement;

(b) Placement of a student in a public or private alternative education program may be made only if:

(A) The student is a resident of the district and the district has legal responsibility for the student's education consistent with ORS 327.006(7);

(B) After assessing the student's needs and interests and consulting with the parent or guardian, the district determines that the student is not benefiting, has not benefited, or will not benefit from attendance in other district schools or programs;

(C) The alternative program is determined by the district to best serve the student within local and state academic standards; and

(D) Placement in the program is made consistent with the student's education plan pursuant to OAR 581-022-1120(3)(a) and (b) and 581-022-1130(3) and with district policies and procedures;

(c) Placement in a public or private alternative education program must be made with the approval of the student's resident school district and attending school district; and

(d) Payment to private alternative education providers must be the actual cost of the program or an amount at least equivalent to 80 percent of the district's estimated current year's average per student net operating expenditure, whichever is less.

(6) A school district must adopt policies and procedures for notification of students, parents or guardians of students of:

(a) The law regarding alternative education programs;

(b) The availability of existing alternative education programs; and

(c) The procedures for students, parents, or guardians of students residing in the district to request the establishment of new alternative education programs.

(7) School districts must include opportunities for participation by educators, community members, and parents or guardians in the development of policies and procedures under this rule.

(8) School districts must have policies and procedures in place to ensure that, for the purposes of making claims for state school funds;

(a) Students enrolled in a public school district and receiving instruction in the district's comprehensive planned K-12 curriculum consistent with OAR 581-022-1210 and who are individually placed by the school district in an alternative education program are accounted consistent with OAR 581-023-0006(7);

(b) Students supplementing home or private schooling by attending part-time and receiving less than comprehensive education from the district are accounted consistent with OAR 581-023-0006(6)(a);

(c) Students receiving online instruction are accounted consistent with reporting guidelines published in the Oregon Student Personnel Accounting Manual, and

(d) Activities claimed for state school funds and credits awarded in the alternative education program consistent with OAR 581-023-0008 are approved by the district and by the contract between a private alternative program and the district.

(9) School districts must have policies and procedures in place to ensure that data for each student in public and private alternative education programs are included in district reporting as required by ODE.

Stat. Auth.: ORS 326.051, 327.125, 336.625; 336.645

Stats. Implemented: ORS 327.006, 329.485, 336.615 - 336.665, 329.485, 339.115, 339.030, 339.250

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 2-1998, f. & cert. ef. 2-27-98; ODE 4-2003, f. & cert. ef. 3-14-03; ODE 12-2007, f. & cert. ef. 4-25-07

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**Rule Caption:** Requires that school districts make instructional materials available for visually impaired students.

**Adm. Order No.:** ODE 13-2007

**Filed with Sec. of State:** 4-25-2007

**Certified to be Effective:** 4-27-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 581-011-0052

**Rules Amended:** 581-011-0050, 581-022-1640

**Subject:** National Instructional Materials Accessibility Standard (NIMAS) became effective December Of 2006 in agreement with the reauthorization of the federal Individuals with Disabilities Education Act (IDEA) 2004. It requires all states to make instructional materials accessible for the visually impaired. As a part of that requirement, all public school districts purchasing materials after Decem-

# ADMINISTRATIVE RULES

ber 2006 must provide these materials. The proposed rule and the proposed amendments will implement this federal requirement.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-011-0050

### Definitions

(1) Instructional material for purposes of Oregon law is defined as any organized system which constitutes the major instructional vehicle for a given course of study, or any part thereof.

(2) A major instructional vehicle may include such instructional items as a hardbound or a softbound book or books, or sets or kits of print and non-print materials, including electronic and internet or web-based materials or media.

(3) Basal instructional programs may be adopted by the State Board of Education.

(4) Accessible Instructional Materials are required under OAR 581-015-2060, 581-022-1640, 581-011-1185, 581-011-1186, and 581-011-0052.

Stat. Auth.: ORS 337

Stats. Implemented: ORS 337.035

Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; ODE 10-2001, f. & cert. ef. 5-15-01; ODE 28-2001, f. & cert. ef. 12-20-01; ODE 13-2007, f. 4-25-07, cert. ef. 4-27-07

## 581-011-0052

### Accessible Instructional Materials Required

As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, the Department of Education enters into a written contract with the publisher of the print instructional materials to require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center (NIMAC) electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard (NIMAS).

Stat. Auth.: ORS 337

Stats. Implemented: ORS 337.035

Hist.: ODE 13-2007, f. 4-25-07, cert. ef. 4-27-07

## 581-022-1640

### Instructional Materials

(1) For each program and course in grades K-12, each school district, on a cycle established by the State Board of Education, shall select and provide students with free appropriate instructional and resource materials produced in accordance with the National Instructional Materials Accessibility Standard (NIMAS). These materials shall contribute to the attainment of district, program, and course or grade level goals and reflect recent knowledge, trends, and technology in the field. The school district process for selecting and adopting instructional materials shall include opportunities for citizen and parent involvement.

(2) The school district process must identify whether the district coordinates with the National Instructional Materials Access Center (NIMAC) when purchasing print materials under OAR 581-011-1185 and 581-011-1186.

(3) Districts that do not coordinate with NIMAC must provide instructional materials to blind persons and persons with print disabilities in accessible formats under 581-015-2060.

(4) Sufficient quantities, including those produced in alternate formats and those that cannot be produced from NIMAS files, shall be available in a timely manner to accommodate the number of students who will be using them at any one time. A timely manner means the materials are available at the same time materials are available for students who do not need materials in alternate formats.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 337.150

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 11-1998, f. & cert. ef. 6-23-98; ODE 13-2007, f. 4-25-07, cert. ef. 4-27-07

## Oregon Housing and Community Services Chapter 813

**Rule Caption:** Provides financing for the predevelopment & site acquisition costs associated with the development of low-income housing.

**Adm. Order No.:** OHCS 12-2007

**Filed with Sec. of State:** 5-10-2007

**Certified to be Effective:** 5-10-07

**Notice Publication Date:** 4-1-07

**Rules Adopted:** 813-038-0005, 813-038-0010, 813-038-0015, 813-038-0020, 813-038-0025, 813-038-0030, 813-038-0035, 813-038-0040

**Subject:** The rules are adopted to accomplish the general purposes of the department's Predevelopment Loan Program authorized in ORS 456.515 to 456.725.

813-038-0005 Sets forth the purpose and objectives for the rules.  
813-038-0010 Clarifies the common definitions and terms found within the rules.

813-038-0015 Defines the availability and source of the predevelopment loan funds.

813-038-0020 Sets the program criteria in order for an applicant to apply for funding through the program.

813-038-0025 Sets out the minimum and maximum loan amounts, terms of the loan, applicable interest rate and other conditions to participate in the program.

813-038-0030 Defines the application criteria and the project and financing information that must be included as part of the application process.

813-038-0035 Establishes the charges that will be applicable as part of the program.

813-038-0040 Includes waiver language that is allowed within statute.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

## 813-038-0005

### Purpose and Objectives

OAR chapter 813, division 038 is promulgated to accomplish the general purposes of the department's Predevelopment Loan Program (the "Program") as authorized in ORS 456.515 to 456.725. The Program is designed to assist in the financing of start-up costs incurred prior to the actual development of low-income housing projects. It is intended to facilitate the development of high quality, affordable housing by providing below market financing and flexible terms for site acquisition and typical predevelopment expenses. The Department has no obligation to approve any Loan or to issue a Commitment Letter in response to any Program application or otherwise.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)

Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625

Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

## 813-038-0010

### Definitions

All words and terms used in OAR chapter 813, division 038, except as the context specifically requires, are defined in ORS 456.515 to 456.725, as provided in 813-005-0005, or herein. As used in these rules, unless the context indicates otherwise:

(1) "Application" means a Loan request provided by the Eligible Borrower to the Department in a form and format as prescribed by the Department and modified from time to time reflecting current Program criteria.

(2) "Collateral" means real or personal property pledged to secure the repayment of a Predevelopment Loan as set forth in these rules, including but not limited to real property, guarantees, savings accounts, certificates of deposit and receivables.

(3) "Commitment Letter" or "Commitment" means the written conditional obligation of the Department to provide a Loan issued to the Borrower after the Department has received, reviewed and determined to approve a Loan request. The Commitment Letter may be for an amount different than that requested and may include, but is not necessarily limited to stating the approved loan amount, interest rate, costs of borrowing, repayment terms, performance criteria, monthly reporting requirements and other conditions of the Loan.

(4) "Eligible Borrower" or "Borrower" means a for-profit, non-profit or governmental entity who satisfies the legal, financial, and other criteria of the Department for receipt of a Loan and who has or will make a Loan request that will qualify for approval by the Department.

(5) "Eligible Predevelopment Costs" means costs associated with predevelopment activities including but not limited to architectural design, legal fees, land surveys, soils reports, environmental reports, appraisals, market studies, land option carrying charges, land acquisition costs, federal/state application fees, and other recoverable development costs approved by the Department at its sole discretion.

# ADMINISTRATIVE RULES

(6) "Eligible Project" means the new construction or acquisition and rehabilitation of affordable multi-family rental housing with a minimum of five (5) units that comply with Program requirements as determined by the Department. A single-family housing subdivision may qualify as an Eligible Project if there are five (5) or more lots that will be for sale to home owners who meet the Department's Single-Family Loan Program requirements. Income limits and home prices in the Single-Family Loan Program typically are established in consideration of the County in which the subdivision is located.

(7) "Funds" means the funds the Department makes available for predevelopment activities through this Predevelopment Loan Program.

(8) "Predevelopment Loan" or "Loan" means a loan made by the Department to a Eligible Borrower in order to finance Eligible Predevelopment Costs for an Eligible Project.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)  
Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625  
Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

## 813-038-0015

### Availability and Source of Predevelopment Loan Funds

The Predevelopment Loan Program Funds generally are maintained in a Department revolving account. Funding availability, among other considerations, is dependent upon the number of outstanding loans at the time of the Program Application. The Department may provide funding on its own initiative or through a process which may include, but is not limited to, a first-come first-reviewed and approved approach or a competitive review and approval approach. The Department may provide a Predevelopment Loan under this Division from:

(1) Unrestricted cash and investments of the Department made available for use as Predevelopment Loans not needed for operations of the Department and not otherwise determined by the Director to be a necessary and prudent reserve;

(2) Resources made available to the Department for Predevelopment Loans from other institutions, including, but not limited to, Federal Home Loan Bank, Fannie Mae, or other lending institutions;

(3) Appropriations for this purpose; and

(4) Other appropriate sources.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)  
Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625; 456.625  
Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

## 813-038-0020

### Program Criteria

Program criteria includes but is not limited to:

(1) The Eligible Borrower shall provide a complete Program Application satisfactory to the Department that appropriately demonstrates, inter alia, the need for and projected use of the requested Loan.

(2) The Eligible Borrower shall provide such other information, warranties and assurances as the Department may require, including, inter alia, that it will comply with all Program requirements as set forth in statute, these rules, the Application and the Loan Documents.

(3) The Loan will not exceed 100% of the value of the Collateral unless otherwise approved in writing by the Department and may have such other conditions and requirements as the Department, in its sole discretion, determines to be reasonable or appropriate.

(4) The Loan must be secured by a first-lien interest in appropriate Collateral as determined by the Department, unless otherwise approved in writing by the Department.

(5) A proposed multi-family rental housing Eligible Project must have five (5) or more rental housing units and meet the maximum income requirements of either 20% of the units rented to residents at 50% of area median income or 40% of the units rented to residents at 60% of area median income, as determined by the Department. One-third of the total units may be occupied by households whose incomes are more than 120% of the area median income. Rents for income restricted units must also be restricted as required by the Department.

(6) A proposed single-family subdivision with five (5) or more lots must offer the for-sale homes to owners that meet the Department's Oregon Bond Loan requirements for Eligible Borrowers. Income limits and home prices are restricted, based on the County in which the subdivision is located.

(7) Loan funds may be disbursed in a lump sum, in installments, or on a cost reimbursement basis as determined by the Department.

(8) The Program Application shall include, at a minimum, two independent and comprehensive repayment plans to fully repay the Loan within the terms and conditions of the Loan Commitment Letter and are satis-

factory to the Department. At least one repayment plan shall include repayment of the Loan without using other Department funding sources.

(9) The Department may require such further information as it deems appropriate prior to disbursement of any Loan Funds.

(10) The Commitment Letter must be executed by an authorized signor of the Eligible Borrower and returned to the Department prior to any disbursement of Loan Funds.

(11) Notwithstanding any Commitment, disbursement of Loan Funds to the Eligible Borrower by the Department is specifically conditioned upon the Borrower's execution, delivery and recording of Loan and other Program documents satisfactory to the Department.

(12) The Department may give a preference for a Loan based upon factors including, but not limited to those described in subparagraph 038-0030(2) and the following:

(a) Projects providing the greatest number of suitable housing units constructed, acquired, developed or rehabilitated for the least amount of loan; and

(b) Those Program applications which, in the sole judgment of the Department, best achieve the purposes of the Predevelopment Loan Program.

(13) The Department will make Loans to Eligible Borrowers under the terms of a written Commitment Letter.

(14) The Borrower shall comply with the provisions of these rules, appropriate directives of the Department and the Loan Documents. If the Borrower does not comply or fails to comply, the Department may revoke its Commitment Letter and demand immediate repayment of all or a portion of the Loan Funds advanced.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)  
Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625  
Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

## 813-038-0025

### Program Loan Terms

(1) The minimum Loan is \$40,000 and the maximum Loan is \$1,500,000, unless otherwise specified in writing by the Department.

(2) Loans between \$40,000 and \$500,000 may have a term of up to two (2) years and Loans above \$500,000 may have a term of up to six (6) months; unless otherwise specified in writing by the Department.

(3) The interest rate applicable to Program Loans will be established from time to time by the Department as it determines appropriate in consideration of factors it may determine to be relevant, potentially including, but not necessarily limited to current market rates, the availability of Funds, the credit-worthiness of the Borrower, the size and term of the Loan, any determination by the Department with respect to the need for the Project, the quality of Collateral, or market conditions in general. Unless otherwise established by the Department, interest will accrue as simple interest due and payable under the terms of the Commitment Letter and Loan Documents.

(4) Loans shall be repaid with the sooner of the first available funding sources and otherwise in accordance with the Application, the proposed repayment plans, and within the specified term of the loan.

(5) Due to the limited amount of Funds available, the Department discourages any Loan term extensions. The Department may extend the term of a Loan at its sole discretion and subject to such additional conditions and charges as it determines to be appropriate.

(6) The Loan shall be secured by a fully executed trust deed note and other appropriate Loan Documents satisfactory to the Department. Loan Program commitments by the Borrower with respect to the Project shall be memorialized in an agreement or instrument satisfactory to the Department and executed and recorded by the Borrower at their own expense as required by the Department.

(7) If the Loan is secured by real property, the trust deed shall be recorded in an acceptable lien position, as determined by the Department.

(8) The Borrower shall demonstrate control over the Collateral satisfactory to the Department.

(9) All conditions contained in the Commitment and Loan Documents shall be timely fulfilled by the Borrower to the satisfaction of the Department.

(10) The Borrower shall repay the Loan within the terms of the Commitment Letter and applicable Loan Documents.

(11) The Loan shall not be transferred to another party or assumed by another party unless approved in writing by the Department prior to the change.

(12) During the term of the Loan, the Eligible Borrower shall not take any action that directly or indirectly affects the value of the Collateral used as security without prior written approval of the Department.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625  
Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

## Oregon Liquor Control Commission Chapter 845

### 813-038-0030

#### Application Criteria

(1) An Eligible Borrower shall provide a complete Program application in the form and content satisfactory to the Department.

(2) The Program application shall include, but is not limited to, the following documents:

(a) A written description of the proposed Eligible Project including, but not limited to, the development timelines, number of units, unit mix, proposed rents, site location and amenities;

(b) A written description indicating the market need of the proposed type of housing, prospective income levels of the residents and prospective resident services;

(c) A proforma of the proposed Eligible Project operating income and expenses, funding sources, and development costs;

(d) The Predevelopment Loan amount requested;

(e) A written explanation itemizing the proposed uses and associated Eligible Predevelopment Costs for the Loan proceeds;

(f) At a minimum, two (2) comprehensive repayment plans for the Loan;

(g) A description of the Eligible Borrower and their development team's experience in and capacity for developing and operating similar housing projects;

(h) Adequate documentation demonstrating at least 100% Collateral to secure the Loan and any subordinate loans using the same Collateral; and

(i) Such other documents and information as the Department may require.

(3) In evaluating whether or not to provide a Loan, the Department may consider factors including, but not limited to:

(a) The value of the security for the Loan;

(b) The economic and financial feasibility of the Eligible Project;

(c) The readiness of the Eligible Project to proceed with development;

(d) The location and need for the Eligible Project;

(e) The availability of Department Funds;

(f) The Department's experience with and/or the reputation, experience and capacity of the Borrower, including any of its agents, representatives, employees or contractors;

(g) The amount, quality, and duration of suitable affordable housing to be provided or enabled by the proposed Eligible Project;

(h) The mix of affordable housing units to be provided or enabled; and

(i) Any other information obtained by or made available to the Department.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)

Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625

Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

### 813-038-0035

#### Fees

(1) A non-refundable Application charge, as specified from time to time by the Department, is due and payable by the Eligible Borrower upon submission of the Application.

(2) A non-refundable loan processing charge, as specified from time to time by the Department is due and payable by the Eligible Borrower upon the sooner of the closing of the Loan or 90 days after the Borrower's acceptance of the Commitment.

(3) If the Borrower determines the need for an extension of the Loan, it must request and justify the extension to the Department in writing in advance of the loan maturity date.

(4) Should the Department determine, in its sole discretion, that an extension of the loan term is warranted, the Department may grant the extension subject to such additional conditions and an extension charges as it deems appropriate.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)

Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625

Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

### 813-038-0040

#### Waiver

Subject to applicable law, the Department may waive or modify any requirements of OAR 813, division 038, as it deems appropriate for the public interest.

Stat. Auth.: ORS Ch. 183, 456.555(2), 456.625(12)

Stats. Implemented: ORS 456.561; 456.574; 456.620; 456.625

Hist.: OHCS 12-2007, f. & cert. ef. 5-10-07

**Rule Caption:** Amend rule to clarify that Special Events Winery licensees may sell malt beverages.

**Adm. Order No.:** OLCC 6-2007(Temp)

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 5-14-07 thru 11-10-07

**Notice Publication Date:**

**Rules Amended:** 845-005-0415

**Subject:** The 2007 legislature passed House Bill 2164, which was signed by the Governor on April 9, 2007. The House Bill has an emergency clause, and the statutory changes are now in effect. The subject of the legislation and rule change is the Special Events Winery license and clarifies that these licensees are allowed to sell malt beverages, in addition to wine and cider, at the special event. We need to amend this rule on a temporary basis in order to comply with the statutory change made to ORS 471.223 by HB 2164 and its emergency clause.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

### 845-005-0415

#### Special Event Winery and Special Event Grower Sales Licenses

(1) ORS 471.223 authorizes the Commission to issue a Special Events Winery license to a Winery licensee. The special license may allow the licensee to sell wine, malt beverages and cider at retail for consumption on or off the licensed premises at a location other than that designated as the winery's licensed premises for a period not to exceed five consecutive days.

(2) ORS 471.227 authorizes the Commission to issue a Special Events Grower Sales license to a Grower Sales Privilege licensee. The special license may allow the licensee to sell wine and cider at retail for consumption on or off the licensed premises at a location other than that designated as the grower's licensed premises for a period not to exceed five consecutive days.

(3) Any special license application shall be made in writing and include:

(a) A control plan for managing patronage by minors and alcohol consumption by adults;

(b) Identification of the individuals to be employed by the licensee to manage events applied for under this section;

(c) Identification of the premises proposed to be licensed;

(d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465;

(e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, extent of expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;

(f) License fees as established by ORS 471.311.

(4) Applicants must apply in writing using the Commission form provided for this purpose. The Commission may reject any application not completed fully and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(5) The Commission may deny, cancel or restrict a special license for any reason for which the Commission may deny, cancel or restrict a regular license.

(6) Commission staff investigates non-routine applications for special licenses. Non-routine applications include those that propose electronically amplified entertainment, a drinking environment as defined in OAR 845-006-0340(8), an operation that staff concludes requires employment of security personnel, or that has not received an unqualified grant recommendation from the local governing body or its delegated department. Commission staff assesses each application to determine if it is routine or non-routine. Applications must be submitted enough in advance of the event date to allow staff assessment and investigation:

(a) The Commission may refuse to process any routine application not submitted at least five business days in advance of the proposed event date;

(b) The Commission may refuse to process any non-routine application not submitted at least fifteen business days prior to the proposed event date if the applicant will operate a drinking environment as defined by OAR 845-006-0340(8);

# ADMINISTRATIVE RULES

(c) The Commission may refuse to process any non-routine application not submitted at least twenty-five business days prior to the proposed event date if prior to the submission of the application Commission staff provide notice to the applicant or the applicant's representative that investigation of the application will require assessment of public safety or neighborhood impact matters, or the risk of disturbances or liquor law violations at the location proposed to be licensed.

(7) Submission of an application within the time lines stated in subsection (6) of this rule does not guarantee the Commission will have the resources to complete investigation of the application prior to the applications requested date(s).

(8) The Commission may refund the special license fee if the application is withdrawn by the applicant or denied by the Commission, or if the event does not take place because of circumstances beyond the licensee's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.223 & 471.730(5)  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 6-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07

## Oregon Patient Safety Commission Chapter 325

**Rule Caption:** Establishes Oregon Patient Safety Reporting Program for ambulatory surgery centers.

**Adm. Order No.:** PSC 3-2007

**Filed with Sec. of State:** 5-4-2007

**Certified to be Effective:** 5-4-07

**Notice Publication Date:** 4-1-07

**Rules Adopted:** 325-025-0001, 325-025-0005, 325-025-0010, 325-025-0015, 325-025-0020, 325-025-0025, 325-025-0030, 325-025-0035, 325-025-0040, 325-025-0045, 325-025-0050, 325-025-0055, 325-025-0060

**Subject:** These rules, taken together, establish the Oregon Patient Safety Reporting Program for ambulatory surgery centers in Oregon. They also establish an ambulatory surgery center fee structure to partially fund the work of the Patient Safety Commission.

**Rules Coordinator:** Jim Dameron—(503) 224-9226

### 325-025-0001

#### Definitions

As used in OAR 325-025-0001 to 325-025-0060:

(1) "Commission" means the Oregon Patient Safety Commission.

(2) "Event Report" means the form designated by the Commission to be used by Ambulatory Surgery Center Participants for the reporting of Reportable Ambulatory Surgery Center Adverse Events.

(3) "Ambulatory Surgery Center Participant" means an ambulatory surgery center as defined in ORS 442.015, that has volunteered to participate in the Oregon Patient Safety Reporting Program.

(4) "Oregon Patient Safety Reporting Program" means the Patient Safety Reporting Program, as defined in Oregon Laws 2003, Chapter 686, Section 4, and operated by the Commission.

(5) "Participant" means an entity that reports Patient Safety Data to a Patient Safety Reporting Program, and any agent, employee, consultant, representative, volunteer or medical staff member of the entity.

(6) "Patient Safety Activities" include but are not limited to:

(a) The collection and analysis of Patient Safety Data by a Participant;

(b) The collection and analysis of Patient Safety Data by the Oregon Patient Safety Commission established in Oregon Laws 2003, Chapter 686 and ORS 442.820;

(c) The utilization of Patient Safety Data by Participants;

(d) The utilization of Patient Safety Data by the Oregon Patient Safety Commission to improve the quality of care with respect to patient safety and to provide assistance to health care providers to minimize patient risk; and

(e) Oral and written communication regarding Patient Safety Data among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program.

(7) "Patient Safety Data" means oral communication or written reports, data, records, memoranda, analyses, deliberative work, statements, root cause analyses or action plans that are collected or developed to improve patient safety or health care quality that:

(a) Are prepared by a Participant for the purpose of reporting Patient Safety Data voluntarily to a Patient Safety Reporting Program, or that are communicated among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program; or

(b) Are created by or at the direction of the Patient Safety Reporting Program, including communication, reports, notes or records created in the course of an investigation undertaken at the direction of the Oregon Patient Safety Commission.

(8) "Serious Adverse Event" for the purposes of OAR 325-025-0001 to 325-025-0060 means any unanticipated, usually preventable consequence of patient care that results in patient death or serious physical injury, either temporary or permanent.

(9) "Reportable Adverse Event" for the purposes of OAR 325-025-0001 to 325-025-0060 means any unanticipated, usually preventable consequence of patient care that results in patient harm, including the events described in **Appendix A** and any Serious Adverse Events. **Appendix A** is incorporated by reference.

[ED. NOTE: Appendix referenced are available from the agency.]

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

### 325-025-0005

#### Enrollment in the Oregon Patient Safety Reporting Program

(1) Participation in the Oregon Patient Safety Reporting Program is voluntary. Ambulatory Surgery Center Participants are entitled to the benefits and subject to the obligations set forth in these administrative rules.

(2) Interested ambulatory surgery centers may apply for participation in the Oregon Patient Safety Reporting Program by completing the Commission's registration form and submitting the applicable annual fee. The registration form must include the name of a designated contact person.

(3) In agreeing to participate an ambulatory surgery center must affirm that it is willing to fully share requested Patient Safety Data with the Commission. This statement must be co-signed by the ambulatory surgery center's Chief Executive Officer, Chairperson of the Governing Body, and the Director of Quality Management, or their equivalents.

(4) Upon enrolling in the Oregon Patient Safety Reporting Program, an Ambulatory Surgery Center Participant must have adopted policies and procedures describing patient safety activities, including how it triages adverse events; how it investigates adverse events; and how it provides notice of adverse events to a patient and/or patient's personal representative. The Ambulatory Surgery Center Participant must provide copies to the Commission upon request.

(5) Within 30 calendar days of receipt and acceptance of the registration form and fee the Commission will issue a certificate establishing an Ambulatory surgery center Participant's enrollment in the Oregon Patient Safety Reporting Program. The Ambulatory surgery center Participant should conspicuously post the certificate in an area where patients are admitted.

(6) The Commission will issue a press release on a regular basis, which will provide a list of Ambulatory surgery center Participants to the public.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

### 325-025-0010

#### Annual Ambulatory surgery center Participant Fee

(1) An Ambulatory Surgery Center participant must pay an annual fee of \$850 for each facility licensed under ORS 441.015.

(2) Initial fees will be assessed at the time of enrollment in the Oregon Patient Safety Reporting Program and will expire on December 31 following the date of issue. Annual Ambulatory Surgery Center Participant fees will be due by December 31 for the next year's enrollment. A delinquent renewal fee of up to 25% of the renewal fee may be assessed against a Ambulatory Surgery Center Participant submitting fees postmarked after December 31st.

(3) No participation fees will be refunded due to withdrawal or termination from the Oregon Patient Safety Reporting Program.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

# ADMINISTRATIVE RULES

## 325-025-0015

### Termination of Participation

(1) The Commission's reporting program relies on voluntary reporting. However, the Commission is responsible for ensuring that those who choose to participate also comply with the standards established by the Commission.

(2) Participation requirements include the reporting of all Reportable Adverse Events; fully completing Event Reports; creating and implementing acceptable action plans; and providing written disclosure to patients or their personal representatives following a Serious Adverse Event.

(3) If the Commission believes an Ambulatory Surgery Center Participant is not meeting its participation requirements, the Commission must provide the Ambulatory Surgery Center Participant with a written notice explaining why. The Ambulatory Surgery Center Participant will have 30 calendar days to respond and come into compliance.

(4) The Commission may deny, suspend or revoke a Ambulatory Surgery Center Participant's status when the Commission finds that there has been a substantial failure to comply with the provisions of participation. Upon written notification by the Commission of revocation, suspension, or denial of an Ambulatory Surgery Center Participant enrollment in the Oregon Patient Safety Reporting Program, an Ambulatory Surgery Center Participant may request a hearing. Hearings will be held in accordance with ORS 183.310 to 183.470.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0020

### Re-Issue of Suspended or Revoked Participation Certificate

The Commission may re-issue a participation certificate that has been suspended or revoked if the Commission determines that the ambulatory surgery center applying for re-enrollment meets the provisions of participation.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0025

### Reporting Adverse Events

(1) The Commission will provide an Event Report form to be used by Ambulatory Surgery Center Participants for reporting Reportable Adverse Events. The Event Report will include: a summary description of the event; an overview of the Ambulatory Surgery Center Participant's complete, thorough and credible investigation for that event; information about plans to implement improvements to reduce risk. The meaning of terms "complete," "thorough," and "credible" are explained in OAR 325-025-0035.

(2) Ambulatory Surgery Center Participants must use the Event Report form when reporting Reportable Adverse Events to the Commission.

(3) Ambulatory Surgery Center Participants must submit a completed Event Report to the Commission within 45 calendar days of discovery of a Reportable Adverse Event.

(4) Ambulatory Surgery Center Participants must make a good faith effort to report events that occur or are discovered following discharge from the ambulatory surgery center.

(5) If an Ambulatory Surgery Center Participant believes the Commission should immediately issue an alert to all Oregon ambulatory surgery centers based on a specific Reportable Adverse Event, the Ambulatory Surgery Center Participant should provide an initial report to the Commission within three business days of discovery of the event, or sooner. The Ambulatory Surgery Center Participant and Commission will work together to identify information to include in the alert.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0030

### Ambulatory Surgery Center Reporting of Less Serious Adverse Events and Close Calls

(1) In addition to the list of Reportable Adverse Events, Participating Ambulatory Surgery Centers are also strongly encouraged to report less serious adverse events and close calls. Participating Ambulatory Surgery Centers should do so when they believe other organizations will benefit from the information.

(2) To report such events, Ambulatory Surgery Center Participants should use the appropriate sections of the Event Report form. Ambulatory Surgery Center Participants will not be required to complete detailed inves-

tigation for these less serious events or close calls, but may do so when they believe other organizations will benefit from the information.

(3) Ambulatory Surgery Center Participants are not required by the Commission to provide written disclosure of less serious adverse events or close calls to patients or their personal representatives.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0035

### Commission Review of Reports

(1) When the Commission receives an Event Report from an Ambulatory Surgery Center Participant, the Commission will determine whether that Event Report is complete, thorough, credible and acceptable. The definitions for the terms thorough, credible and acceptable can be found in the Joint Commission's Sentinel Event Policy, October 2006, and are adopted by reference. In general:

(a) A report is complete if it contains all the information requested in the Event Report, or explains to the Commission's satisfaction why that information is not available or not necessary to provide;

(b) A report is thorough if the investigation includes an analysis of all relevant systems issues and shows evidence of an inquiry into all appropriate areas;

(c) A report is credible if it shows evidence that the investigation of the Reportable Ambulatory Surgery Center Adverse Event included participation by leadership within the organization and was internally consistent; and

(d) A report is acceptable if all the above standards are met and the action plans clearly describe meaningful improvement strategies designed to minimize risk.

(2) If the Commission believes that an Event Report received from a Ambulatory Surgery Center Participant is incomplete or unacceptable in some manner, it will inform the Ambulatory Surgery Center Participant's contact person within 10 business days of receipt of the Event Report.

(3) On an annual basis, the Commission will query Ambulatory Surgery Center Participants regarding the status of action plans identified in their Event Reports.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0040

### Public Health Officer Certification

(1) At least annually, the Commission will request that the Public Health Officer certify the completeness, credibility, and thoroughness of each Ambulatory Surgery Center Participant's reporting during the applicable period.

(2) The Commission will request that the Public Health Officer develop independent and objective standards to evaluate the overall integrity of the Patient Safety Reporting Program. On an annual basis the Commission will request that the Public Health Officer use those standards to certify the Oregon Patient Safety Reporting Program.

(3) The Commission will provide information to the Public Health Officer to assist the Public Health Officer in completing the certification processes listed in (1) and (2) of this rule, consistent with OAR 325-025-0055.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0045

### Patient Notification Of Serious Adverse Events

(1) After a Serious Adverse Event occurs, an Ambulatory Surgery Center Participant must provide written notification to each affected patient, or, if necessary, to the patient's personal representative. Notification must be timely and should be consistent with the Ambulatory Surgery Center Participant's internal communication and disclosure policies.

(2) As provided in Oregon Laws 2003, Chapter 686, Section 4(4), notice provided under this subsection may not be construed as an admission of liability in a civil action.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0050

### Extensions And Waivers

(1) The Commission may grant an extension of any time requirement stipulated in these rules if the Ambulatory Surgery Center Participant pro-

# ADMINISTRATIVE RULES

vides justification that the delay is due to factors beyond its control or that the delay will not adversely affect the purposes of the Commission. An Ambulatory Surgery Center Participant requesting a waiver must submit a written request to the Commission prior to the deadline for the required action. Facsimile requests are acceptable.

(2) The Commission may grant a waiver of any other provision of these rules if the Ambulatory Surgery Center Participant provides justification that granting the waiver will not adversely affect the purposes of the Commission.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0055

### Protection Of Patient Safety Data

(1) The Commission is subject to all the confidentiality provisions set forth in Oregon Laws 2003, Chapter 686, Sections 1, 4 to 6, 8 to 10, 12, and in ORS 442.820 to 442.835.

(2) The Commission will maintain the confidentiality of all Patient Safety Data that identifies or could be reasonably used to identify an Ambulatory Surgery Center Participant or an individual who is receiving or has received health care from the Ambulatory Surgery Center Participant.

(3) Before it takes receipt of any confidential Patient Safety Data, the Commission will have in place appropriate safeguards and security measures to ensure the technical integrity and physical safety of such data.

(4) Pursuant to ORS 442.820(4), meetings or portions of meetings where the Oregon Patient Safety Commission Board of Directors, or subcommittees or advisory committees, consider information that identifies a participant or patient are not subject to the Oregon Public Meetings Law, ORS 192.610 to 192.690.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## 325-025-0060

### Commission's Use Of Patient Safety Data

(1) The Commission will create an advisory group on best practices in patient safety. This committee will advise the Commission on effective methods for making use of and sharing information gathered from the Commission's review of Event Reports.

(2) At least quarterly, the Commission will provide Ambulatory Surgery Center Participants with patient safety quality improvement information derived from Patient Safety Data.

(3) During the second quarter of each year, the Commission will publish a report to the public summarizing Patient Safety Data for the preceding calendar year. This report will use aggregate, de-identified data from the program and will describe statewide adverse event patterns and best practices to avoid the occurrence or minimize the effects of adverse events.

(4) The Commission will maintain an easily accessible and well-publicized website to share patient safety information directly with consumers.

(5) The Commission, within its resource limitations, will provide technical assistance to Ambulatory Surgery Center Participants, including but not limited to recommendations and advice regarding methodology, communication, dissemination of information, data collection, security and confidentiality.

(6) The Commission will work with representatives of organizations participating in the Oregon Patient Safety Reporting Program and with other interested parties to develop recommendations for continued improvements in the collection and utilization of Patient Safety Data. The Commission will revise its reporting form as necessary based on feedback from Participants.

(7) The Commission may initiate other projects using patient safety data when consistent with its mission and in accordance with existing confidentiality protections.

Stat. Auth.: Ch. 686, OL 2003, Other Auth. ORS 182.456 - 182.472  
Stats. Implemented: ORS 442.820 - 442.835  
Hist.: PSC 3-2007, f. & cert. ef. 5-4-07

## Oregon State Fair and Exposition Center Chapter 622

**Rule Caption:** Integration of the Oregon State Fair rules into OPRD rules requires repeal of 622.

**Adm. Order No.:** SFEC 1-2007

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 7-1-07

**Notice Publication Date:** 3-1-07

**Rules Repealed:** 622-001-0000, 622-001-0005, 622-010-0000, 622-010-0006, 622-010-0011, 622-020-0001, 622-020-0140, 622-020-0141, 622-020-0142, 622-020-0143, 622-020-0144, 622-020-0145, 622-020-0147, 622-020-0148, 622-020-0149, 622-020-0153, 622-030-0005, 622-030-0010, 622-045-0000, 622-045-0005, 622-045-0010, 622-045-0015, 622-045-0019, 622-055-0003, 622-055-0005, 622-055-0009, 622-055-0010, 622-055-0015, 622-055-0020, 622-055-0025, 622-065-0001, 622-065-0002, 622-065-0003, 622-065-0010, 622-065-0011

**Subject:** Integration of the Oregon State Fair (OSF) into the Oregon Parks and Recreation Department, Administrative Rules for the OSF need to be updated, made consistent with existing rules and integrated into existing rules for OPRD. OSF current OAR — Chapter 622 will be replaced and incorporated into OPRD OAR Rule 736

**Rules Coordinator:** Alesia Gadach—(503) 986-0719

## Oregon State Marine Board Chapter 250

**Rule Caption:** Establish moorage buffer in the Marion and Polk Counties area of the Willamette River.

**Adm. Order No.:** OSMB 4-2007(Temp)

**Filed with Sec. of State:** 5-2-2007

**Certified to be Effective:** 5-2-07 thru 10-28-07

**Notice Publication Date:**

**Rules Amended:** 250-020-0261

**Rules Suspended:** 250-020-0290

**Subject:** This rule will set a 5 mph-slow no wake zone within 100 feet of the Salem waterfront park transient moorage/dock facility. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-020-0261

### Boat Operations on the Willamette River in Marion and Polk Counties

No boat shall be operated at a speed in excess of 5 MPH on the Willamette River, in Polk and Marion Counties, in the following locations:

(1) Within 200 feet of a designated public launching ramp or designated swimming area.

(2) From a point 50 feet south of the Center Street Bridge between Salem and West Salem and a point 50 feet north of the railroad bridge on Marion Street between Salem and West Salem.

(3) Within 100 feet of the moorage dock at the Salem waterfront park.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 17, f. 2-5-63; Renumbered from 250-020-0140; OSMB 4-2007(Temp), f. & cert. ef. 5-2-07 thru 10-28-07

## 250-020-0290

### Boat Operations on the Willamette River in Polk and Marion Counties

No boat shall be operated at a speed in excess of 5 MPH on the Willamette River, in Polk and Marion Counties, in the following locations:

(1) Within 200 feet of a designated public launching ramp or designated swimming area.

(2) From a point 50 feet south of the Center Street Bridge between Salem and West Salem and a point 50 feet north of the railroad bridge on Marion Street between Salem and West Salem.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 17, f. 2-5-63; Renumbered from 250-020-0140; Suspended by OSMB 4-2007(Temp), f. & cert. ef. 5-2-07 thru 10-28-07

## Oregon State Treasury Chapter 170

**Rule Caption:** Repeal of administrative rule 170-061-0010.

**Adm. Order No.:** OST 1-2007

**Filed with Sec. of State:** 4-27-2007

**Certified to be Effective:** 4-27-07

**Notice Publication Date:** 4-1-07

**Rules Repealed:** 170-061-0010



# ADMINISTRATIVE RULES

**Subject:** This rule was adopted by the Municipal Debt Advisory Commission in 1983. The rule sets standards for handling bonds that are printed on paper and are paid through the mail. Bonds are now issued in electronic, book-entry form through the Depository Trust Company, and are paid by electronic transfer of funds, eliminating the need for this administrative rule.

**Rules Coordinator:** Sally Furze—(503) 378-4990

.....  
**Oregon University System,  
Eastern Oregon University  
Chapter 579**

**Rule Caption:** Amend Special Student and Course Fees.

**Adm. Order No.:** EOU 1-2007

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 5-14-07

**Notice Publication Date:** 3-1-07

**Rules Amended:** 579-020-0006

**Subject:** Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.

**Rules Coordinator:** Lara Moore—(541) 962-3368

**579-020-0006**

**Special Student Fees**

Eastern Oregon University intends to adopt by reference Special Student Fees for the 2007–08 school year

[ED NOTE: Fee list referenced is available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 3, f. & ef. 6-23-76; EOSC 8, f. & ef. 6-16-77; EOSC 6-1978, f. & ef. 10-2-78; EOSC 1-1979, f. & ef. 6-27-79; EOSC 1-1981, f. & ef. 1-12-81; EOSC 3-1981, f. & ef. 7-1-81; EOSC 2-1983, f. & ef. 12-16-83; EOSC 2-1984, f. & ef. 10-25-84; EOSC 1-1986, f. & ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89; EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EOU 1-2006, f. & cert. ef. 4-14-06; EOU 1-2007, f. & cert. ef. 5-14-07

.....  
**Oregon University System,  
Southern Oregon University  
Chapter 573**

**Rule Caption:** Special Fees

**Adm. Order No.:** SOU 1-2007

**Filed with Sec. of State:** 4-25-2007

**Certified to be Effective:** 4-25-07

**Notice Publication Date:** 2-1-07

**Rules Amended:** 573-040-0005

**Subject:** The proposed rule amendments eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect the actual costs of instruction for certain courses and special services not otherwise funded through the institution's operating budget.

**Rules Coordinator:** Treasa Sprague—(541) 552-6319

**573-040-0005**

**Special Fees**

The Special Fees for certain courses and general services approved by Southern Oregon University are hereby adopted by reference.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & OAR 580-040-0010

Hist.: SOSC 4, f. & ef. 9-2-76; SOSC 10, f. & ef. 5-9-77; SOSC 6-1978, f. & ef. 6-2-77; SOSC 8-1978, f. & ef. 12-15-78; SOSC 2-1979, f. & ef. 6-20-79; SOSC 4-1980, f. & ef. 5-20-80; SOSC 4-1980, f. & ef. 5-20-80; SOSC 2-1981, f. & ef. 6-2-81; SOSC 3-1982, f. & ef. 7-1-82; SOSC 4-1983, f. & ef. 5-26-83; SOSC 1-1984, f. & ef. 6-20-84; SOSC 4-1985, f. & ef. 6-3-85; SOSC 9-1985, f. & ef. 12-17-85; SOSC 2-1986, f. & ef. 5-30-86; SOSC 1-1987, f. & ef. 6-5-87; SOSC 4-1987, f. & ef. 9-4-87; SOSC 1-1988, f. & cert. ef. 5-19-88; SOSC 2-1988(Temp), f. & cert. ef. 9-2-88; SOSC 4-1988, f. & cert. ef. 11-23-88; SOSC 3-1989, f. & cert. ef. 6-1-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 3-1991, f. & cert. ef. 5-30-91; SOSC 1-1992, f. & cert. ef. 6-3-92; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 1-1995, f. & cert. ef. 6-7-95; SOSC 1-1996, f. & cert. ef. 6-5-96; SOU 1-1997, f. & cert. ef. 5-20-97; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 2-1999, f. & cert. ef. 5-7-99; SOU 1-2000, f. & cert. ef. 4-10-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2002, f. & cert. ef. 4-11-02; SOU 1-2003, f. & cert. ef. 4-16-03; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05; SOU 1-2006, f. & cert. ef. 3-31-06; SOU 1-2007, f. & cert. ef. 4-25-07

**Oregon University System,  
University of Oregon  
Chapter 571**

**Rule Caption:** Amend special fees, fines, penalties, and service charges — specifically for Family Housing Rental Rates.

**Adm. Order No.:** UO 9-2007

**Filed with Sec. of State:** 5-10-2007

**Certified to be Effective:** 6-29-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 571-060-0005

**Subject:** Increase in family housing rental rates to cover projected operating costs for 2007–2008

**Rules Coordinator:** Deb Eldredge—(541) 346-3082

**571-060-0005**

**Special Fees, Fines, Penalties, Service Charges**

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

(1) The fees, fines, penalties and service charges listed by reference in this rule are updated annually and copies are on file in the listed departments by July 1.

(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed with the master copy.

(4) University departments charging fees shall maintain a copy of at least that department's section of the list of special fees, fines, penalties and service charges including any updates made during the course of the fiscal year. The list and all current changes shall be available upon request to any person during regular departmental business hours.

(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15 days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of ORS 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

[ED. NOTE: Lists referenced are available from the agency.]

Stat. Auth.: ORS 351.070, 351 & 352

Stats. Implemented: ORS 351.070

Hist.: UOO 20, f. & cert. ef. 4-27-76; UOO 34(Temp), f. & cert. ef. 8-8-77; UOO 37, f. & cert. ef. 9-30-77; UOO 3-1978, f. & cert. ef. 7-1-78; UOO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UOO 4-1979, f. & cert. ef. 10-3-79; UOO 7-1980, f. 6-30-80, ef. 7-1-80; UOO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UOO 9-1981(Temp), f. & cert. ef. 6-29-81; UOO 2-1982, f. & cert. ef. 4-14-82; UOO 4-1982, f. & cert. ef. 6-10-82; UOO 4-1983, f. & cert. ef. 6-10-83; UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85; UOO 1-1986; f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert. ef. 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2001, f. 6-18-01,

# ADMINISTRATIVE RULES

cert. ef. 7-1-01; UO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UO 1-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2004, f. 5-11-04, cert. ef. 7-1-04; UO 3-2004, f. 6-30-04, cert. ef. 7-1-04; UO 6-2007, f. & cert. ef. 2-22-07; UO 8-2007, f. & cert. ef. 3-12-07; UO 9-2007, f. 5-10-07, cert. ef. 6-29-07

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## Parks and Recreation Department Chapter 736

**Rule Caption:** Integration of the Oregon State Fair rules into OPRD rules require an updated of OAR 736.

**Adm. Order No.:** PRD 5-2007

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 7-1-07

**Notice Publication Date:** 3-1-07

**Rules Adopted:** 736-201-0000, 736-201-0005, 736-201-0010, 736-201-0015, 736-201-0020, 736-201-0025, 736-201-0030, 736-201-0035, 736-201-0040, 736-201-0045, 736-201-0050, 736-201-0055, 736-201-0060, 736-201-0065, 736-201-0070, 736-201-0075, 736-201-0080, 736-201-0085, 736-201-0090, 736-201-0095, 736-201-0100, 736-201-0105, 736-201-0110, 736-201-0115, 736-201-0120, 736-201-0125, 736-201-0130, 736-201-0135, 736-201-0140, 736-201-0145, 736-201-0150, 736-201-0155, 736-201-0160, 736-201-0165, 736-201-0170, 736-201-0175, 736-201-0180

**Subject:** Integration of the Oregon State Fair (OSF) into the Oregon Parks and Recreation Department, Administrative Rules for the OSF need to be updated, made consistent with existing rules and integrated into existing rules for OPRD. OSF current OAR — Chapter 622 will be replaced and incorporated into OPRD OAR Rule 736.

**Rules Coordinator:** Pamela Berger—(503) 986-0719

### 736-201-0000

#### Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any permanent rule relating to the Oregon State Fairgrounds Park District (OSFD), the Oregon Parks and Recreation Commission shall give notice of the intended action:

(1) In the Secretary of States Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(2) By mailing a copy of the notice to persons on the Oregon Parks and Recreation Commission's mailing list established pursuant to ORS 183.335 at least 28 days before the effective date of the rule; and

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

- (a) The Associated Press;
- (b) Associated Oregon Industries;
- (c) Associated General Contractors;
- (d) OSFD interested parties list;

(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 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

### 736-201-0005

#### Definitions

(1) "OPRD" is an acronym for Oregon Parks and Recreation Department.

(2) "OSFD" is an acronym for Oregon State Fairgrounds Park District, a division of OPRD.

(3) "Director" means the Director of the Oregon Parks and Recreation Department as appointed under ORS 390.005(3).

(4) "State Fair" is the annual State Fair event held at the OSFD in Salem, Oregon.

(5) "Manager" is the person in charge of the daily business and management of OSFD and appointed by the Director.

(6) "Department" is the Oregon Parks and Recreation Department.

(7) "Oregon State Fair Division" is an internal division of OPRD.

(8) "Fair Department(s)" are various sections of State Fair activity that are divided by subject area. OSFD may add or delete Departments as necessary to reflect the interests of its participants.

(9) "Handbook" is the annual publication which lists the rules, procedures, conditions, provisions, information, and fees for participation in certain State Fair department activities and competitions as well as the awards offered.

(10) "Entry Fee" is the fee that participants pay to participate in certain Fair Department activities and/or competitions.

(11) "Permittee" is an individual, group or organization entering into a written agreement with the OSFD for use of buildings, facilities, services and equipment rental costs for a period of time for the purpose of conducting an event, such as but not limited to; expositions, meetings, conferences, tradeshows, concerts, and other types of private and public events.

(12) "Licensee" is an individual, group or organization entering into a written agreement with OSFD for the use of buildings, facilities, services and equipment for the purpose of conducting official business transactions.

(13) "Event" is an activity, meeting, attraction or other occurrence in OSFD with specific opening and closing dates and specific operating hours.

(14) "Paid Exhibit Space," are certain locations on the property during each annual State Fair for the purpose of sales and/or displays of goods and services or the dissemination of information under certain conditions and for certain fees.

(15) "Exhibitors" or "Commercial Exhibitors" are individuals, organizations, companies, or associations occupying Paid Exhibit Space locations during the annual State Fair or during other OSFD managed events.

(16) "Exhibit Areas" are various areas or zones on the OSFD property that are characterized by the type of Exhibitors occupying paid exhibit space. Such exhibit areas include but are not limited to Commercial Exhibit Areas and other commercial-style attractions.

(17) "Schedule of Rates and Fees" are the published fees and charges for facilities, buildings, services, and/or equipment rental or for operating a business on OSFD property that covers a period of time also listed in the Schedule of Rates and Fees.

(18) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon.

(19) "Weapon" includes, but is not limited to, any firearm; any destructive device; any dirk or dagger; any knife with a blade of three inches or more in length, and any snap-blade or spring-blade knife, regardless of the length of the blade; any ice pick or similar sharp stabbing tool; any straight-edge razor or any razor blade fitted to a handle; any device by whatever name known, which is designed to expel a projectile by the action of compressed air, gas, compressed spring or by any chemical action; any dangerous or deadly weapon within the meaning of any law of this state restricting the use thereof; any cutting, stabbing or bludgeoning weapon or any other device capable of inflicting grievous bodily harm.

(20) "Destructive Device" means:

(a) A projectile containing an explosive or incendiary material or any other chemical substance;

(b) Ammunition, ammunition components including, but not limited to, smokeless powder, black powder, primers and percussion caps;

(c) A bomb, grenade, missile, or similar device or any launching device therefore; or

(d) Any weapon of mass destruction including any device capable of producing injury, death or property damage by way of release or discharge of chemical or biological agents, disease or radiation.

(21) "Agents" are individual volunteers, community service groups or paid contractors officially representing OSFD or OPRD and only when performing official duties assigned by OPRD in writing.

(22) "Non-profit" is a registered non-profit, tax-exempt corporation and community focused organization authorized by IRS 501(c) 3.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

### 736-201-0010

#### Entry Fees

Entry Fees for participation in some Fair Department activities and competitions maybe established in the Handbook for each particular Fair Department.

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

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]

Stats. Implemented: ORS 565

Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

### 736-201-0015

#### Facilities Available for Rent

(1) Certain facilities located on the OSFD grounds are available for lease by Permittee(s) or Licensee throughout the calendar year, other than during the days of the annual State Fair. Permittee(s) and Licensees also have the option of renting accessory equipment owned and maintained by OSFD to augment an Event, program or attraction at these facilities.

(2) Fees and charges for facilities, buildings, services and equipment rental shall be according to OSFD current Schedule of Rates and Fees.

# ADMINISTRATIVE RULES

(3) Director or the Director's designee may waive, vary or increase, in whole or in part, the established rates and fees when it is determined that:

(a) Marketing opportunities exist to encourage use and increase revenues, or;

(b) Time frame for use varies from that specified on Schedule of Rates and Fees; or

(c) Rate change would attract business when otherwise there would be none.

(4) OSFD reserves the right to add a surcharge for facilities, buildings, services, and equipment rental for unusual and unexpected direct costs related to cleaning and repair of facilities, buildings or equipment.

(5) Rates and fees published in the Schedule of Rates and Fees cover most ordinary situations involving use of buildings, facilities, services, and equipment. Director, or the Director's designee, shall have authority to establish rates and fees at any time for buildings, facilities, services, activities and/or equipment that are not specifically listed in the Schedule of Rates and Fees.

(6) Director shall have authority to establish rates and fee categories for various segments of industry and business such as, but not limited to non-profit, volunteer and community organizations, school and governmental agencies, youth groups and youth organizations for the use of buildings, facilities, services and equipment.

(7) Director may establish written procedures for any regular and returning Permittee or Licensee and shall have authority to enter into ongoing rental and lease agreements at any time to attract or increase business.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0020

### Food Concessions

(1) All food and beverage concession items provided for sale to the public will be sold by OSFD's food contractor(s). Food contractor(s) does not charge Permittee(s) for this service, nor does Permittee(s) receive revenue from food and beverage sales.

(2) Permittees who rent facilities, buildings or locations on property for Events that are food oriented may request an exemption to provide alternative food and beverage for sale but may pay a concession fee according to the Schedule of Rates and Fees for such privilege. Permittee(s) requesting an exemption shall be required to put such proposal in writing, and shall be evaluated by the Director or the Director's designee. The evaluation of food Events shall be based on whether or not food is an integral part of Event, type of food proposed or by means in which food is prepared and OSFD's food contractor's ability to provide same service.

(3) Director, at his/her discretion, may grant an exemption to any Event to provide food and beverage sales.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0025

### Catered Events

(1) Permittees must use the food and alcohol caterer designated and licensed by OSFD. Permittees are responsible for all charges for labor and equipment specifically required for a catered Event at established rates.

(2) Director or the Director's designee may grant an exemption to any Permittee for an Event to provide food and beverage catering.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0030

### Licenses to do Business

(1) The Director or the Director's designee is authorized to issue license(s) permitting holder(s) of the license to conduct any business therein named upon the OSFD.

(2) Issuance of licenses shall be in accordance with the competitive bidding requirements for the awarding of public contracts, to extent those procedures are practicable. The funds arising there from shall become a part of the Oregon State Fair Account.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0035

### Businesses that may be licensed, Other licenses Required

(1) Licenses under ORS 565.130 issued by the Director or Director's designee permitting any business to be conducted which under the laws of this state may be conducted at any place, including the sale of malt, vinous or distilled liquor.

(2) The Director or the Director's designee shall establish permitting procedures consistent with ORS 565.130 and shall make these available upon request by interested businesses to be licensed at the OSFD.

(3) Any business so licensed by the Director or the Director's designee is not required to pay license to any city, county or state, other than to the OSFD for conducting a business upon the grounds of the Oregon State Fair.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0040

### Advertising, Canvassing, or Soliciting

(1) No advertising, canvassing or soliciting, and no dissemination of written materials is permitted on the property of OSFD, and the air space above, except by persons exhibiting as a permittee or sponsors or any other agreement entered into with OPRD. All such activity must be approved by the permittee(s) and confined to the areas within and adjacent to the facilities under the permittee(s) control. These areas include, but are not limited to, exhibit halls, barns, entrances, walkways and areas adjacent to such areas, including parking lots.

(2) No person or group shall use the properties of the OSFD to advertise products, goods, or services of a commercial nature, or solicit funds without the expressed written consent of OPRD.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0045

### Procedures for Obtaining Paid Exhibit Space

Procedures for obtaining exhibit space in a particular Exhibit Area and the associated fees, conditions, rules, and other information about exhibiting in a specific Exhibit Area shall be outlined in the Handbook for each Exhibit or Fair Department Area.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0050

### Exhibit Space Fees

(1) Fees for the use of exhibit space and any associated cost for services such as, but not limited to electricity, production, admission, and parking shall be established in the Handbook for each particular Exhibit Area.

(2) Fees, conditions, rules, and other information about exhibiting in a particular Exhibit Area published in the Handbook cover most ordinary situations involving exhibit space at the State Fair. The Director or the Director's designee shall have authority to establish fees, conditions, rules, and other information about exhibiting in a particular Exhibit Area that are not specifically listed in the Handbook.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0055

### Exhibitor Compliance Procedures

In the event an Exhibitor, Permittee or Licensee refuses to comply with fees, conditions, rules, or other information as outlined in the Handbook or License to do Business, OPRD may take appropriate action to gain compliance, up to and including requiring Exhibitor to remove furnishings and all property immediately. If not removed, furnishings and property may be stored at a fee of \$100 per day or portion thereof.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0060

### Items Prohibited on Property

(1) The following items are prohibited on OSFD property unless specifically authorized in this rule:

- Bicycles, skateboards, roller blades, scooters;
- Unauthorized vehicles;
- Unauthorized animals, reptiles, insects, arachnids and other pets;

# ADMINISTRATIVE RULES

- (d) Weapons;
- (e) Fireworks, explosives or explosive devices, and inflammables;
- (f) Alcohol or alcoholic beverages;
- (g) Controlled substances;
- (h) Any other object or objects which in the opinion of the Director or his/her designee may affect the safety and well-being of persons attending events on OSFD property; or
  - (i) Destructive Device.
- (2) Exceptions to the above prohibitions are limited to:
  - (a) Weapons of law enforcement officials and those carried by persons authorized by law to carry them when carried in a manner authorized by law;

(b) Alcoholic beverages and alcoholic beverage containers belonging to OPRD, licensed concessionaires or catering services contracting with OPRD;

(c) Prohibited items that have been permitted by OPRD by virtue of a signed agreement;

(d) Fireworks in the custody of any group operating or presenting an officially sanctioned fireworks display;

(e) Bicycles, skateboards, roller blades, scooters are permitted on the property outside the fenced areas unless they apart of an OSFD approved Event or display;

(f) Prescription Medications in the possession of the prescription and its licensees and contractors that are required in the performance of their official duties.

(g) Employees of OPRD and its licensees, contractors and agents may not carry personal prohibited items that are not necessary for the performance of their official duties;

(h) Prohibited items in the possession of Exhibitors that are necessary for daily care or preparation of animals and for showing and are used only for preparation and showing purposes; and

(i) Such prohibited items expressly permitted in writing by the Director or the Director's designee.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0065

### Inspections During State Fair and Other Controlled Events

(1) OPRD employees or agents may request, as a condition of the license or permit, that persons about to enter OSFD property, allow visual access to all purses, backpacks, briefcases, suitcases, athletic bags, packages, duffel bags, coolers, ice chests, picnic baskets, diaper bags, strollers, carts and other similar items capable of concealing prohibited items ("containers").

(2) OPRD staff or agents requesting such an inspection shall do so outside the fairgrounds gates or such other reasonable places as designated by the Director or his/her designee. The person(s) entering the facility may be asked by OSFD staff or agents to reveal the items in the container. Staff or agents shall inform person(s) in possession of containers to which the inspection request pertains, are free to decline the inspection and may receive a refund of the price of the ticket and parking (if admission or parking fees were incurred) upon surrender of their tickets. Alternatively, the persons may discard the container or prohibited item(s).

(3) Most searches are visual. At the option of OPRD staff, agents or law enforcement officers, other search measures may be employed, including but not limited to electronic, chemical or physical inspections such as "pat downs."

(4) Possession of Weapons or controlled substances at anytime on OSFD property may be reported to law enforcement officials.

(5) If a person possesses one or more prohibited item inside a OSFD building or facility, shall be considered to have violated the license to enter. The license shall be revoked and the person(s) shall be requested to leave the property by an OPRD employee or agent. A refusal or failure to leave the property following such a request can cause the person(s) to be in trespass.

(6) If a refund is requested under the provisions of section 2 of this rule, a bearer coupon shall be completed and delivered promptly by OPRD officials. Such a coupon shall specify the location, date, and refund to be made. This bearer coupon may be redeemed at the nearest admission booth or mailed within 30 days to the OSFD business office, along with parking and admission tickets for reimbursement.

(7) Prohibited items which may be seen without inspection are subject to the same consequences as specified in section (5) of this rule.

(8) Signs shall be displayed at entrances to the facility generally identifying prohibited items, and providing notification of the request for inspection.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0070

### Activities Prohibited on Property

No person or group shall participate in loud, rude or unreasonable behavior; disturb the public peace; make threatening comments, actions or gestures towards others; obstruct the use and enjoyment of any facility, area or event; act in a disorderly manner; or participate in any behavior or activity which in the opinion of the Director, or the Director's designee, may affect the safety and well-being of persons attending events at the OSFD.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0075

### Conducting Business on or Near Grounds of Fair

No person shall set up any shop, booth, wagon or other vehicle for the sale of spirituous or other liquors, cigars, provisions or other article of traffic. No person shall sell or otherwise dispose of any liquors, cigars, goods or services, wares, merchandise, meals or any article of traffic on the grounds of the OSFD, or within one-half mile of grounds, without having paid OSFD a licensing fee for the privilege, or obtain written consent from OSFD.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0080

### Admission to Fairs Except through Special Gates Prohibited

(1) No person shall gain admission, or attempt to gain admission, to the grounds of the OSFD during the annual State Fair, or at any public event or meetings on the grounds of the OSFD, except through special gates or entrances kept or directed by the OSFD.

(2) The Director, or the Director's designee, may set the prices of admission, licenses and all matters pertaining to the conducting of the annual State Fair, exhibitions or other public events or meetings on OSFD property or within OSFD buildings and facilities.

(3) The Director, or the Director's designee, may change or alter gates for admission and use other means to manage traffic flow such as directional signs to manage Event traffic or to control the flow of traffic to and from the OSFD with assistance from OPRD employees, contractors or agents.

(4) The Director, or the Director's designee, may control and set the opening and closing times of gates for admission to the annual State Fair, exhibitions and other public events or meetings at OSFD.

(5) The Director, or the Director's designee may establish procedures for the control and management of signs, banners and other promotional materials on display on and around the OSFD gates, entrances, parking lots and other OSFD areas viewable by the public.

(6) Admission coupons or admission discounts may be honored if they are officially endorsed by OPRD prior to the Event or annual State Fair.

(7) OPRD staff and agents may refuse any person(s) admission through any gated area or entry if the person(s) refuses to pay the designated admission fee or charge.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0085

### Returned Checks

The OPRD may assess a reasonable fee, similar to bank charges and fees, for each personal or business check returned for non-payment. The fee may be assessed in addition to any legal remedies the OPRD may pursue to effect collection of the returned items.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0090

### Credit Card Returns

The OPRD may assess a reasonable fee, similar to bank charges, for each accepted credit card charge returned for non-payment. The fee may be

# ADMINISTRATIVE RULES

assessed in addition to any legal remedies the OPRD may pursue to effect collection of the returned items.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0095

### Late Payments

The OPRD may assess a fee of 1.5% per month or portion thereof on any unpaid balances due to OPRD if not paid within 30 days of billing. The fee may be assessed in addition to any legal remedies the OPRD may pursue to effect collection of the late payments.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0100

### Photocopying Charges

The OPRD may provide photocopies of public records for a copying fee listed in the Schedule of Rates and Fees. OPRD reserves the right to set a maximum number of copies allowed per person.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0105

### Facsimile Machine Usage

The OPRD may make its facsimile machine available for public usage at rates listed in the Schedule of Rates and Fees. OPRD reserves the right to set a maximum number of pages per person, time of use and proper procedures for fax usage.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0110

### Shipping and Mailing Charges

The OPRD may allow shipping and mailing for public usage at rates listed in the Schedule of Rates and Fees. OPRD reserves the right to set a maximum number of items to be shipped or mailed per person or organization from the OSFD location.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0115

### Additional Services & Support Charges

The OPRD may add additional service and support charges listed in the Schedule of Rates and Fees when applicable such as, but not limited to; service charges for additional cleaning, repair of damages or moving of items left in a OSFD building or facility.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0120

### Storage of Items left on Grounds

OPRD may store items left on OSFD property after the annual State Fair, program, event or exhibition and charge a storage fee listed in the Schedule of Rates and Fees. OPRD reserves the right to set a maximum number of days items may be stored on site. All items left or abandoned on grounds may be disposed of by OPRD.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0125

### State Fair Advisory Committee

(1) Pursuant to ORS 565.021 and 565.030 the Director shall appoint a State Fair Advisory Committee to provide advice and assistance to the Director on matters regarding the operation of the annual State Fair.

(2) The advisory committee shall consist of seven members appointed by the Director for four-year terms. The director shall appoint:

(a) A resident from each of the five congressional districts of Oregon. The director shall seek to ensure that those persons reflect a broad-based representation of the industrial, educational and cultural interests that are active in state fair programs, contests and exhibits;

(b) Two persons to represent county fair interests. The Director may give consideration to nominations suggested by the County Fair Commission established under ORS 565.410;

(c) The Director may stagger the terms of office of the members of the advisory committee to ensure that the terms of office do not expire at the same time.

(3) The members of the advisory committee serve at the pleasure of the director. The director may fill a vacancy on the advisory committee by appointing a person to fill the unexpired term.

(4) Each member of the advisory committee is entitled to compensation and reimbursement of expenses, as provided in ORS 292.495.

(5) The advisory committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the performance of the functions of those offices as determined by the advisory committee.

(6) The advisory committee shall meet at the call of the director. The director shall give consideration to calling a meeting at the request of a majority of the advisory committee.

(7) The principal duty of the advisory committee is to advise the director and staff on the implementation of the State Fair Business Plan, as adopted by the Oregon Parks and Recreation Commission, and to evaluate the performance of the fair operations as measured against the objectives set forth in the business plan.

(8) Administrative support to the advisory committee shall be provided by the director's office of the OPRD.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0130

### Oregon State Fair Established

Under ORS 565.040, there is a state institution to be designated and know as the OSFD, which shall be administered and operated by the State Parks and Recreation Department (OPRD).

(1) The Director, at the Director's discretion, may present business plans and policies for the operation and management of the OSFD before the OPRD Commission for affirmation and approval or for informational purposes.

(2) The Director may develop and implement policies, process and procedures for the operation and execution of the annual State Fair.

(3) The Director may delegate authority for the day-to-day business decisions to the Manager, appointed by the Director.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0135

### State Fair Purposes; Use & Management of Property

(1) The objects and purposes of the OSFD are to disseminate knowledge concerning, and to encourage the growth and prosperity of all agricultural, stock raising, horticultural, mining, mechanical, artistic and industrial pursuits in this state. The Director shall operate the business and properties of the OSFD as a year-round fair and exposition center, display historical objects and do all things necessary to expedient for full utilization of the properties and facilities of the annual State Fair and as an exposition center.

(2) The Director, or the Director's designee, shall conduct an annual state fair for a period of not more than 17 days duration beginning and ending on such dates as the Director considers appropriate. The Director or the Director's designee may set the hours of the annual State Fair and other public events.

(3) The Director, or the Director's designee shall have care of the OSFD property and be entrusted with the direction of its business and financial affairs. The Director shall prepare, adopt, publish and enforce all necessary rules for the management of the Oregon State Fair, its meetings and exhibitions and for the guidance of its officers or employees.

(4) The Director, or the Director's designee, may appoint all necessary marshals to keep order on the grounds and in buildings of the OSFD during all exhibitions. The marshals so appointed shall be vested with the same authority for such purposes as executive peace officers are vested by law.

(5) The Director, or the Director's designee, shall establish charges for entrance fees, gate money, lease stalls, parking space, buildings, restaurant sites; conduct shows and concerts, exhibitions, races and all manner of business notwithstanding the provisions of ORS 227.286 and do all other things the Director considers proper in the operation of a year-round fair and exposition center and the annual State Fair.

# ADMINISTRATIVE RULES

(6) The Director, or the Director's designee, may enter into sponsorship agreements for the receipt of moneys, services, products or other items of value. A sponsorship agreement entered into under this section is not subject to ORS 279.835 to 279.855 of Chapter 279A or 279B.

(7) The Director, or the Director's designee, may enter into sponsorship agreements with private business, individuals, corporations or public or non-profit entity that exchanges financial and other valuable consideration for the privilege of conducting promotional, advertising, educational, product and service activities in association with the OSFD programs, activities, events, grounds and facilities.

(8) The Director, or the Director's designee, for the successful sponsorships for the benefit of OSFD, may allow the provision of tickets and other promotional items, facilities, supplies, staff and services by OSFD for use by such a sponsor in connection with events, activities and programs, buildings and facilities at the OSFD.

(9) The Director or the Director's designee to help encourage the successful sponsorship for the benefit of the OSFD, may waive fees and charges listed in the Schedule of Rates and Fees for use by the sponsor in order to encourage additional business or sponsorship activities.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0140

### Location of State Fair, Acquisitions of Adjacent Lands, Repair of Facilities

(1) OSFD shall be permanently located on the present grounds now owned by the state and heretofore devoted to the OSFD purposes, located in the City of Salem, in Marion County. The OSFD and such additional lands as may be obtained by the OPRD for the purpose of the OSFD is dedicated for the use of the annual State Fair and for other year-round exposition center and other departmental programs.

(2) The Director may obtain by donation, exchange or purchase such lands adjacent to the present grounds, including improvements thereon, as it may deem necessary in the operation of the OSFD and for other departmental programs, activities and events.

(3) The Director may repair, alter, construct, furnish and equip buildings, facilities and equipment at OSFD as the Director deems appropriate.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0145

### Acceptance and Disposition of Gifts, Grants and Donations

(1) As authorized under ORS 565.109 to 565.116, the Director may accept on behalf of OSFD any gifts, grants and donations of moneys, property or any other valuable thing on behalf of OSFD from public and private sources for the purposes set out in ORS 565.109 and 565.144. Any prospective donor may contact the Director or the Director's designee to consult or to propose making gifts, grants or donations of any value stipulating conditions or limitations, if any.

(2) Gifts, grants and donations approved under section (1) of this rule will be received by the Director or an appointed designee of the Director. Funds will be deposited in appropriate separate trust account to be used for the purposes for which the gifts, grants or donations are made. When no specific designations are made by the donor, OPRD shall deposit such amounts in a separate account for general OSPD improvements, programs and fair enhancements. When the Director determines that any stipulation or limitation imposed by the donor will result in violation of any applicable law or is contrary to any rules or policies, the Director or designee shall decline acceptance of such donation or gift.

(3) All donations or gifts must be approved by the Director or the Director's designee. Gifts and donations must be:

(a) Compatible with the OPRD master plans or, in areas not covered by such plans, compatibility with existing facilities, buildings, entrances, security, fire lanes and property uses; or

(b) Of a compatibility nature with the local conditions; or

(c) Of an age or the general condition of the donation and the anticipated maintenance or repair costs; or

(d) Of any anticipated maintenance costs and on-going service requirements can be maintained.

(4) The Director or the Director's designee may accept in-kind and voluntary service donations associated with improvement of the grounds, facilities, programs and Events at the OSFD. Non-profits, service organizations, their agents and volunteers, may assist in the planning, organizing and execution of service projects on the property or within facilities at OSFD.

(5) The Director or the Director's designee may enter into agreements with non-profit and volunteer service organizations for the purpose of planning, organizing and executing service projects on the property, during the annual state fair and during any other public event or exhibition. The Director may, at his/her discretion, pay a stipend to a service or community organization for services at the OSFD or during the annual state fair or any other public event or exhibition.

(6) The Director or the Director's designee for the successful solicitation of gifts, grants, donations, voluntary service by a nonprofit or community service organization for the benefit of OSFD, may allow the provision of tickets and other promotional items, facilities, supplies, staff and services by OSFD for use by such an organization in connection with fundraising efforts or service projects that improve the property, facilities, programs, events and the neighboring community.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0150

### Cooperating Non-Profit Organizations

(1) As authorized under ORS 565.116, the Director may cooperate with any non profit, tax exempt organization designated as appropriate, to solicit gifts, grants and donations for the benefit of the OSFD property, facilities, buildings, programs and events.

(2) The Director may cooperate with any nonprofit, tax-exempt organization designated by the director as an appropriate organization to solicit gifts, grants and donations for the benefit of the Oregon State Fair:

(a) The Director may enter into agreements with and pay a stipend to a nonprofit organization to provide services, programs and events at OSFD;

(b) The Director may accept donations in the form of donations of services, in-kind support, volunteer labor and other services from any nonprofit organization.

(3) The Director may advise and receive advice from an organization described in section (1) of this rule. The Director may, if allowed by the charter and bylaws of the organization, serve as a regular or nonvoting board member of the organization. The director may not chair the board of directors, vote for or appoint other board members, control the financial affairs of the organization or oversee the day-to-day operation of the organization.

(4) The Director may provide tickets, promotional items and facilities to the organization without charge for use in increasing the ability of the organization to successfully solicit gifts, grants and donations, including in-kind and voluntary service donations for the benefit of the OSFD facilities, buildings, property, programs and events.

(5) The Director may provide additional supplies, staff and services to the organization at cost for use in increasing the ability of the organization to successfully solicit gifts, grants and donations for the benefit of the OSFD.

(6) The Director shall submit an annual accounting report to an appropriate committee of the Legislative Assembly designated by the Speaker of the House of Representatives and the President of the Senate. The report must contain a detailed description of all tickets, promotional items, facilities, supplies, staff and services provided under of this rule, the specific disposition or application thereof made by the organization and any resulting benefit to the OSFD.

(7) The director may enter into agreements for the donation to the Oregon State Fair of goods, services and public improvements by a nonprofit, tax-exempt organization.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0155

### Buildings and Facilities for 4-H and FFA Programs, Exhibits and Contests

The buildings and facilities that are planned, constructed, altered, furnished and equipped by OPRD on OSFD property, as authorized by Chapter 42, Oregon Laws 1957, shall be used primarily for the housing and dining of members of the 4-H Clubs and of the Future Farmers of America (FFA) and for the exhibit and contest space for non livestock exhibits of both groups.

(1) 4-H and FFA designated buildings and facilities shall be available for other groups at times other than during the State Fair and as authorized by OSFD.

(2) The Director may provide alternative forms of housing as repairs, new development and alterations are made to buildings and facilities on OSFD property.

# ADMINISTRATIVE RULES

(3) The Director may put into to place applicable building rules, regulations and procedures for the safe use of the buildings and facilities on OSFD property.

(4) The Director may provide alternative forms exhibits space as repairs, new development and alterations are made to buildings and facilities on OSFD property.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0160

### Armory on Grounds of Oregon State Fair

(1) When the construction of an armory containing an auditorium is authorized under ORS 396.505 to 396.545 in Marion County, if OPRD and the General Staff of the Oregon National Guard arrive at a mutually satisfactory agreement for the use of the armory by OPRD, OPRD may, notwithstanding the provisions of ORS 565.090, permit such armory to be constructed on the OSFD property and grant control over such armory and grounds to the General Staff for the period that such armory and grounds are used for military purposes. When such armory and grounds are no longer primarily used for military purposes, the control of the them shall revert to OPRD.

(2) For the purposes of the section "control" does not include the power to sell, lease, mortgage or in any other way encumber an armory constructed under section 1.

(3) The Director, or the Director's designee, may enter into agreements with the Oregon National Guard for the use of the armory building and facility during the annual State Fair and other OSFD controlled events.

(4) The Director may put into to place applicable building rules, regulations and procedures for the safe use of the buildings and facilities on OSFD property including armory constructed under section 1.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0165

### Horse Barn Facilities on Grounds

(1) The Director shall plan, construct, alter, furnish and equip horse barn facilities at the OSFD suitable for stabling horses. These facilities shall also include restrooms suitable for public use.

(2) The Director shall also plan, construct, alter, furnish and equip storm sewers on grounds of the OSFD.

(3) The Director, or the Director's designee, may provide alternative forms of horse barn facilities as repairs, new development and alterations are made to buildings and facilities on OSFD property.

(4) The Director or the Director's designee may put into to place applicable rules, regulations and procedures for the safe use of the buildings and facilities on OSFD property.

(5) The Director may contract with or enter into agreements for the management and oversight and set forth specific uses of the horse barn facilities on OSFD property.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0170

### County Exhibits at State Fair

(1) The Director or the Director's designee shall plan, construct, alter, furnish and equip on the grounds of the OSFD a facility suitable for housing Oregon county exhibits.

(2) The Director, or the Director's designee, shall develop procedures for Oregon county's participation at the annual State Fair including but not limited to the size and location of exhibit space, the move-in move-out times and other procedures for exhibiting at the annual State Fair.

(3) The Director, or the Director's designee, may encourage county participation by providing financial incentives and other forms of support and services allowing for county representation at the annual State Fair.

(4) The Director, or the Director's designee, may encourage county participation in a regional format in order to share resources to encourage county and regional representation in the state at the annual State Fair.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0175

### Protest Procedures

(1) Any protest of OPRD or OSFD actions under chapter 736 division 245 must be in writing and delivered in person or by certified mail to the Manager within 10 business days of occurrence.

(2) If protester's satisfaction is not achieved, written protest may be delivered in person or by certified mail to the Director within five (5) business days of receipt of response from Manager. The decision of the Director shall be final.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## 736-201-0180

### Sanctions

(1) Any person or group violating the division of rule shall be the basis for revocation of the person(s) or group's license and subject to being requested to promptly leave the OSFD property. Any person(s) or group whose failure to promptly leave the property upon request of OPRD personnel, agents or law enforcement officials shall be considered trespass.

(2) The peace officers of the OSFD, during the continuance of each annual State Fair or other public event or meeting, and for three days prior and two days subsequent thereto, when on the property, shall have the authority of a deputy sheriff and may make arrests for violations of the provisions of ORS 565.610 to 565.630 or other laws of this state, or the rules or regulations of OPRD.

(3) The OPRD employee and agents shall allow access to all buildings and facilities in order for peace officers to enforce laws of this state, or rules or regulations of OSFD.

Stat. Auth.: ORS 565.060 [Amended by 1977 c.55 §18; 2005 c.777 §25]  
Stats. Implemented: ORS 565  
Hist.: PRD 5-2007, f. 5-15-07, cert. ef. 7-1-07

## Public Utility Commission Chapter 860

**Rule Caption:** Amends rules relating to sanctions for attachments to utility poles and facilities.

**Adm. Order No.:** PUC 2-2007

**Filed with Sec. of State:** 4-16-2007

**Certified to be Effective:** 4-16-07

**Notice Publication Date:** 7-1-06

**Rules Amended:** 860-028-0120, 860-028-0130, 860-028-0140, 860-028-0150, 860-028-0170, 860-028-0180, 860-028-0190, 860-028-0230

**Subject:** These rules and amendments establish more comprehensive joint use rules for electric and communication operators that attach to utility poles. These amendments expand and clarify rules related to the duties of occupants, and to the sanctioning process and sanction amounts for violations of rules related to joint use of electric and communications facilities.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-028-0120

### Duties of Pole Occupants

(1) Except as provided in sections (2) and (3) of this rule, a pole occupant attaching to one or more poles of a pole owner must:

(a) Have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

(b) Have a permit issued by the pole owner for each pole on which the pole occupant has attachments;

(c) Install and maintain the attachments in compliance with the written contracts required under subsection (1)(a) of this rule and with the permits required under subsection (1)(b) of this rule; and

(d) Install and maintain the attachments in compliance with Commission safety rules.

(2) A pole occupant that is a government entity is not required to enter into a written contract required by subsection (1)(a) of this rule, but when obtaining a permit from a pole owner under subsection (1)(b) of this rule, the government entity must agree to comply with Commission safety rules.

(3) A pole occupant may install a service drop without the permit required under subsection (1)(b) of this rule, but the pole occupant must:

(a) Apply for a permit within seven days of installation;

(b) Except for a pole occupant that is a government entity, install the attachment in compliance with the written contract required under subsection (1)(a) of this rule; and

(c) Install the service drop in compliance with Commission safety rules.

(4) A pole occupant must repair, disconnect, isolate, or otherwise correct any violation that poses an imminent danger to life or property immediately after discovery. If the pole owner performs the corrections, a pole

# ADMINISTRATIVE RULES

occupant must reimburse the pole owner for the actual cost of correction. Reimbursement charges imposed under this section must not exceed the actual cost of correction.

(5) Upon receipt of a pole owner's notification of violation, a pole occupant must respond either with submission of a plan of correction within 60 calendar days or with a correction of the violation within 180 calendar days.

(a) If a pole occupant fails to respond within these deadlines, the pole occupant is subject to sanction under OAR 860-028-0150(2).

(b) If a pole occupant fails to respond within these deadlines and if the pole owner performs the correction, the pole occupant must reimburse the pole owner for the actual cost of correction attributed to violations caused by the occupant's non-compliant attachments. Reimbursement charges imposed under this section must not exceed the actual cost of correction attributed to the occupant's attachments.

(6) A pole occupant must correct a violation in less than 180 days if the pole owner notifies an occupant that the violation must be corrected within that time to alleviate a significant safety risk to any operator's employees or a potential risk to the general public. A pole occupant must reimburse the pole owner for the actual cost of correction caused by the occupant's non-compliant attachments made under this section if:

(a) The owner provides reasonable notice of the violation; and

(b) The occupant fails to respond within timelines set forth in the notice.

(7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.

Stat. Auth.: ORS 183, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0120 & 860-034-0820; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0130

### Sanctions for Having No Contract

(1) Except as provided in section (2) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0060(2). The sanction may not exceed \$500 per pole. This rule does not apply to:

(a) A pole occupant that is a government entity; or

(b) A pole occupant operating under an expired or terminated contract and participating in good faith efforts to negotiate a contract or engaged in formal dispute resolution, arbitration, or mediation regarding the contract; or

(c) A pole occupant operating under a contract that is expired if both pole owner and occupant are unaware that the contract expired and both carry on business relations as if the contract terms are mutually-agreeable and still applicable.

(3) Sanctions imposed pursuant to this rule will be imposed no more than once in a 365 day period.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0130 & 860-034-0830; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0140

### Sanctions for Having No Permit

(1) Except as provided in section (3) of this rule, a pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(b), except as provided in OAR 860-028-0120(3).

(2) Sanctions imposed under this rule may not exceed:

(a) Five times the current annual rental fee per pole if the violation is reported by the occupant to the owner and is accompanied by a permit application or is discovered through a joint inspection between the owner and occupant and accompanied by a permit application; or

(b) \$100 per pole plus five times the current annual rental fee per pole if the violation is reported by the owner in an inspection in which the occupant has declined to participate.

(3) Sanctions imposed pursuant to this rule may be imposed no more than once in a 60 day period.

(4) A pole owner may not impose new sanctions for ongoing violations after the initial 60 day period if:

(a) The occupant filed a permit application in response to a notice of violation; or

(b) The notice of violation involves more than the threshold number of poles, as defined in OAR 860-028-0020(32), and the parties agree to a longer time frame to complete the permitting process.

(5) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0140 & 860-034-0840; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0150

### Sanctions for Violation of Other Duties

(1) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(1)(c), (1)(d), or (3). Sanctions imposed for these violations may not exceed \$200 per pole.

(2) A pole owner may impose a sanction on a pole occupant that is in violation of OAR 860-028-0120(5). Sanctions imposed under this section must not exceed 15 percent of the actual cost of corrections incurred under OAR 860-028-0120(5).

(3) Sanctions and charges imposed under sections (1) and (2) of this rule do not apply if:

(a) The occupant submits a plan of correction in compliance with OAR 860-028-0170 within 60 calendar days of receipt of notification of a violation; or

(b) The occupant corrects the violation and provides notification of the correction to the owner within 180 calendar days of receipt of notification of the violation.

(4) If a pole occupant submits a plan of correction in compliance with OAR 860-028-0170 and fails to adhere to all of the provisions and deadlines set forth in that plan, the pole owner may impose sanctions for the uncorrected violations documented within the plan.

(5) Notwithstanding the timelines provided for in section (3) of this rule, a pole owner must notify the occupant immediately of any violations occurring on attachments that are newly-constructed and newly-permitted by the occupant or are caused by the occupant's transfer of currently-permitted facilities to new poles. The occupant must immediately correct the noticed violation. If the violation is not corrected within five days of the notice, the pole owner may immediately impose sanctions.

(a) Sanctions may be imposed under this section only within 90 calendar days of the pole occupant providing the pole owner with a notice of completion.

(b) Sanctions under this section will not be charged to the pole occupant if the violation is discovered in a joint post-construction inspection between the pole owner and pole occupant, or their respective representatives, and is corrected by the pole occupant within 60 calendar days of the joint post-construction inspection or within a mutually-agreed upon time.

(c) If the pole occupant performs an inspection and requests a joint post construction inspection, the pole owner's consent to such inspection must not be unreasonably withheld.

(6) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0150 & 860-034-0850; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0170

### Plans of Correction

(1) A plan of correction must, at a minimum, set out:

(a) Any disagreement, as well as the facts on which it is based, that the pole occupant has with respect to the violations alleged by the pole owner in the notice;

(b) The pole occupant's suggested compliance date, as well as reasons to support the date, for each pole that the pole occupant agrees is not in compliance with OAR 860-028-0120.

(2) If a pole occupant suggests a compliance date of more than 180 days following receipt of a notice of violation, then the pole occupant must show good cause.

(3) Upon its receipt of a plan of correction that a pole occupant submits under OAR 860-028-0150(3)(a), a pole owner must give notice of its acceptance or rejection of the plan.

(a) If the pole owner rejects the plan, then it must set out all of its reasons for rejection and, for each reason, must state an alternative that is acceptable to it;

(b) The pole occupant's time for compliance set forth in the plan of correction begins when the plan of correction is mutually agreed upon by both the pole owner and the occupant.

(c) If a plan of correction is divisible and if the pole owner accepts part of it, then the pole occupant must carry out that part of the plan.

(d) If a pole occupant submits a plan, the pole occupant must carry out all provisions of that plan unless the pole owner consents to a submitted plan amendment.



# ADMINISTRATIVE RULES

(4) Pole occupants submitting a plan of correction must report to the pole owner all corrections completed within the timelines provided for within the plan.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0170 & 860-034-0870; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0180

### Removal of Occupant Pole Attachments

(1) If the pole occupant fails to meet the time limitations set out in OARs 860-028-0120, 860-028-0130, 860-028-0140, or 860-028-0150 by 180 or more days, then the pole owner may request an order from the Commission authorizing removal of the pole occupant's attachments. Nothing in this section precludes a party from pursuing other legal remedies.

(2) This rule does not apply to a pole occupant that is a government entity.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0180 & 860-034-0880; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0190

### Notice of Violation

A pole owner that seeks, under these rules, any type of relief against a pole occupant for violation of OAR 860-028-0120 must provide the pole occupant notice of each attachment allegedly in violation of the rule, including the provision of the rule each attachment allegedly violates; an explanation of how the attachment violates the rule; and the pole number and location, including pole owner maps and GPS coordinates, if available.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0190 & 860-034-0890; PUC 2-2007, f. & cert. ef. 4-16-07

## 860-028-0230

### Pole Attachment Rental Reductions

(1) Except as provided in section (3), a licensee must receive a rental reduction.

(2) The rental reduction must be based on ORS 757.282(3) and applicable administrative rules.

(3) A pole owner or the Commission may deny the rental reduction to a licensee, if either the pole owner or the Commission can show that:

(a) The licensee caused serious injury to the pole owner, another pole joint-use entity, or the public resulting from non-compliance with Commission safety rules and Commission pole attachment rules or its contract or permits with the pole owner;

(b) The licensee does not have a written contract with the pole owner that specifies general conditions for attachments on the poles of the pole owner;

(c) The licensee engaged in a pattern of failing to obtain permits issued by the pole owner for each pole on which the pole occupant has attachments;

(d) The licensee engaged in a pattern of non-compliance with its contract or permits with the pole owner, Commission safety rules, or Commission pole attachment rules;

(e) The licensee engaged in a pattern of failing to respond promptly to the pole owner, Commission Staff, or civil authorities in regard to emergencies, safety violations, or pole modification requests; or

(f) The licensee engaged in a pattern of delays, each delay greater than 45 days from the date of billing, in payment of fees and charges that were not disputed in good faith, that were filed in a timely manner, and are due the pole owner.

(4) A pole owner that contends that a licensee is not entitled to the rental reduction provided in section (1) of this rule must notify the licensee of the loss of reduction in writing. The written notice must:

(a) State how and when the licensee violated either the Commission's rules or the terms of the contract;

(b) Specify the amount of the loss of rental reduction that the pole owner contends the licensee should incur; and

(c) Specify the amount of any losses that the conduct of the licensee caused the pole owner to incur.

(5) If the licensee wishes to discuss the allegations of the written notice before the Joint-Use Association (JUA), the licensee may request a settlement conference. The licensee must provide notice of its request to the

pole owner and to the JUA. The licensee may also seek resolution under section (6) of this rule.

(6) If the licensee wishes to contest the allegations of the written notice before the Commission, the licensee must send its response to the pole owner, with a copy to the Commission. The licensee must also attach a true copy of the written notice that it received from the pole owner.

(a) Upon receipt of a request, the Commission Staff must, within 30 days, provide to the parties a recommended order for the Commission;

(b) Either party may, within 30 days of receipt of the recommended order, submit written comments to the Commission regarding the recommended order;

(c) Upon receipt of written comments, the Commission must, within 30 days, issue an order.

(7) Except for the rental reduction amount in dispute, the licensee must not delay payment of the pole attachment rental fees due to the pole owner.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040, 757.035, 757.270-290, 759.045 & 759.650-675  
Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0230 & 860-034-0930; PUC 2-2007, f. & cert. ef. 4-16-07

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**Rule Caption:** Adopts and amends rules governing attachment to utility poles, conduits and facilities.

**Adm. Order No.:** PUC 3-2007

**Filed with Sec. of State:** 4-16-2007

**Certified to be Effective:** 4-16-07

**Notice Publication Date:** 7-1-06

**Rules Adopted:** 860-028-0050, 860-028-0060, 860-028-0070, 860-028-0080, 860-028-0100, 860-028-0115

**Rules Amended:** 860-028-0020, 860-028-0110, 860-028-0310

**Subject:** These rules and amendments establish more comprehensive joint use rules for electric and communication operators that attach to utility poles. These rules and amendments provide clarified and expanded definitions, address owner-occupant contracts (i.e., presumptively reasonable rates, terms and conditions), dispute resolution processes, attachment installation practices and duties of facilities owners.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-028-0020

### Definitions for Pole and Conduit Attachment Rules

For purposes of this Division:

(1) "Attachment" has the meaning given in ORS 757.270 and 759.650.

(2) "Authorized attachment space" means the usable space occupied by one or more attachments on a pole by an occupant with the pole owner's permission.

(3) "Carrying charge" means the costs incurred by the owner in owning and maintaining poles or conduits. The carrying charge is expressed as a percentage. The carrying charge is the sum of the percentages calculated for the following expense elements, using owner's data from the most recent calendar year and that are publicly available to the greatest extent possible:

(a) The administrative and general percentage is total general and administrative expense as a percent of net investment in total plant.

(b) The maintenance percentage is maintenance of overhead lines expense or conduit maintenance expense as a percent of net investment in overhead plant facilities or conduit plant facilities.

(c) The depreciation percentage is the depreciation rate for gross pole or conduit investment multiplied by the ratio of gross pole or conduit investment to net investment in poles or conduit.

(d) Taxes are total operating taxes, including, but not limited to, current, deferred, and "in lieu of" taxes, as a percent of net investment in total plant.

(e) The cost of money is calculated as follows:

(A) For a telecommunications utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding;

(B) For a public utility, the cost of money is equal to the rate of return on investment authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding; or

(C) For a consumer-owned utility, the cost of money is equal to the utility's embedded cost of long-term debt plus 100 basis points. Should a consumer-owned utility not have any long-term debt, then the cost of

# ADMINISTRATIVE RULES

money will be equal to the 10-year treasury rate as of the last traded day for the relevant calendar year plus 200 basis points.

(4) "Commission pole attachment rules" mean the rules provided in OAR chapter 860, division 028.

(5) "Commission safety rules" has the meaning given in OAR 860-024-0001(1).

(6) "Conduit" means any structure, or section thereof, containing one or more ducts, manholes, or handholes, used for any telephone, cable television, electrical, or communications conductors or cables, owned or controlled, in whole or in part, by one or more public, telecommunications, or consumer-owned utilities.

(7) "Consumer-owned utility" has the meaning given in ORS 757.270.

(8) "Duct" means a single enclosed raceway for conductors or cables.

(9) "Government entity" means a city, a county, a municipality, the state, or other political subdivision within Oregon.

(10) "Licensee" has the meaning given in ORS 757.270 or 759.650. "Licensee" does not include a government entity.

(11) "Make ready work" means engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities. Make ready work costs are non-recurring costs and are not contained in carrying charges.

(12) "Net investment" means the gross investment, from which is first subtracted the accumulated depreciation, from which is next subtracted related accumulated deferred income taxes, if any.

(13) "Net linear cost of conduit" is equal to net investment in conduit divided by the total length of conduit in the system.

(14) "Notice" means written notification sent by mail, electronic mail, telephonic facsimile, or other means previously agreed to by the sender and the recipient.

(15) "Occupant" means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.

(16) "Owner" means a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities.

(17) "Pattern" means a course of behavior that results in a material breach of a contract, or permits, or in frequent violations of OAR 860-028-0120.

(18) "Percentage of conduit capacity occupied" means:

(a) When inner ducts are used, the product of the quotient of the number "one," divided by the number of inner ducts, multiplied by the quotient of the number "one," divided by the number of ducts in the conduit [i.e.,  $(1/\text{Number of Inner Ducts} \geq 2)) \times (1/\text{Number of Ducts in Conduit})$ ]; or

(b) When no inner ducts are used, the quotient of the number "one," divided by the number of ducts in the conduit [i.e.,  $(1/\text{Number of Ducts in Conduit})$ ].

(19) "Periodic Inspection" means any inspection done at the option of the owner, including a required inspection pursuant to division 024, the cost of which is recovered in the carrying charge. Periodic inspections do not include post construction inspections.

(20) "Permit" means the written or electronic record by which an owner authorizes an occupant to attach one or more attachments on a pole or poles, in a conduit, or on support equipment.

(21) "Pole" means any pole that carries distribution lines and that is owned or controlled by a public utility, telecommunications utility, or consumer-owned utility.

(22) "Pole cost" means the depreciated original installed cost of an average bare pole to include support equipment of the pole owner, from which is subtracted related accumulated deferred taxes, if any. There is a rebuttable presumption that the average bare pole is 40 feet and the ratio of bare pole to total pole for a public utility or consumer-owned utility is 85 percent, and 95 percent for a telecommunications utility.

(23) "Post construction inspection" means work performed to verify and ensure the construction complies with the permit, governing agreement, and Commission safety rules.

(24) "Preconstruction activity" means engineering, survey and estimating work required to prepare cost estimates for an attachment application.

(25) "Public utility" has the meaning given in ORS 757.005.

(26) "Serious injury" means "serious injury to person" or "serious injury to property" as defined in OAR 860-024-0050.

(27) "Service drop" means a connection from distribution facilities to the building or structure being served.

(28) "Special inspection" means an owner's field visit made at the request of the licensee for all nonperiodic inspections. A special inspection does not include preconstruction activity or post construction inspection.

(29) "Support equipment" means guy wires, anchors, anchor rods, and other accessories of the pole owner used to support the structural integrity of the pole to which the licensee is attached.

(30) "Surplus ducts" means ducts other than:

(a) Those occupied by the conduit owner or a licensee;

(b) An unoccupied duct held for emergency use; or

(c) Other unoccupied ducts that the owner reasonably expects to use within the next 60 months.

(31) "Telecommunications utility" has the meaning given in ORS 759.050.

(32) "Threshold number of poles" means 50 poles, or one-tenth of one percent (0.10 percent) of the owner's poles, whichever is less, over any 30 day period.

(33) "Unauthorized attachment" means an attachment that does not have a valid permit and a governing agreement subject to OAR 860-028-0120.

(34) "Usable space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between the communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0110 & 860-034-0810; PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0050

### General

(1) OAR chapter 860 division 028 governs access to utility poles, conduits, and support equipment by occupants in Oregon.

(2) OAR chapter 860, division 028 is intended to provide just and reasonable provisions when the parties are unable to agree on certain terms.

(3) With the exceptions of OARs 860-028-0060 through 860-028-0080, 860-028-0115, and 860-028-0120, parties may mutually agree on terms that differ from those in this division. In the event of disputes submitted for Commission resolution, the Commission will deem the terms and conditions specified in this division as presumptively reasonable. If a dispute is submitted to the Commission for resolution, the burden of proof is on any party advocating a deviation from the rules in this division to show the deviation is just, fair and reasonable.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0060

### Attachment Contracts

(1) Any entity requiring pole attachments to serve customers should be allowed to use utility poles, ducts, conduits, rights-of-way, manholes, handholes, or other similar facilities jointly, as much as practicable.

(2) To facilitate the joint use of poles, entities must execute contracts establishing the rates, terms, and conditions of pole use in accordance with OAR 860-028-0120. Government entities are not required to execute contracts.

(3) Parties must negotiate pole attachment contracts in good faith.

(4) Unless expressly prohibited by contract, the last effective contract between the parties will continue in effect until a new contract between the parties goes into effect.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0070

### Resolution of Disputes for Proposed New or Amended Contractual Provisions

(1) This rule applies to a complaint alleging a violation of ORS 757.273, 757.276, 757.279, 757.282, 759.655, 759.660, or 759.665.

(2) In addition to the generally applicable hearing procedures contained in OAR chapter 860, divisions 011 through 014, the procedures set forth in this rule shall apply to a complaint that an existing or proposed contract is unjust and unreasonable.

(3) The party filing a complaint under this rule is the "complainant." The other party to the contract, against whom the complaint is filed, is the "respondent."

# ADMINISTRATIVE RULES

(4) Before a complaint is filed with the Commission, one party must request, in writing, negotiations for a new or amended attachment agreement from the other party.

(5) Ninety (90) calendar days after one party receives a request for negotiation from another party, either party may file with the Commission for a proceeding under ORS 757.279 or 759.660.

(6) The complaint must contain each of the following:

(a) Proof that a request for negotiation was received at least 90 calendar days earlier. The complainant must specify the attempts at negotiation or other methods of dispute resolution undertaken since the date of receipt of the request and indicate that the parties have been unable to resolve the dispute.

(b) A statement of the specific attachment rates, terms and conditions that are claimed to be unjust or unreasonable.

(c) A description of the complainant's position on the unresolved provisions.

(d) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute.

(e) All information available as of the date the complaint is filed with the Commission that the complainant relied upon to support its claims:

(A) In cases in which the Commission's review of a rate is required, the complaint must provide all data and information in support of its allegations, in accordance with the administrative rules set forth to evaluate the disputed rental rate.

(B) If the licensee is the party submitting the complaint, the licensee must request the data and information required by this rule from the owner. The owner must supply the licensee the information required in this rule, as applicable, within 30 calendar days of the receipt of the request. The licensee must submit this information with its complaint.

(C) If the owner does not provide the data and information required by this rule after a request by the licensee, the licensee must include a statement indicating the steps taken to obtain the information from the owner, including the dates of all requests.

(D) No complaint by a licensee will be dismissed because the owner has failed to provide the applicable data and information required under paragraph (6)(e)(B) of this rule.

(7) Within 30 calendar days of receiving a copy of the complaint, the respondent must file its response with the Commission, addressing in detail each claim raised in the complaint and a description of the respondent's position on the unresolved provisions.

(8) If the Commission determines after a hearing that a rate, term or condition that is the subject of the complaint is not just, fair, and reasonable, it may reject the proposed rate, term or condition and may prescribe a just and reasonable rate, term or condition.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0080

### Costs of Hearing in Attachment Contract Disputes

(1) When the Commission issues an order in an attachment contract dispute that applies to a consumer-owned utility, as defined by ORS 757.270, the order must also provide for payment by the parties of the cost of the hearing.

(2) The cost of the hearing includes, but is not limited to, the cost of Commission employee time, the use of facilities, and other costs incurred. The rates will be set at cost. Upon request of a party, and no more than once every 60 days, the Commission will provide to the parties the costs incurred to date in the proceeding.

(3) The Joint-Use Association is not considered a party for purposes of this rule when participating in a case as an advisor to the Commission.

(4) The Commission will allocate costs in a manner that it considers equitable. The following factors will be considered in allocating costs:

(a) Whether the party unreasonably burdened the record or delayed the proceeding;

(b) Merits of the party's positions throughout the course of the proceeding; and

(c) Other factors that the Commission deems relevant.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.279 & 759.660

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0100

### Application Process for New or Modified Attachments

(1) As used in this rule, "applicant" does not include a government entity.

(2) An applicant requesting a new or modified attachment must submit an application providing the following information in writing or electronically to the owner:

(a) Information for contacting the applicant.

(b) The pole owner may require the applicant to provide the following technical information:

(A) Location of identifying pole or conduit for which the attachment is requested;

(B) The amount of space requested;

(C) The number and type of attachment for each pole or conduit;

(D) Physical characteristics of attachments;

(E) Attachment location on pole;

(F) Description of installation;

(G) Proposed route; and

(H) Proposed schedule for construction.

(3) The owner must provide written or electronic notice to the applicant within 15 days of the application receipt date confirming receipt and listing any deficiencies with the application, including missing information. If required information is missing, the owner may suspend processing the application until the missing information is provided.

(4) Upon receipt of a completed application, an owner must reply in writing or electronically to the applicant as quickly as possible and no later than 45 days from the date the completed application is received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.

(a) An approval will be valid for 180 calendar days unless extended by the owner.

(b) The owner may require the applicant to provide notice of completion within 45 calendar days of completion of construction.

(c) If the owner approves an application that requires make ready work, the owner must provide a detailed list of the make ready work needed to accommodate the applicant's facilities, an estimate for the time required for the make ready work, and the cost for such make ready work.

(d) If the owner denies the application, the owner must state in detail the reasons for its denial.

(e) If the owner does not provide the applicant with notice that the application is approved, denied, or conditioned within 45 days from its receipt, the applicant may begin installation. Applicant must provide notice prior to beginning installation. Commencement of installation by the occupant will not be construed as completion of the permitting process or as final permit approval. Unpermitted attachments made under this section are not subject to sanction under OAR 860-028-0140.

(5) If the owner approves an application that requires make ready work, the owner will perform such work at the applicant's expense. This work must be completed in a timely manner and at a reasonable cost. Where this work requires more than 45 days to complete, the parties must negotiate a mutually satisfactory longer period to complete the make ready work.

(6) If an owner cannot meet the time frame for attachment established by this rule, preconstruction activity and make ready work may be performed by a mutually acceptable third party.

(7) If an application involves more than the threshold number of poles, the parties must negotiate a mutually satisfactory longer time frame to complete the approval process.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0110

### Rental Rates and Charges for Attachments by Licensees to Poles Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through 757.290 or 759.650 through 759.675.

(2) The pole attachment rental rate per foot is computed by multiplying the pole cost by the carrying charge and then dividing the product by the usable space per pole. The rental rate per pole is computed as the rental rate per foot multiplied by the licensee's authorized attachment space.

(3) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates will be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.

# ADMINISTRATIVE RULES

(4) Authorized attachment space for rental rate determination must comply with the following:

(a) The initial authorized attachment space on a pole must not be less than 12 inches. The owner may authorize additional attachment space in increments of less than 12 inches.

(b) For each attachment permit, the owner must specify the authorized attachment space on the pole that is to be used for one or more attachments. This authorized attachment space will be specified in the owner's attachment permit.

(5) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.

(6) A communication operator has primary responsibility for trimming vegetation around its communication lines in compliance with OAR 860-028-0115(7) and 860-028-0120(7). If the communication operator so chooses, or if the communication operator is sanctioned or penalized for failure to trim vegetation in compliance with OAR 860-028-0115(7) or 860-028-0120(7), the electric supply operator may trim the vegetation around communication lines that poses a foreseeable danger to the pole and electric supply operator's lines. If the electric supply operator trims the vegetation around communication lines, it shall do so contemporaneously with trimming around its own facilities. If the electric supply operator is the pole owner, it may bill the communication operators for the actual cost of trimming around the communication lines. If the electric supply operator is the pole occupant, it may offset its pole rent by the vegetation trimming cost.

(7) The owner must provide notice to the occupant of any change in rental rate or fee schedule a minimum of 60 days prior to the effective date of the change. This section will become effective on January 1, 2008.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 9-1984, f. & ef. 4-18-84 (Order No. 84-278); PUC 16-1984, f. & ef. 8-14-84 (Order No. 84-608); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 15-2000, f. 8-23-00, cert. ef. 1-1-01; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01, Renumbered from 860-022-0055 & 860-034-0360; PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0115

### Duties of Structure Owners

(1) An owner must install, maintain, and operate its facilities in compliance with Commission Safety Rules.

(2) An owner must establish, maintain, and make available to occupants its joint use construction standards for attachments to its poles, towers, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the owner.

(3) An owner must establish and maintain mutually agreeable protocols for communications between the owner and its occupants.

(4) An owner must immediately correct violations that pose imminent danger to life or property. In the event that a pole occupant performs the corrections, a pole owner must reimburse the pole occupant for the actual cost of corrections. Charges imposed under this section must not exceed the actual cost of corrections.

(5) An owner must respond to a pole occupant's request for assistance in making a correction within 45 days.

(6) An owner must ensure the accuracy of inspection data prior to transmitting information to the pole occupant.

(7) Vegetation around communications lines must not pose a foreseeable danger to the pole and electric supply operator's facilities.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.035, 757.270 - 290, 759.045 & 759.650 - 675

Hist.: PUC 3-2007, f. & cert. ef. 4-16-07

## 860-028-0310

### Rental Rates and Charges for Attachments by Licensees to Conduits Owned by Public Utilities, Telecommunications Utilities, and Consumer-Owned Utilities

(1) This rule applies whenever a party files a complaint with the Commission pursuant to ORS 757.270 through 757.290 or 759.650 through 759.675.

(2) The conduit rental rate per linear foot is computed by multiplying the percentage of conduit capacity occupied by the net linear cost of conduit and then multiplying that product by the carrying charge.

(3) A licensee occupying part of a duct is deemed to occupy the entire duct.

(4) Licensees must report all attachments to the conduit owner. A conduit owner may impose a penalty charge for failure to report or pay for all attachments. If a conduit owner and licensee do not agree on the penalty

and submit the dispute to the Commission, the penalty amount will be five times the normal rental rate from the date the attachment was made until the penalty is paid. If the date the attachment was made cannot be clearly established, the penalty rate will apply from the date the conduit owner last inspected the conduit in dispute. The last inspection date is deemed to be no more than five years before the unauthorized attachment is discovered. The conduit owner also may charge for any expenses it incurs as a result of the unauthorized attachment.

(5) The conduit owner must give a licensee 18 months' notice of its need to occupy licensed conduit and will propose that the licensee take the first feasible action listed:

(a) Pay revised conduit rent designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the conduit owner's space needs;

(b) Pay revised conduit rent based on the cost of new conduit constructed to meet the conduit owner's space needs;

(c) Vacate ducts that are no longer surplus;

(d) Construct and maintain sufficient new conduit to meet the conduit owner's space needs.

(6) The rental rates referenced in section (2) of this rule do not include the costs of permit application processing, preconstruction activity, post construction inspection, make ready work, and the costs related to unauthorized attachments. Charges for activities not included in the rental rates must be based on actual costs, including administrative costs, and will be charged in addition to the rental rate.

(7) The owner may require prepayment from a licensee of the owner's estimated costs for any of the work allowed by OAR 860-028-0100. Upon completion of the work, the owner will issue an invoice reflecting the actual costs, less any prepayment. Any overpayment will be promptly refunded, and any extra payment will be promptly remitted.

(8) The owner must be able to demonstrate that charges under sections (6) and (7) of this rule have been excluded from the rental rate calculation.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 757.270 - 757.290, 759.045 & 759.650 - 759.675

Hist.: PUC 2-1986, f. & ef. 2-7-86 (Order No. 86-107); PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 12-1998, f. & cert. ef. 5-7-98; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 23-2001, f. & cert. ef. 10-11-01. Renumbered from 860-022-0060 & 860-034-0370; PUC 3-2007, f. & cert. ef. 4-16-07

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

**Adm. Order No.:** PUC 4-2007

**Filed with Sec. of State:** 4-18-2007

**Certified to be Effective:** 4-18-07

**Notice Publication Date:** 11-1-06

**Rules Adopted:** 860-011-0090, 860-011-0100, 860-011-0110

**Rules Amended:** 860-011-0080

**Subject:** These new rules address the treatment of confidential information submitted to the Commission in instances when no protective order exists; the process for filing public records requests and for the Commission to review and respond to such requests, including the charges the Commission will impose to recover its costs in responding; and finally, the fees and penalties the Commission will charge for annual subscriptions to agency orders, notices, rules and other publications, returned checks, untimely payment of fees required by statute, and late-filed statements and reports.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-011-0080

### Confidential Information

(1) Information filed or submitted in confidence with the Commission is exempt from public disclosure to the extent provided under the Public Records Law, ORS 192.410 to 192.505. This rule applies to any information filed or submitted under a claim of confidentiality, but does not apply to information designated and protected as confidential pursuant to a protective order in a contested case proceeding.

(2) At the time of filing or submission, a person may designate a document as containing confidential information. Any such designation must be made in good faith and be limited to only those portions of the document that qualify for protection. The person asserting confidentiality must state the legal basis upon which the information is claimed to be confidential.

(3) Settlement offers submitted pursuant to a settlement conference convened under OAR 860-014-0085 are exempt from disclosure to the extent provided in ORS 192.502(4). If a party to a settlement conference

# ADMINISTRATIVE RULES

submits settlement material on the condition of confidentiality, the Commission obligates itself to protect this information from public disclosure.

(4) Unless otherwise provided by Commission order, any confidential information filed or submitted pursuant to this rule must be printed on yellow paper, separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, the provider must place only those portions of the document containing the confidential information in the envelope/container. The envelope/container shall bear the legend: "CONFIDENTIAL."

(5) Any failure to comply with the requirements specified in this rule may result in the filing or submission not being treated as one including confidential information or its return to the provider for correction and resubmission.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 192.420-192.505, 756.040 & 756.500-756.575  
Hist.: PUC 13-1985, f. & ef. 9-26-85 (Order No. 85-886); PUC 10-1994, f. & cert. ef. 7-21-94 (Order No. 94-1127); Renumbered from 860-015-0005; PUC 1-1996, f. & cert. ef. 2-21-96 (Order No. 96-043); PUC 3-1996, f. & cert. ef. 7-19-96 (Order No. 96-181); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 16-1998, f. & cert. ef. 10-12-98; PUC 18-2004, f. & cert. ef. 12-30-04; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 8-2005, f. & cert. ef. 12-21-05; PUC 4-2007, f. & cert. ef. 4-18-07

## 860-011-0090

### Public Records and Request for Documents

(1)(a) With prior notice, the Commission will make public records, not otherwise exempt from disclosure by law, available for inspection during regular business hours. The Commission may condition the time and manner of inspection of public records as necessary, under the circumstances, to protect the records and to prevent interference with the regular discharge of the duties of the Commission and its employees.

(b) The request must be sufficiently specific to allow the Commission to readily identify the document or other material that contains the requested information. The Commission may require that any request for public records be made in writing.

(c) The request must indicate the format in which any copies are desired and the date, if any, by which the records are needed. The Commission reserves the right to provide the information in a different format than requested, or to provide the information after the desired date, if the burden of meeting the requested format or date is impractical.

(2) The Commission will charge the following fees reasonably calculated to recover the costs of providing access to and copying of public records.

(a) Employee time: The Commission will charge for employee time in excess of 15 minutes spent locating, compiling, sorting, and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents. Employee time will be charged in 15-minute increments at the following rates:

(A) Assistant Attorney General: \$111 per hour, excluding time spent in determining the application of the provisions of ORS 192.410 to 192.505;

(B) Administrative Law Judge: \$52 per hour;

(C) Manager: \$32 per hour

(D) Utility Analyst: \$25 per hour

(E) Information Services: \$43 per hour;

(F) Law Clerk: \$22 per hour;

(G) General Clerical: \$15 per hour;

(b) Photocopies: If the request seeks copies of any documents identified in response to a request, the Commission will charge \$0.15 per page to recover the costs of photocopying. "Page" refers to the number of copies produced. A double-sided copy consists of two pages. The Commission may waive fees for photocopies provided in response to routine requests for a single copy of a Commission order or other public document.

(c) If the request seeks certification of true copies of public documents, the Commission will charge \$10 per document certification.

(d) Facsimile: When faxing records, the Commission will charge \$0.75 per page. The Commission limits the number of pages it will fax to 30 pages.

(e) Electronic Media: If the request seeks electronic reproduction of public records, the Commission will provide reproduction media at the following rates:

(A) Diskette, CD, or DVD: \$1.50 each

(B) Video Cassettes, 2 hours: \$2.00 each

(C) Audio Cassettes: \$2.50 each.

(f) Mailing: When sending voluminous records, the Commission will also charge the actual costs for sending the public records.

(3) Upon request, the Commission will provide notice of the estimated costs of making records available for inspection or providing copies of records. If the estimated costs exceed \$25, the Commission will provide written notice and not act further to respond to the request unless and until it receives written authorization to proceed with making the public records available. The Commission may require that all estimated fees and charges be paid before public records will be made available for inspection or copies provided.

(4)(a) If a public records request seeks the disclosure of information that has been designated as confidential pursuant to a protective order or OAR 860-011-0080, the Commission will provide, prior to the release of any such information, written notice to the person asserting confidentiality and allow an opportunity for the person to provide a written response to the request. The person asserting confidentiality bears the burden to show that part or all of a document is to be exempt from disclosure.

(b) In the event the Commission concludes that the information designated as confidential is not protected from disclosure, the Commission will provide notice of the decision and delay the release of the information to permit the person asserting confidentiality the ability to obtain a court order to protect the records from disclosure.

(c) If the person asserting confidentiality consents in writing to the release of the information, or does not commence proceedings to restrain disclosure by way of court order within ten days following notice of the decision, the Commission will remove the confidential designation from its files, and release the information to the requester.

(5) Any person denied the right to inspect or to receive a copy of any public record may appeal the Commission's decision to the Attorney General pursuant to ORS 192.450.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 192.420-192.505  
Hist.: PUC 4-2007, f. & cert. ef. 4-18-07

## 860-011-0100

### Commission Publications

The Commission will charge the fees reasonably calculated to reimburse the agency for costs of annual subscriptions, agency publications, and materials related to agency proceedings. These fees, which include actual mailing costs, are as follows:

(1) Subscriptions to Commission Orders: \$100 (annually);

(2) Subscription to Notices of Hearings: \$50 (annually);

(3) Administrative Rules update service: \$75 (annually);

(4) Bound Volume of Oregon Laws Relating to the Commission: \$15;

(5) Maps of specific area boundaries: \$20;

(6) Statistical reports: \$15;

(7) Hearing transcripts: At cost. A copy of a public hearing transcript must be supplied to a party without cost upon the filing with the Commission of a satisfactory affidavit of indigency, pursuant to ORS 756.521.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 192.420-192.505, 756.040, 756.060 & 756.500-756.575  
Hist.: PUC 4-2007, f. & cert. ef. 4-18-07

## 860-011-0110

### Late Fees and Penalties

(1) The Commission will impose the following late fees and penalties, as applicable:

(a) Check Returned for Non-Sufficient Funds: \$25.

(b) Costs Incurred by the Commission to Collect Past-Due Amounts: At Cost.

(2) The Commission will impose the following interest and penalties for the untimely payment of fees required by statute or rule:

(a) Annual Fees: No interest; 2 percent penalty of fee per month;

(b) Residential Service Protection Fund (RSPF) payments: 9 percent interest per Annum; 9 percent penalty of Unpaid Fee, up to \$500 maximum per reporting period.

(3) The Commission will impose the following fees for late-filed statements and reports:

(a) Electric Company Annual Fee Statement: \$100.

(b) Gas Utility Annual Fee Statement: \$100.

(c) Telecommunications Providers Annual Fee Statement: \$100.

(d) Water Utility Annual Fee Statement: \$40.

(e) RSPF Report: \$100.

Stat. Auth.: ORS 183, 756, 757 & 759  
Stats. Implemented: ORS 756.040 & 756.500-756.575  
Hist.: PUC 4-2007, f. & cert. ef. 4-18-07

# ADMINISTRATIVE RULES

**Rule Caption:** In the Matter of Amending Vegetation Clearance Requirements for Electric Transmission Lines over 50,000 Volts.

**Adm. Order No.:** PUC 5-2007

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 5-14-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 860-024-0016

**Subject:** This amendment corrects an erroneous provision adopted by Commission Order 06-547 that allowed the limited intrusion of small branches and new tree growth in established minimum clearances for both transmission conductors and distribution conductors. This amendment restricts the "limited intrusion" provision of the rule so that it applies only to primary distribution conductors that are energized between 600 to 50,000 volts.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-024-0016

### Minimum Vegetation Clearance Requirements

(1) For purposes of this rule:

(a) "Readily climbable" means vegetation having both of the following characteristics:

(A) Low limbs, accessible from the ground and sufficiently close together so that the vegetation can be climbed by a child or average person without using a ladder or other special equipment; and

(B) A main stem or major branch that would support a child or average person either within arms' reach of an uninsulated energized electric line or within such proximity to the electric line that the climber could be injured by direct or indirect contact with the line.

(b) "Vegetation" means trees, shrubs, and any other woody plants.

(c) "Volts" means nominal voltage levels, measured phase-to-phase.

(2) The requirements in this rule provide the minimum standards for conductor clearances from vegetation to provide safety for the public and utility workers, reasonable service continuity, and fire prevention. Each operator of electric supply facilities must have a vegetation management program and keep appropriate records to ensure that timely trimming is accomplished to keep the designated minimum clearances. These records must be made available to the Commission upon request.

(3) Each operator of electric supply facilities must trim or remove vegetation to maintain clearances from electric supply conductors.

(4) Each operator of electric supply facilities must trim or remove readily climbable vegetation as specified in section (5) of this rule to minimize the likelihood of direct or indirect access to a high voltage conductor by a member of the public or any unauthorized person.

(5) Under reasonably anticipated operational conditions, an operator of electric supply facilities must maintain the following minimum clearances of vegetation from conductors:

(a) Ten feet for conductors energized above 200,000 volts.

(b) Seven and one-half feet for conductors energized at 50,001 through 200,000 volts.

(c) Five feet for conductors energized at 600 through 50,000 volts.

(A) Clearances may be reduced to three feet if the vegetation is not readily climbable.

(B) Intrusion of limited small branches and new tree growth into this minimum clearance area is acceptable provided the vegetation does not come closer than six inches to the conductor.

(6) For conductors energized below 600 volts, an operator of electric supply facilities must trim vegetation to prevent it from causing strain or abrasion on electric conductors. Where trimming or removal of vegetation is not practical, the operator of electric supply facilities must install suitable material or devices to avoid insulation damage by abrasion.

(7) In determining the extent of trimming required to maintain the clearances required in section (5) of this rule, the operator of electric supply facilities must consider at minimum the following factors for each conductor:

(a) Voltage;

(b) Location;

(c) Configuration;

(d) Sag of conductors at elevated temperatures and under wind and ice loading; and

(e) Growth habit, strength, and health of vegetation growing adjacent to the conductor, with the combined displacement of the vegetation, supporting structures, and conductors under adverse weather or routine wind conditions.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 757.035 & 758.280 - 758.286

Hist.: PUC 9-2006, f. & cert. ef. 9-28-06; PUC 5-2007, f. & cert. ef. 5-14-07

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**Rule Caption:** In the Matter of an Amendment to Adopt the 2007 National Electrical Safety Code.

**Adm. Order No.:** PUC 6-2007

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 5-14-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 860-024-0010

**Subject:** This rule amendment adopts the 2007 edition of the National Electrical Safety Code (NESC) as the basic standard in Oregon for the construction, operation, and maintenance of electric supply lines (or power lines) and communication lines. The American National Standards Institute approved the 2007 edition of the NESC on June 16, 2006, as an American National Standard. This rule applies to electric utilities, telecommunication utilities, telecommunications providers, cable television operators, and other persons or entities that are involved in the construction, operation or maintenance of electric supply lines and communication lines. The NESC contains basic provisions that are necessary for the safety of employees and the public.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-024-0010

### Construction, Operation, and Maintenance of Electrical Supply and Communication Lines

Every operator shall construct, operate, and maintain electrical supply and communication lines in compliance with the standards prescribed by the **2007 Edition of the National Electrical Safety Code** approved June 16, 2006, by the American National Standards Institute.

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

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 757.035

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 173, f. & ef. 1-14-76 (Order No. 76-037); PUC 1-1978, f. 1-13-78, ef. 2-13-78 (Order No. 78-076); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 6-1990, f. & cert. ef. 5-25-90 (Order No. 90-833); PUC 11-1993, f. & cert. ef. 6-23-93 (Order No. 93-809); PUC 13-1994, f. & cert. ef. 8-31-94 (Order No. 94-1243); PUC 7-1997, f. & cert. ef. 2-6-97; PUC 9-2002, f. & cert. ef. 2-26-02; PUC 6-2007, f. & cert. ef. 5-14-07

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**Rule Caption:** In the Matter of Amending OAR 860-038-0480(7) to Correct a Date to Conform to ORS 757.612.

**Adm. Order No.:** PUC 7-2007

**Filed with Sec. of State:** 5-15-2007

**Certified to be Effective:** 5-15-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 860-038-0480

**Subject:** Prior to amendment, OAR 860-038-0480(7) stated that self-directing customers may not claim a public purpose credit for energy conservation measures that were started prior to January 1, 2000. That date was incorrect, and by this amendment, is corrected to July 23, 1999, the date that ORS 757.612 was enacted into law.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-038-0480

### Public Purposes

(1) Each electric company that offers direct access to its retail electricity consumers and each electricity service supplier that provides electricity services to direct access consumers in the electric company's service territory will collect a public purpose charge from its retail electricity consumers for 10 years beginning on the date direct access is first offered.

(2) Except as provided in section (6) of this rule, electric companies and electricity service suppliers will bill and collect from each of their retail electricity consumers a public purpose charge equal to 3 percent of the total revenues billed to those consumers for electricity services, distribution, ancillary services, metering and billing, transition charges, and other types of costs that were included in electric rates on July 23, 1999.

(3) The electricity service suppliers will remit monthly to each electric company the public purpose charges they collect from the customers of each electric company.

(4) The electricity service suppliers will remit monthly the public purpose charges collected from direct service industrial consumers they serve

# ADMINISTRATIVE RULES

to the electric company in whose service territory the direct service industrial site is located.

(5) The electric company whose territory abuts the greatest percentage of the site of an aluminum plant that averages more than 100 average megawatts of electricity use per year will collect monthly from the aluminum company a public purpose charge. The aluminum company will remit to the appropriate electric company a public purpose charge equal to 1 percent of the total revenue from the sale of electricity services to the aluminum plant from any source. Annually, the aluminum company will submit to the electric company an affidavit from a certified public accountant verifying that the costs for electricity services at the site of the aluminum plant and the remittance of the public purpose charges are accurate for the previous calendar year

(6) A retail electricity consumer, including an aluminum plant as described in section (5) of this rule, may receive credits against its public purpose charges for qualifying expenditures incurred for new energy conservation and the above-market costs of new renewable energy resources at any site if the following qualifications for becoming a self-directing consumer are met:

(a) The consumer has used more than one average megawatt of electricity at any such site in the prior calendar year; and

(b) The consumer has received final certification from the Oregon Department of Energy for expenditures for new energy conservation and/or new renewable energy resources.

(7) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(a) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(b) The energy conservation measure did receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999, but the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access; provided that, a self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(c) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(8) The Oregon Department of Energy will establish specific rules and procedures that are consistent with these rules for qualifying a self-directing consumer's expenditures.

(9) The electric company will apply the self-direction credit, determined by the Oregon Department of Energy, toward the consumer's public purpose obligation.

(10) Each electric company will establish five separate accounts for the public purpose charges to be funded from its collections of public purpose charges as follows:

(a) Energy conservation in schools;

(b) New cost-effective local energy conservation and new market transformation;

(c) Above-market costs of new renewable energy resources;

(d) New low-income weatherization; and

(e) Construction and rehabilitation of low-income housing.

(11) Each electric company will allocate the public purpose funds it collects (billed less uncollectible amounts) from electricity service suppliers and consumers to the five public purpose accounts as follows:

(a) Energy conservation in schools — 10.0 percent;

(b) Local and market transformation conservation — 56.7 percent;

(c) Renewable energy resources — 17.1 percent;

(d) Low-income weatherization — 11.7 percent; and

(e) Low-income housing — 4.5 percent.

(12) Each electric company will adjust the accounts for the credits returned to self-directing customers for conservation or renewable resource expenditures certified by the Oregon Department of Energy.

(13) Each electric company will distribute funds from the public purpose accounts at least monthly as follows:

(a) The funds for conservation in schools to the education service districts located in its service territory;

(b) The funds for local and market transformation conservation as directed by the Commission;

(c) The funds for renewable energy resources as directed by the Commission;

(d) The funds for low-income weatherization to the Housing and Community Services Department; and

(e) The funds for low-income housing to the Housing and Community Services Department Revolving Account.

(14) Each electric company will determine by January 1 of each year the allocation of public purpose funds for schools to the Education Service Districts according to the following methodology:

(a) From the Department of Education, collect current total weighted average daily membership (ADMw) as defined in ORS 327.013 and average daily membership (ADM) for each Education Service District that contains schools served by the electric company;

(b) For each of the Education Service Districts, compute the ratio of ADM in schools served by the electric company to total ADM;

(c) For each Education Service District, multiply its total ADMw by the ratio of ADM in schools served by the electric company to total ADM. The result is an estimate of ADMw in schools served by the electric company;

(d) Add the estimates of ADMw for each Education Service District; and

(e) Compute the percentage of the total ADMw represented by each Education Service District. These are the percentages that will be used to allocate the public purpose funds for schools to Education Service Districts for the 12-month period with the exception of 2002 where the funds will be allocated for a 10-month period beginning March 1, 2002. After 2002, the 12-month period will begin on January 1 of each year.

(15) The electric company may be reimbursed for the reasonable administrative costs it incurs to collect and distribute the public purpose funds. Those administrative costs will be deducted from the total amount of public purpose funds collected by the electric company before the funds are allocated to the five public purpose accounts. The electric company will also pay from the total public purpose funds collected or from a specific fund any other administrative costs the Commission directs to be paid for implementation of the public purpose requirements. The entities responsible for administering the public purpose funds will pay for their costs of implementing the public purpose requirements from the public purpose funds they receive from the electric company.

(16) The electric companies and the administrators of the public purpose funds will collect sufficient information so that biennial reports can be made to the Legislature on what has been accomplished with the public purpose funds and how those funds have benefited the consumers of each electric company. Specifically, information must be collected so that the reporting requirements of ORS 757.617 can be fulfilled.

(a) Each electric company must report the total funds collected by source (that is, electric company customers, electricity service suppliers and self-directing consumers) for public purposes, the amounts distributed to the administrators of each public purpose fund, and its administrative costs;

(b) Each administrator of public purpose funds must report, at a minimum:

(A) The amount of funds received;

(B) The amount of funds spent;

(C) Its administrative costs; and

(D) Its results, for example, measures installed, projects funded, energy saved, homes weatherized, and low-income homes built/rehabilitated.

Stat. Authority: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 1-2001, f. & cert. ef. 1-5-01; PUC 2-2001, f. & cert. ef. 1-5-01; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2007, f. & cert. ef. 5-15-07

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**Secretary of State,  
Archives Division  
Chapter 166**

**Rule Caption:** Changes retention period on City Employee Time Records to match State and County schedules.

**Adm. Order No.:** OSA 1-2007

**Filed with Sec. of State:** 5-8-2007

**Certified to be Effective:** 5-8-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 166-200-0085

# ADMINISTRATIVE RULES

**Subject:** Changes retention period for city employees' time records from 3 to 4 years.

**Rules Coordinator:** Julie Yamaka—(503) 378-5199

**166-200-0085**

## **Payroll Records**

(1) **Deduction Authorization Records** Records documenting employee application and authorization for voluntary payroll deductions, direct bank deposits, and related actions. Payroll deductions are directly deposited or remitted to the authorized financial institution, insurance company, or other agency or vendor. Records may include insurance applications, enrollment cards, deduction authorizations, approval notices, deduction terminations, and related records. (Minimum retention: 3 years after superseded, terminated, or employee separates).

(2) **Deduction Registers** Registers or records serving the same function of documenting voluntary and/or required deductions from the gross pay of city employees. Types of deductions include federal income and social security taxes, state tax, workers' compensation, union dues, insurance, deferred compensation, credit union, parking permit, pre-written checks, garnishments, levies, charitable contributions, and others. Information may include employee name and number, pay period, social security number, total deductions, net pay, check number, and related data. (Minimum retention: (a) Retain registers documenting state and federal taxes 5 years; (b) Retain other registers 3 years).

(3) **Employee Time Records** Records documenting hours worked, leave hours accrued, and leave hours taken by city employees. Information usually includes employee name and social security number, hours worked, type and number of leave hours taken, total hours, dates, and related data. SEE ALSO Leave Applications in this section. (Minimum retention: (a) For the retention of records documenting the expenditure of grant funds, see Grant Records in the Financial-General section; (b) Retain other records 4 years).

(4) **Federal and State Tax Records** Records, in addition to those itemized in this section, used to report the collection, distribution, deposit, and transmittal of federal and state income taxes as well as social security tax. Examples include the federal miscellaneous income statement (1099), request for taxpayer identification number and certificate (W-9), employers' quarterly federal tax return (941, 941E), tax deposit coupon (8109), and similar federal and state completed forms. SEE ALSO Wage and Tax Statements and Withholding Allowance Certificates in this section for related records. (Minimum retention: 5 years).

(5) **Garnishment Records** Records documenting requests and court orders to withhold wages from employee earnings for garnishments, tax levies, support payments, and other reasons. Usually includes original writs of garnishment, orders to withhold for the Oregon Department of Human Resources, federal or state tax levies, recapitulations of amounts withheld, and related records. Information usually includes employee name and number, name of agency ordering garnishment, amount, name of party to whom payment is submitted, dates, and related data. (Minimum retention: 3 years after resolution).

(6) **Leave Applications** Applications or requests submitted by city employees for sick, vacation, compensatory, personal business, family and medical leave, long term leave, and other leave time. Information usually includes employee name, department, date, leave dates requested, type of leave requested, and related data. SEE ALSO Employee Time Records in this section. (Minimum retention: 3 years).

(7) **Leave Balance Reports** Reports documenting individual city employee accrual and use of sick, vacation, compensatory, personal business, family and medical leave, and other leave time. Information usually includes employee name and number, social security number, leave beginning balance, leave time accrued, leave time used, ending balance, and related data. SEE ALSO Employee Benefits Records in the Personnel section. (Minimum retention: (a) Retain year-end leave balance reports 75 years after date of hire; (b) Retain other reports 4 years).

(8) **Payroll Administrative Reports** Reports, statistical studies, and other records designed and used for budget preparation, projections, workload and personnel management, research, and general reference. Often consists of recapitulation reports organizing wages, deductions, and other data into categories such as quarter-to-date, year-to-date, fiscal year-to-date, department, division, section, employee/employer contributions, and others. (Minimum retention: 3 years).

(9) **Payroll Registers** Registers or records serving the same function of documenting the earnings, voluntary and required deductions, and withholdings of city employees. Information usually includes employee name and number, social security number, hours worked, rate, overtime, vacation

value, various allowances, gross pay, federal and state withholding, voluntary deductions, net pay, and related data. (Minimum retention: (a) Retain year-end, or month-end if no year-end payroll registers, 75 years; (b) Retain other payroll registers 2 years).

(10) **Unemployment Compensation Claim Records** Records documenting claims submitted by former city employees for unemployment compensation. Usually includes claims, notices, reports, and related records. May also include records generated by the appeal of claim determinations. (Minimum retention: 3 years).

(11) **Unemployment Reports** Records documenting employee earnings on a quarterly basis. Used to document costs and charges in the event of an unemployment compensation claim. Information includes employee name, social security number, quarterly earnings, days worked, totals, and other data. (Minimum retention: 3 years).

(12) **Wage and Tax Statements** Annual statements documenting individual employee earnings and withholdings for state and federal income taxes and social security tax. Also known as federal tax form W-2. Information includes city name and tax identification number, employee name and social security number, wages paid, amounts withheld, and related data. SEE ALSO Federal and State Tax Forms in this section for related records. (Minimum retention: 5 years).

(13) **Withholding Allowance Certificates** Certificates documenting the exemption status of individual city employees. Also described as W-4 forms. Information includes employee name and address, social security number, designation of exemption status, and signature. SEE ALSO Federal and State Tax Forms in this section for related information. (Minimum retention: 5 years after superseded or employee separation).

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005-192.170 & 357.805-357.895

Hist.: OSA 1-1998, f. & cert. ef. 1-7-98; OSA 3-2002, f. & cert. ef. 7-2-02; OSA 1-2007, f. & cert. ef. 5-8-07

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## **Secretary of State, Elections Division Chapter 165**

**Rule Caption:** Adoption of Amendments to the 2006 and 2007 Campaign Finance Manuals.

**Adm. Order No.:** ELECT 2-2007(Temp)

**Filed with Sec. of State:** 5-2-2007

**Certified to be Effective:** 5-2-07 thru 10-29-07

**Notice Publication Date:**

**Rules Amended:** 165-012-0005

**Subject:** This temporary amendment supplements the 2007 Campaign Finance Manual for Candidates and Political Committees and the 2006 Campaign Finance Manual by prescribing procedures to report when personal funds are spent on behalf of a committee by any person.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-012-0005**

## **Designating the Campaign Finance Manual and Forms; Reporting Personal Expenditures by Any Person**

(1) The Secretary of State designates the *2007 Campaign Finance Manual for Candidates and Political Committees* and associated forms as the procedures and guidelines to be used by candidates and political committees for compliance with Oregon campaign finance regulations.

(2) The Secretary of State designates the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used by chief petitioner committees for compliance with Oregon campaign finance regulations.

(3) This amendment supplements the *2007 Campaign Finance Manual for Candidates and Political Committees* and the *2006 Campaign Finance Manual* by prescribing the procedures for reporting personal funds spent on behalf of a committee by any person. When personal funds are spent on behalf of a committee by any person they are reported as either in-kind contributions to the committee or personal expenditures for reimbursement. This includes any credit card transaction made with a personal credit card. If a person uses a personal credit card and expects reimbursement, the expenditure is reported as a Personal Expenditure for Reimbursement. When reimbursement for a personal expenditure is made, the payee is the name of the card holder, even if the check is written to the credit card company. A committee may also report the name of the credit card company in addition to the card holder's name.

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

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



# ADMINISTRATIVE RULES

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200  
Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef. 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07; ELECT 2-2007(Temp), f. & cert. ef. 5-2-07 thru 10-29-07

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**Rule Caption:** Adoption of Amendments to the 2006 State Initiative and Referendum Manual.

**Adm. Order No.:** ELECT 3-2007(Temp)

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 5-14-07 thru 11-10-07

**Notice Publication Date:**

**Rules Amended:** 165-014-0005

**Subject:** This temporary amendment supplements the 2006 State Initiative and Referendum Manual and associated forms. Form SEL 312 and SEL 314 have been updated to remove specific language referring to initiative petitions only, as these forms are used for both initiative and referendum petitions.

**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. This rule is temporarily amended to adopt and approve use of the attached revised versions of the SEL 312, Measure Signature Sheet used when no circulators are being paid and SEL 314, Measure Signature Sheet used when some circulators are being paid. These revised forms are approved for use with initiative and referendum petitions approved for circulation after the effective date of this temporary rule.

(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 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; ELECT 3-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07

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## Teacher Standards and Practices Commission Chapter 584

**Rule Caption:** Adopts, amends and repeals license requirement rules for teachers, counselors, and administrators.

**Adm. Order No.:** TSPC 2-2007

**Filed with Sec. of State:** 4-23-2007

**Certified to be Effective:** 4-23-07

**Notice Publication Date:** 12-1-06

**Rules Adopted:** 584-036-0080, 584-036-0082, 584-070-0012, 584-070-0014, 584-070-0022, 584-080-0153

**Rules Amended:** 584-005-0005, 584-017-0120, 584-017-0200, 584-042-0006, 584-042-0008, 584-048-0015, 584-048-0020, 584-060-0022, 584-060-0051, 584-060-0062, 584-070-0120, 584-080-0151, 584-080-0152, 584-080-0161, 584-100-0002, 584-021-0140

**Rules Repealed:** 584-060-0141, 584-070-0400, 584-080-0050, 584-080-0051, 584-080-0052, 584-080-0081, 584-080-0131

**Subject:** ADOPT: 584-036-0080 Licensure Tests: Applies to all licensure tests, including tests for teaching, administration, school counseling, and school psychology. Division 36 is the chapter that applies to all licenses.

584-036-0082 Courses In Lieu Of or For Preparation of Basic Skills Examinations: Puts into administrative rule the “basic skills substitutes” that have been allowed by the Commission for a number of years.

584-070-0012 Initial I School Counselor License: This rule makes changes that parallel the changes adopted for the Teaching and Administrator Licenses for the School Counselor areas.

584-070-0014 Initial II School Counselor License: This rule makes changes that parallel the changes adopted for the Teaching and Administrator Licenses for the School Counselor areas.

584-070-0022 Continuing School Counselor License Requirements: This rule makes changes that parallel the changes adopted for the Teaching and Administrator Licenses for the School Counselor areas.

584-080-0153 Restricted Transitional Administrator License: New rule separates “Transitional Administrator License” from “Restricted Transitional Administrator License” for clarity.

AMEND: 584-005-0005 Definitions (50): Definition amends “Recent Experience” as it applies to licensure.

584-017-0120 Elementary Authorization: This rule makes changes that parallel the changes adopted for the Teaching and Administrator Licenses for the School Counselor areas.

584-017-0200 Verification of Program Approval: Clarifies the administrative rule governing “program completion” and exactly “when” a program is completed.

584-021-0140 Requirements for Applying for Renewal or Reinstatement of Licensure: Clarification due to application form update.

584-042-0006 Requirements for a Three-Year Professional-Technical Teaching License: Clarifies eligibility for a CAP and the duration of the Emergency Teaching License.

584-042-0008 Five-Year Professional Technical Teaching License: Clarifies eligibility for a CAP.

584-048-0015 Experience Acceptable for Renewal of Licenses: Housekeeping language change.

584-048-0020 Renewal of Teaching Licenses – Special Provisions: Updates rule to clarify volunteer or instructional assistant experience may be substituted for experience needed for renewal requirements.

584-060-0022 Continuing Teaching License Requirements: New language allows the Commission to accept foreign equivalents of a doctorate in education in lieu of completing a CTL program.

584-060-0051 Teaching Authorization Levels: Clarifies what the ELEM and ML authorizations are valid for.

584-060-0062 Adding Endorsements to Initial or Continuing Teaching Licenses: Change clarifies subject-matter tests in the endorsement area may be waived through transcript review for out-of-state applicants upon first licensure in Oregon when other requirements are met.

584-070-0120 Assignment of Teachers as School Counselors: Clarifies when Initial or Continuing License holders are valid for counseling assignments.

584-080-0151 Transitional Administrator License: Updates changes to the Transitional Administrator License.

584-080-0152 Transitional Superintendent License: Updates changes to the Transitional Superintendent License.

# ADMINISTRATIVE RULES

584-080-0161 Exceptional Administrator License: Updates changes to the Exceptional Administrator License.

584-100-0002 Purpose of NCLB Rules: This rule acknowledges the Commission's limited scope as it relates to charter schools and highly qualified teachers.

## REPEAL

584-060-0141 Test Scores Specified by Commission

584-070-0400 Test Scores Specified by Commission

584-080-0050 Preparatory Standards for Continuing Administrator

584-080-0051 Preparatory Standards for Continuing Administrator

584-080-0052 Preparatory Standards for Continuing Superintendent

584-080-0081 Conditional Assignment in Administration

584-080-0131 Test Scores Specified by Commission

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-005-0005

### Definitions

These definitions apply to Divisions 001-100 unless otherwise indicated by the context:

(1) "Administrators:" Superintendents, assistant superintendents, principals, vice principals, and such other personnel, regardless of title, whose positions require them to evaluate other licensed personnel.

(2) "Alternative Assessment:" Procedures established by the Commission for candidates seeking licensure who fail to achieve a passing score on required matter or specialty area licensure tests for endorsement or authorization.

(3) "Alternative Education Program or School:" A private alternative education program or school registered with the Oregon Department of Education or a public alternative education program or school operated by a school district, education service district, or community college, which is established to serve students identified under ORS 339.250(6) and other students whose academic or professional technical interests and needs are best served through participation in such programs. (See OAR 584-036-0015(2)(i).)

(4) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license. As used in these rules, "application" includes the Application Form, C-1, the fee, and all supporting documents necessary for the evaluation for the license.

(5) "Appropriately Assigned:" Assignments for administrator, teacher, supervisor, school counselor, school psychologist, or school nurse duties for which the person involved holds the proper license, endorsements and authorizations. (See OAR 584-060-0081.)

(6) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. governmental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" at OAR 584-005-0005(51).

(7) "Approved Program:" An Oregon program of educator preparation approved by TSPC and offered by a regionally accredited Oregon institution. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction authorized to approve educator preparation programs.

(8) "Assistant Superintendent:" A superintendent's immediate subordinate who evaluates licensed personnel. May also be designated Deputy or Associate Superintendent.

(9) "Athletic Coaches:" Licensed personnel employed full time or part time for purposes of participation in interscholastic athletics and whose duties include instruction of students, preprimary through grade twelve. A student teacher or intern may serve as an assistant coach without licensure if assigned for a full-time practicum in the school in which he or she is coaching. (See OAR 584-036-0015(2)(e).)

(10) "Authorization Level:" The grade levels in which a person may teach, i.e., early childhood, elementary, middle level and high school as defined in OAR 584-060-0051.

(11) "Commission:" Teacher Standards and Practices Commission (TSPC).

(12) "Competencies:" Ability to apply knowledge and skills appropriately and effectively in achieving the expected outcomes.

(13) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal

requirements and has obtained the institution's recommendation for licensure.

(14) "Conditional Assignment:" (Formerly "Missassignment") Assignment of a licensed educator to a position for which he or she does not hold the subject or specialty area endorsement or authorization level required by the rules for licensure. (See OAR 584-060-0081.)

(15) "Consortium:" An advisory body to the institution in reviewing, evaluating, and making recommendations on the design, implementation, evaluation, and modification of the program.

(16) "Continuing Professional Development Advisor:" A person selected by an educator and approved by the educator's supervisor, such as a college or university advisor, a peer coach, or a qualified member of an agency or professional organization.

(17) "Distance Learning Teacher:" A teacher who meets the criteria in OAR 584-036-0017 and provides live interactive instruction transmitted from a remote location or who delivers online education either from within Oregon or from another state and who is employed by one or more Oregon public school districts to teach public school students.

(18) "Domain:" An area of professional competency under which a teacher may select coursework or other approved activities for continuing professional development. (See OAR 584-090-0010.)

(19) "Education Service District (ESD):" A district created under ORS 334.010 that provides regional educational services to component school districts.

(20) "Educator:" Any person who is authorized to be employed in the instructional program of the public schools, public charter schools and ESDs, and holds a license to teach, administer, supervise, counsel or provide school psychology services.

(21) "Emergency License:" Issued by TSPC when a school district demonstrates extenuating circumstances that merits the issuance of the license in order to protect the district's programs or students.

(22) "Endorsement:" The subject matter or specialty education field or grade authorization in which the individual is licensed to teach.

(23) "Executive Director:" The Executive Director of the Commission. (See ORS 342.410.)

(24) "Expired License:" A license for which an application for renewal was not received by TSPC prior to the date of expiration stated on the license.

(25) "Field Experience:" Learning activities designed to develop professional competence through observing, assisting, or teaching in a public or approved non-public school.

(26) "Instructional Assistant:" A non-licensed position of employment in a school district assigned to assist a licensed teacher in a supportive role in the classroom working directly with students.

(27) "Instructional Faculty:" Full-time and part-time faculty who teach professional courses and/or supervise field-centered activities and student teachers.

(28) "Intern:" A student of an approved institution who serves as a teacher, personnel specialist, or administrator under the supervision of the institution and of the school district in order to acquire practical experience in lieu of student teaching or supervised practica. Interns may receive both academic credit from the institution and financial compensation from the school district. Interns may serve as assistant coaches.

(29) "Joint Application:" Submitted by the school district in cooperation with the applicant.

(30) "Liaison Officer:" The person designated by the unit to submit all program modifications for TSPC approval, issue all recommendations for licensure under the approved program, authorize all waivers of professional courses for students enrolled in the program, and handle all correspondence between TSPC and the unit.

(31) "Major Modifications:" Changes of program philosophy, curricula, practica, resources, personnel, or performance standards.

(32) "Major Traffic Violation:" Includes driving while under the influence of intoxicants (ORS 487.540); reckless driving (ORS 487.550); fleeing or attempting to elude a police officer (ORS 487.555); driving while license is suspended or revoked or beyond license restrictions (ORS 487.560); or failure to perform the duties of a driver or witness at an accident (ORS 483.602).

(33) "Mentor:" Educators who have demonstrated the appropriate subject matter knowledge and teaching and/or administrative skills, which when assisting beginning educators, should substantially improve the induction and professional growth of beginning educators in this state.

(34) "Misassignment:" See definition of "Conditional Assignment" above.

## ADMINISTRATIVE RULES

(35) "National Board For Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate to qualified educators.

(36) "Oregon Schools:" Includes public school districts, education service districts, registered private schools preprimary through grade twelve, state and federal schools, special state-supported schools, and public charter schools in Oregon serving students ages three through twenty-one, private schools accredited by the Northwest Commission on College and Universities, and private proprietary career schools registered by the Oregon Department of Education.

(37) "Out of State Licenses or Certificates:" A certificate or license valid for full-time employment, at least equivalent to the Oregon license being requested, issued by one of the United States, a U.S. jurisdiction (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands), or the U.S. Department of Defense.

(38) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator.

(39) "Personnel Service:" A type of license issued to counselors, supervisors, and school psychologists.

(40) "Practicum or Practica:" All supervised field experiences other than student teaching or internships. A practicum may be part of the field experience necessary to add an endorsement.

(41) "PRAXIS:" A series of professional assessments for beginning educators produced and administered by Educational Testing Service (ETS) and adopted by TSPC as licensure examinations.

(42) "Principal:" The administrator of each school building or buildings as designated by the school district board.

(43) "Private Schools:" A private school, preprimary through grade twelve, registered with the Oregon Department of Education in compliance with provisions of ORS 345.525 and 345.535 or approved or registered by another U.S. jurisdiction or government.

(44) "Professional Development Plan:" A plan for personal professional growth during the next licensure renewal cycle.

(45) "Professional Development Units (PDU):" A unit of domain-related activity that equals one clock hour of professional development and contributes to completion of an educator's professional development plan. (See OAR 584-090-001 et seq.)

(46) "Program Administrator:" Managers of school programs and coordinators of district-wide programs that are accountable at the building level.

(47) "Program Review Committee:" Committee appointed by the Commission to conduct an on-site review for purposes of approval of an educator preparation program.

(48) "Public Funds:" All monies expended by public school districts and for which the school board has responsibility, including funds from local, state, federal, and private sources. (See ORS 342.120(9).)

(49) "Public Schools:" Public school districts, education service districts and public charter school created under ORS Ch. 338, which are supported by local and state public funds and for which the school board has responsibility, for the program of instruction carried out in that school.

(50) "Recency or Recent Educational Experience or Recent Experience:" An application for a license submitted to TSPC either within three years following completion of the required coursework in an approved program or during the effective period of a comparable license and within three years of the last year of experience on such license.

(a) If more than three years have elapsed since completion of the required coursework in the program or since the last year of public school or regionally accredited private school experience on a license appropriate for the assignment, recency may be met by completion of nine quarter hours or six semester hours of additional preparation from an accredited institution germane to the license or endorsement requested.

(b) The additional credits must be completed during the three-year period prior to application and must help the applicant keep abreast of current needs of public schools.

(c) If the comparable license expired prior to application, a Preparation for Teaching Report, **Form C-2**, must be submitted.

(d) Completion of the testing requirements alone for licensure or endorsement will not meet the definition of "recent experience" if the coursework in the program was completed more than three years prior to the application for licensure.

(51) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate

regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission; Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools, Commission on Higher Education; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(52) "Reinstatement:" Restoration of the validity of a license which has expired, been suspended, or been revoked. (See OAR 584-050-0015.)

(53) "Renewal:" Extension of validity of a current license. An application for renewal must be submitted prior to the expiration date stated on the license. (See OAR 584 div 48.)

(54) "School:" A single school building or combination of buildings which the school board designates as a school.

(55) "School Administrator:" The principal, vice principals and assistant principals at each school.

(56) "School Board:" The board of directors of a local school district or an education service district, the governing board of a public charter school, a registered private school, or the directors of a state, federal, or special state-supported school.

(57) "School Counselor:" A licensed employee of the district assigned to assist students to: develop decision-making skills, obtain information about themselves, understand opportunities and alternatives available in educational programs, set tentative career and educational goals, accept increasing responsibilities for their own actions, develop skills in interpersonal relations, and utilize school and community resources.

(58) "School District:" Includes administrative school districts; common school districts; joint school districts; union high school districts; county units; education service districts; registered private schools; and state, federal, and special state-supported schools. May also include school districts from other states.

(59) "School Nurse:" A registered nurse who is licensed by the Teacher Standards and Practices Commission as qualified to conduct and coordinate the health service programs of a school. (See OAR 584 div 21.)

(60) "School Psychologist:" A licensed employee of the district assigned to: assessment of students' mental aptitude, emotional development, motor skills, or educational progress; designing educational programs for students and conferring with licensed personnel regarding such programs; and consulting with parents and students regarding interpretation of assessments and the design of educational programs. (See OAR 584 div 44 and 70.)

(61) "School Supervisor:" Educators who assist, supervise, and evaluate students enrolled in the field-centered activities, including but not limited to, practica, internships and student teaching. (See OAR 584 div 17.)

(62) "Self-Contained Classroom:" An assignment for teaching in grades preprimary through nine in which the teacher has primary responsibility for the curriculum.

(63) "Skills:" Ability to use knowledge effectively in the performance of specific tasks typical of those required in an educational position.

(64) "State Board:" The Oregon State Board of Education.

(65) "Student Teacher:" A student of an approved teacher education institution who is assigned to a public or approved private school for professional practica under the supervision of qualified personnel. Student teachers may provide instruction or may serve as assistant coaches.

(66) "Successful Experience:" If the educator was permitted to fulfill the contract with the district, the experience is deemed successful.

(67) "Superintendent:" The district's chief administrator who reports directly to the school board.

(68) "Supervisor of Licensed Personnel:" A person assigned to a position which includes the on-the-job supervision or evaluation of licensed personnel. Should not be confused with "School Supervisor" at OAR 584-050-0005(64) above.

(69) "Teacher:" Includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

(70) "Teacher Education Programs:" Programs preparing teachers, personnel service specialists, or administrators. Oregon Revised Statutes use the term "teacher education" to refer to all programs preparing educational personnel for public elementary and secondary schools, not exclusive to those for classroom teachers.

# ADMINISTRATIVE RULES

(71) "Transcripts:" An institution-sealed official record of academic preparation which bears the signature of the registrar and the seal of the institution. Photocopies are not acceptable.

(72) "TSPC:" Teacher Standards and Practices Commission.

(73) "Unit:" The institution, college, school, department, or other administrative body with the responsibility for managing or coordinating all programs offered for the initial and continuing preparation of teachers and other school personnel, regardless of where these programs are administratively housed.

(74) "Vice Principal:" A principal's immediate subordinate assigned to coordination of instruction, discipline, student activities, or supervision or evaluation of staff.

(75) "Violation of Licensure:" Employment by a public school of a teacher or school nurse without a valid license or Conditional Assignment Permit. See definition of Conditional Assignment at 584-005-0005(15).

(76) "Work Samples:" A designed and implemented unit of study that demonstrates capacity to foster student learning.

(77) "Year of Experience:" A period of at least eight consecutive months of full-time work or two consecutive years of one-half time or more while holding a license valid for the assignment.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430 & 342.455 - 342.495

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 5-2000, f. & cert. ef. 9-20-00; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2002, f. & cert. ef. 3-15-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-017-0120

### Elementary Authorization

The unit assures that candidates for an Elementary Authorization demonstrate knowledge, skills, and competencies in an elementary setting.

(1) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students in grades 3-8 within the cultural and community context of the teacher education institution and cooperating school districts.

(2) Candidates articulate and apply a philosophy of education which is appropriate to the students in elementary grades and which ensures that students learn to think critically and integrate subject matter across disciplines.

(3) Candidates document broad knowledge of the subject matter, curriculum and methods needed to enable students to meet state and district standards by passing the commission-approved multiple subjects examination.

(4) Candidates complete student teaching or internship with students in grades 3-8 in an elementary, school or in a 5th or 6th grade self-contained classroom in a middle school. A practicum may substitute for student teaching if this is an additional authorization on an Initial or Continuing Teaching License.

(5) Special Education candidates may complete practica, student teaching, or internships in grades three (3) through eight (8) in an elementary, middle or junior high school.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1998, f. 9-28-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-017-0200

### Verification of Program Completion

The unit assures that candidates have completed the program successfully.

(1) The unit documents that candidates for licensure have acquired the knowledge and demonstrated the competencies required for the authorization level(s) and endorsement(s).

(2) The unit documents that candidates for licensure have completed the required practica successfully.

(3) The unit attests that candidates comply with Standards for Competent and Ethical Performance of Oregon Educators in OAR 584 division 20.

(4) The unit attests that the candidates have passed the licensure tests required for the authorization levels and endorsements for which the unit is recommending.

(5) Program completion for purposes of reporting under Title II of the Higher Education Act (HEA) means the latest date at which a candidate completes all of the requirements for an Initial Teaching I License.

(a) All candidates completing an approved program must be reported to the Commission for Title II HEA reporting purposes whether the candidate applies for licensure with TSPC.

(6) Candidates enrolled in an approved Masters of Arts in Teaching (MAT) program may not be reported as having completed the program for licensure purposes prior to completing the MAT.

(7) Candidates for an Initial Teaching License will hold a minimum of a bachelor's degree from a regionally accredited institution or from an institution that is deemed to offer a degree comparable to a regionally accredited institution as approved by the Oregon Office of Degree Authorization, including but not limited to a foreign equivalent of such a degree.

(8) Candidates for a Continuing Teaching License will hold a master's or higher degree in arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-021-0140

### Requirements for Applying for Renewal or Reinstatement of Licensure

An applicant for renewal or reinstatement of an Oregon School Nurse License must assemble all materials necessary for evaluation for the license and must submit these materials as a single package. An incomplete application will be returned. The applicant must:

(1) Provide the information requested on the Application, Form N-1, and sign in the space provided. The character questions pertaining to dismissal, revocation, and conviction must be answered and supporting materials attached to the application, if necessary.

(2) Provide verification of successful experience as a school nurse during the life of the current license, if applicable. Experience must be verified by the superintendent of the district on the Application, Form N-1.

(3) Present a statement verifying satisfactory completion of a Commission-approved workshop or course on the laws prohibiting discrimination, if not previously verified. See OAR 584-021-0165 for options for demonstrating this knowledge.

(4) Submit a check or money order for the evaluation fee and, if applicable, submit the late application fee. See OAR 584-021-0170 for a list of fees. Cash may be presented when applying at the Commission office.

(5) Provide verification of professional upgrading satisfactory to the school district, if applicable.

(6) Provide evidence satisfactory to the Commission of fitness to serve as school nurse, if the application is for reinstatement of a surrendered or revoked license.

(7) Submit the employing school board or school superintendent's request for license if the application is for renewal of an Emergency School Nurse License.

(8) Submit a current registered nurse license issued by the Oregon State Board of Nursing. A photocopy is acceptable.

(9) Submit official transcripts of nine quarter hours of additional preparation during the life of the current license or since expiration of the license, if applicable.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 183, 342.127, 342.135, 342.140, 342.143, 342.147, 342.165, 342.175 & 342.176

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 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-036-0080

### Licensure Tests

(1) Test scores currently specified by the commission for all licensure tests are published on the commission's Web.

(2) Test adoption is determined by the commission following recommendations by panels of educators. Passing scores are based on a sophisticated psychometric process.

(3) An applicant may present a score from a test that was used by the commission at one time but is no longer administered so long as the test was passed during the same period in which the commission had adopted the test. Passing scores for these tests are available upon request from the commission.

(4) An electronic score report submitted by the testing company administering the test at the applicant's request will be treated as an "orig-

# ADMINISTRATIVE RULES

inal” score report. In all other cases, only the original score report will be accepted as validation of passing the required test.

(5) Other evidence documenting passage of a required test for licensure may be accepted at the executive director’s discretion when exigent circumstances prohibit the educator from presenting an original score report.

(6) Basic Skills Tests: To satisfy the basic skills testing requirements; the commission will accept passing scores on the following tests:

(a) The California Basic Educator Skills Test (CBEST) — National Evaluation Systems (NES);

(b) The Washington Educator Skills Test — Basic (WEST-B) — National Evaluation Systems (NES);

(c) The Praxis I: Pre-Professional Skills Assessment (PPST) — Education Testing Service (ETS);

(d) See 584-036-0082 for information related to coursework in lieu of Basic Skills Tests.

(e) A doctorate degree waives the basic skills tests.

(7) The basic skills requirement may be met by a combination of any one of the testing options or coursework options offered in OAR 584-036-0082. For example: A passing test of the writing portion of the CBEST; combined with a passing score of the reading portion of the PPST; combined with the approved math coursework at an approved institution would satisfy the Basic Skills requirement for licensure.

(8) Applicants may be eligible for Alternative Assessment in lieu of the subject-matter tests. Alternative Assessment is only allowed for waiver of subject-matter tests required for specific licenses or endorsements. (See OAR 584-052-0030 regarding Alternative Assessment. See OAR 584-036-0082 regarding Basic Skills Tests.)

(9) Applicants for a first Oregon license who have taught five years or more on a license from another state in the areas in which they seek endorsement or licensure are eligible for a transcript review in lieu of the test. The applicant’s coursework will be compared to the academic requirements in Divisions 38. The test will be waived if the applicant has completed academic coursework equivalent to the endorsement requirements in Division 38; whichever is applicable.

(9) Applicants seeking endorsement in areas where the commission has not adopted an approved test must complete coursework requirements in Division 38 to add the endorsement to a Basic, Standard, Initial or Continuing Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.200, 342.400, 342.985

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-036-0082

### Courses in Lieu of or in Preparation for Basic Skills Examinations

(1) *Courses in Lieu of Basic Skills Examinations:* If an applicant for Oregon licensure has failed any section of the basic skills tests in reading, writing or mathematics at least once; the applicant may substitute a sequence of three transfer level Oregon college courses as outlined in subsection (2) below in each section failed.

(a) The sequences of courses must be completed subsequent to failing the basic skills test and must be completed for credit with a grade of “B” or better to qualify for waiver of the test.

(b) Prior to registering for the courses, the applicant must contact the counseling center at the college and secure specific advice pertaining to enrollment and admission into the approved courses and sections. The courses may be challenged through the institution’s course challenge or credit by examination procedure when the candidate possesses the skills and knowledge that the courses are designed to develop.

(c) All courses which are challenged or in which credit is earned shall be reported to TSPC only on official transcripts.

(2) Courses in satisfaction of the basic skills requirements may be taken at any Oregon accredited community, private, or public college or university. Examples of approved courses are listed below. Please note that if a set of courses is NOT mentioned below: *Failure to obtain TSPC pre-approval prior to enrollment or admission to the coursework will nullify the credit.*

(a) **READING:** Nine (9) quarter or six (6) semester hours of any reading course with the prefix “RD” that is 100 level or above. Examples include but are not limited to: RD 115 Accelerated Reading Tactics I; RD 116 Accelerated Reading Tactics II; RD 120 Critical Thinking and Reading;

(b) **WRITING:** Nine (9) quarter or six (6) semester hours of any writing course with the prefix “WR” that is 100 level or above. Examples include but are not limited to: WR 115 Introduction to Composition; WR 121 English Composition; WR 122 English Composition; WR 123 English Composition;

(c) **MATHEMATICS:** Nine (9) quarter or six (6) semester hours of any reading course with the prefix “MATH” that is 100 level or above. Examples include but are not limited to: MATH 191 Mathematics for Elementary Teachers; MATH 192 Mathematics for Elementary Teachers; MATH 193 Mathematics for Elementary Teachers; MATH 211 Foundations of Elementary Mathematics; MATH 212 Foundations of Elementary Mathematics; MATH 213 Foundations of Elementary Mathematics.

(3) *Courses in Preparation for Basic Skills Examinations:* In some cases, courses may be taken in preparation for Basic Skills Examinations. In particular “Learning Plus” workshops may be taken to prepare for the Basic Skills Examination. Beginning January 1, 2008, these courses will not be accepted in lieu of the Basic Skills Examination.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.200, 342.400, 342.985

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-042-0006

### Requirements for a Three-Year Professional Technical Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be granted a Three-Year Professional Technical License for one or more Professional Technical endorsements below.

(a) The Three-Year Professional Technical License is valid to teach in ODE approved Professional Technical programs for which the educator is specifically licensed. The license is not eligible for any other district assignment. The license is not eligible for a conditional assignment.

(2) A person may not work in a Professional Technical Program unless properly licensed regardless if the educator is licensed in another area.

(a) If an educator holding a Basic, Standard, Initial or Continuing Teaching License is not immediately eligible for a Three-Year Professional Technical License; the educator may be eligible for an Emergency Teaching License in the Professional Technical Endorsement area if the educator meets the requirements as it relates to criminal background checks;

(b) Applicants who are not yet licensed by TSPC may be eligible for employment only upon obtaining an Emergency Teaching License prior to employment while the application for the Three-Year Professional Technical License is pending.

(A) The Emergency Teaching License will be issued for a period generally not to exceed six (6) months. The Emergency Teaching License may be extended in cases where ODE program approval has not yet been obtained. (See OAR 584-060-0210 for Emergency Teaching License.)

(3) The application shall be a joint application from the applicant and the school district who seeks to employ the applicant. The application must be directly submitted by the applicant only. TSPC will not accept application submitted by third parties.

(4) The application must provide documentation of the following to TSPC:

(a) Evidence the requesting school district has an Oregon Department of Education approved program in the requested professional technical endorsement area;

(b) The applicant has passed the district’s Instructor Appraisal Committee examination and the Instructor Appraisal Committee’s approval is submitted on the required form; (See, 584-042-0002 for definition of Instructor Appraisal Committee.)

(c) The district has a signed agreement outlining the three-year Professional Technical Professional Development Plan on file; a copy of which is submitted with the application; (See OAR 584-042-0002 for details regarding the plan.)

(d) The district has provided a professional technical mentor in the professional technical education program area an such mentor is identified in the application materials; and

(e) Evidence the applicant meets the provisions of subsection (5) or (6) below or provides a recommendation from the Oregon Department of Education for a waiver. This evidence must include:

(A) Evidence that the structured or non-structured work experience has been completed and verified as having been completed in the past five years; or

(B) Transcripts documenting completion of an associate’s degree; or

(C) The ODE waiver must be signed and dated within 90 days from the date of the application and submitted with the application materials; or

(D) A copy of the industry certification or licensure.

(5) For an applicant holding a teaching license, the work experience must have been performed in the last five years and must include:

# ADMINISTRATIVE RULES

(a) Non-structured related work of at least 1920 hours as defined in 584-042-0002(6)(b); or

(b) At least 640 hours of structured related work experience as defined in 584-042-0002(6)(a); or

(c) The equivalent combination of structured and non-structured related work at a technical skill level within the last five years. One hour of structured work experience related to the program area equals three hours of non-structured work experience; or

(d) Industry certification or licensure.

(6) For an applicant who does not hold a teaching license, the applicant must hold an associate's degree or obtain recommendation from the Oregon Department of Education for a waiver of the associate's degree; and

(a) Provide verification that the related work experience includes a minimum of 4,000 hours of non-structured related experience at a technical skill level within the last five years; or

(b) Provide industry certification or licensure; and

(c) Provide documentation that the school district has provided an assigned Professional Technical Mentor as defined in 584-042-0002.

(7) The Three-Year Professional Technical Teaching License is transferable to another Oregon school district if the new instructional assignment is comparable and in an Oregon Department of Education-approved professional technical program. The receiving school district superintendent must ensure that the instructor's three-year improvement plan is successfully completed.

(8) The Three-Year Professional Technical Teaching License is not renewable or eligible for extensions.

(9) If the application and fee for the Five-Year Professional Technical Teaching License is received prior to the expiration of the Three-Year Professional Technical Teaching License, the license will remain valid for another 120 days following the expiration of the license. The applicant and co-applicant district must provide documentation that the requirements for the Five Year Professional Technical Teaching License have been met prior to the expiration of the 120 days after the Three-Year Professional Teaching License has expired to remain continuously licensed in this area.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TSPC 3-2002, f. 3-15-02, cert. ef. 1-15-03; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-042-0008

### Five-Year Professional Technical Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be granted a Five-Year Professional Technical Teaching License, valid for five years of teaching in an approved professional technical education program, may be issued.

(2) The Five-Year Professional Technical License is valid to teach in ODE approved Professional Technical programs for which the educator is specifically licensed. The license is not eligible for any other district assignment. The license is not eligible for a conditional assignment permit.

(3) The application shall be a joint application from the applicant and the school district who seeks to employ the applicant. The application must be directly submitted by the applicant only. TSPC will not accept application submitted by third parties.

(4) The application must provide documentation that the applicant:

(a) Meets all the requirements for the Three Year Professional Technical Teaching License as set forth in OAR 584-042-0006, and

(b) Has one year of professional technical teaching experience while holding a professional technical license as verified on a Professional Educational Experience Report Form (PEER); and

(c) Has attained a passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree; and

(d) Has attained a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission; and

(e) Has completed 15 quarter hours of teaching methodology and/or structured work experience as advised by the Instructor Appraisal Committee. The applicant must submit transcripts or other credible evidence that provisions of this subsection have been met.

(5) Preparation for the Five-Year Professional Technical Teaching License may be completed at an approved teacher education institution; a community college; or through inservice instruction approved by the employing school district.

(6) If formal credit is not granted by a college or university, 30 clock hours of inservice shall be equivalent to one quarter hour of credit.

(7) The Five-Year Professional Technical Teaching License may be transferred to another Oregon school district if the new instructional assignment is comparable and in a professional technical program approved by the Oregon Department of Education.

(8) The Five-Year Professional Technical Teaching License is renewable upon joint application of the employing school board or school superintendent and the instructor under the following conditions:

(a) Completion of 125 clock hours or the equivalent of continuing professional development (CPD);

(b) CPD includes, but is not limited to:

(A) College and university coursework;

(B) Community college course; or

(C) Established workshops or planned experiences in business and industry.

(c) One quarter hour of college credit shall be equivalent to 20 clock hours of CPD; and 1 semester hour of college credit shall be equivalent to 30 clock hours of CPD. (See also OAR 584-090-0005 et seq for additional details.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TSPC 3-2002, f. 3-15-02, cert. ef. 1-15-03; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-048-0015

### Experience Acceptable for Renewal of Licenses

(1) For purposes of renewing licenses based upon verification of one year of full-time experience, the Commission accepts educational experience in:

(a) Public schools and regionally accredited private schools in the United States;

(b) State and federal schools in Oregon;

(c) Registered private schools in Oregon;

(d) Special state-supported schools in Oregon;

(e) The Oregon Department of Education;

(f) The Teacher Standards and Practices Commission;

(g) The Oregon Department of Human Resources;

(h) Juvenile court schools in Oregon;

(i) Oregon Education Service Districts;

(j) Public schools in other governmental jurisdictions;

(k) Schools operated by the U.S. Department of Defense; or

(l) Other experience approved by the Executive Director.

(2) Notwithstanding OAR 584-048-0010, the applicant must have been appropriately assigned. See OAR 584-005-0005 for definitions of: "Appropriately Assigned," and "Year of Experience."

(3)(a) College instructors who teach at public or private higher education institutions or public community colleges may verify either one year of full-time teaching experience or the equivalent throughout the life of their license;

(b) The experience must be related to education or related to the license which they are seeking to renew; and

(c) Verification of employment in private or public higher education or a community college must be provided by the institution's registrar, designated personnel officer, or dean of the school or college.

(4) The Executive Director may accept for renewal of licenses teaching experience in an Oregon private professional technical school that is licensed by the Superintendent of Public Instruction if such experience is directly related to the endorsement(s) held by the applicant and to the curriculum offered in Oregon school districts.

(5) Where one full year of experience during the life of the license is required for renewal, the following equivalent combinations may be substituted:

(a) One hundred eighty days of teaching in Oregon schools or other states' schools if accepted by the Executive Director;

(b) Any combination of time .5 FTE or more that totals 180 days of experience during the life of the license will be accepted;

(c) Nine quarter or six semester hours of preparation completed in a regionally accredited institution; or

(d) A combination of experience and academic credit germane to the license may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days and one semester hour equals 30 days of experience.

Stat. Auth.: ORS 342

Stat. Implemented: ORS 342.120 - 342.200

Hist.: TS 15, f. 1-20-76, ef. 1-1-77; TS 17, 12-19-77, ef. 1-1-78; TS 3-1978, f. 7-24-78, ef. 1-1-79; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 3-1988, f. & cert. ef. 4-7-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TS 4-1997, f.

# ADMINISTRATIVE RULES

9-25-97, cert. ef. 10-4-97; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-048-0020

### Renewal of Teaching Licenses — Special Provisions

(1) Notwithstanding other rules for renewal in this division, an applicant for renewal of a Basic, Initial, Standard or Continuing License may be eligible for renewal based on experience other than teaching for at least one renewal.

(2) An eligible applicant with a license in subsection (1) above may submit verification of 12 months of service during the life of the current license in:

- (a) The Armed Forces;
- (b) The Peace Corps; or
- (c) VISTA.

(3) An applicant who qualifies under this rule is permitted one additional renewal of the Basic or Initial Teaching License before having to qualify for the Standard, the Initial II Teaching license or the Continuing Teaching License.

(4) An applicant who meets all requirements for the Standard Teaching License except teaching experience in Oregon schools will be granted a third Basic Teaching License without further preparation. Thereafter, if the experience requirement has not been met, the applicant may renew the Basic Teaching License upon verification of one full year of experience or equivalent pursuant to OAR 584-048-0015.

(5)(a) An applicant for renewal of a Basic, Initial, Standard, Continuing, or Five-Year Teaching License may provide verification of volunteer experience or employment as an instructional assistant in Oregon schools in lieu of one year of full-time teaching experience or in lieu of nine (9) quarter hours or six (6) semester hours of additional preparation.

(b) A combination of volunteer or instructional assistant experience, and credit hours totaling 360 hours, may be submitted in accordance with the provisions set forth below:

(A) One hundred and twenty (120) hours of volunteer or instructional assistant (paid or unpaid) experience may be substituted for up to three quarter or two semester credit hours as experience necessary for renewal, provided the experience is obtained within one academic school year. This method may be used over the life of the license to complete renewal requirements.

(B) Only educational experience in any environment mentioned in OAR 584-048-0015(1), during the work day will be accepted. Work such as extracurricular activities outside of the normal work day will not be counted.

(C) At least 360 hours of volunteer work must be verified during the life of the license. Verification of the subjects; grade-levels or educational projects must also be included on the PEER form completed by the district or a representative supervisor if work is not completed in a district.

(6) An applicant for renewal of a Basic, Initial, Standard, Continuing, or Five-Year Teaching License may provide verification of teaching or administrative employment in a charter school as acceptable experience in lieu of one year of full-time teaching experience or other renewal requirements pursuant to Division 48.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TSPC 6-1983, f. & ef. 10-18-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 3-1989, f. & cert. ef. 7-31-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-060-0022

### Continuing Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing Teaching License.

(2) This license is issued for five years and is renewable repeatedly under conditions specified below.

(3) This license is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing Teaching License an applicant must:

(a) Meet or complete all requirements of the Initial Teaching License; and

(b) Hold a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution

in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; and

(c) Have taught five years of at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0160 by completing one of the following:

(A) A TSPC approved Continuing Teaching License program offered by a college or university; or

(B) A doctorate degree in education from a regionally accredited institution; or the foreign equivalent of such degree approved by the commission; or

(C) Certification by the National Boards of Professional Teaching Standards; or

(D) Certificate of Clinical Competence awarded by the American Speech and Hearing Association for those holding a communication disorders endorsement; or

(E) A commission-approved school district program; or

(F) Any commission-approved professional assessment.

(G) A Professional Certificate issued by the State of Washington.

(5) The Continuing Teaching License may be renewed for five years upon completion of:

(a) Any one of the following educational experiences as a licensed educator on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license; or

(E) A combination of (A)–(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience; or

(F) Meeting any of the special provisions for renewal contained in OAR 584-048-0015 or 584-048-0020; and

(b) A professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.125 & 342.138

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-060-0051

### Teaching Authorization Levels

(1) Teachers must prepare for one or more authorization levels at the early childhood, elementary, middle or high school levels in addition to satisfying the Objectives for Initial Teaching License in OAR 584-017-0100.

(2) Demonstrated competency at these developmental levels indicates the teacher knows, understands and can apply developmental psychology and learning theory appropriate to student age and grade within cultural and community contexts, and can apply an articulated philosophy of education capable of ensuring that students at a particular authorization level will learn to think critically and integrate knowledge across disciplines.

(3) A first Oregon teaching license is authorized for levels on the basis of professional education, experience, previous licensure, and specialized academic course work.

(4) Early Childhood Education (ECE) Authorization: The early childhood education (ECE) authorization level requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in pre-kindergarten through grade four (4) in a school designated as a pre-kindergarten school, a primary school, or an elementary school. (See, OAR 584-017-0110 for ECE authorization competencies and OAR 584-017-0175 for adding an authorization level to a license.)

(a) The ECE authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in pre-kindergarten through grade four (4) in a school designated as a pre-kindergarten school, a primary school, or an elementary school.

(b) The ECE authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(5) Elementary (ELEM) Authorization: The Elementary (ELEM) authorization level requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or

# ADMINISTRATIVE RULES

more grades in grades three (3) through eight (8) in an elementary classroom or in a self-contained 5th or 6th grade classroom in a middle school. (See, OAR 584-017-0120 for ELEM authorization competencies and OAR 584-017-0175 for adding an authorization level to a license.)

(a) The ELEM authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades three (3) through eight (8) in a school designated as an elementary school with the Oregon Department of Education; or in a self-contained 5th or 6th grade classroom in a middle school.

(b) The ELEM authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(c) The ELEM authorization is valid for assignments in special education in grades three (3) through eight (8) in a school designated as an elementary school; middle school; or junior high school.

(6) The Middle-Level (ML) Authorization: The Middle-Level (ML) authorization level for candidates seeking multiple subjects endorsement requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or more grades in grades five (5) through nine (9). Additionally, the ML authorization requires in-depth knowledge of one subject-matter or specialty endorsement appropriate to middle-level teaching assignments. (See, OAR 584-017-0130 for further ML authorization requirements; 584-060-0062 for ML endorsements; and 584-017-0175 for adding an authorization level to a license.)

(a) The ML authorization is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades five (5) through nine (9) of a school designated as an elementary, middle, or junior high school.

(b) The ML authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(7) The high school authorization level requires completion of an approved program and qualification for at least one subject-matter endorsement appropriate to secondary schools by passing the required Commission-approved test or tests of subject mastery in the endorsement area, together with completion of a practicum experience with students in one or more grades in grades nine (9) through twelve (12). The high school (HS) authorization is valid for teaching one or more integrated or departmentalized subjects, with which the license must be endorsed, in grades seven (7) through twelve (12) of a school designated as a high school. (See OAR 584-017-0140 for HS authorization requirements; 584-060-0062 for HS endorsements; and 584-017-0175 for adding an authorization level to a license.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 4-2005(Temp), f. & cert. ef. 5-6-05 thru 9-30-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-060-0062

### Adding Endorsements to Initial or Continuing Teaching Licenses

(1) Subject-Matter Competency: A new endorsement will be added to a new or existing Initial or Continuing Teaching License upon documentation of one of the following: (For Middle-Level Endorsement exceptions see subsection (3) below.)

(a) For endorsements where subject-matter mastery tests are required by the commission: Documentation of a passing score on all Commission-approved tests required for the endorsement; or

(b) For endorsements where the commission has not approved subject-matter mastery tests in Drama, Japanese, Latin, Russian, and Adaptive Physical Education:

(A) Completion of a program or demonstrated completion of required coursework; or

(B) A nonprovisional out-of-state license in the subject-area.

(c) For out-of-state applicants upon first licensure in Oregon: Proof of licensure and five years experience teaching the endorsed subject on an out-of-state non provisional license may allow for waiver of subject-matter tests in the endorsement area through a transcript review of completed coursework as it compares to endorsement requirements in subject-matter areas in Division 38. (See, Section (2)(c) below for further information on the required experience.)

(2) Practicum Requirements: In addition to the requirements in subsection (1) above, one of the following practical experiences must be completed:

(a) A practicum of 2 semester hours or 3 quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the subject area, in an institution approved to prepare teachers for that endorsement;

(b) Verification of one year of experience teaching the new subject-area at least one hour each day or the equivalent on either an optional assignment of ten hours or less or an approved conditional assignment permit (CAP) as allowed by OAR 584-060-0081.

(c) For out-of-state licensed applicants only: Five years of experience teaching the subject area in a public school or regionally accredited private school within a U.S. jurisdiction on a non-provisional license appropriate for the assignment before holding any Oregon license. Other licensed teaching experience deemed to be equivalent to five years of teaching in the manner described above must be specifically approved by the Executive Director.

(3) Specified Middle-Level Subject-Matter Endorsements: Teachers holding an Initial or Continuing Teaching License with a middle-level authorization are not required to complete an additional subject-related practicum to add the endorsements specified in this subsection. To add a middle-level endorsement to a middle-level authorized license, only the Commission-approved subject-matter high school or middle-level test or tests are required in any of the following areas:

(a) Language Arts;

(b) Social Studies;

(c) Science; and

(d) Math.

(4) Some endorsement areas may require the completion of a new authorization level prior to being added to the license. The applicant should obtain a check sheet of requirements from TSPC prior to pursuing adding a new endorsement to an existing license.

(5) When Programs are Required: An approved institutional program including content and methods courses is always required as preparation for added endorsement in the following areas:

(a) Special education, including Early Intervention;

(b) Communication disorders;

(c) Hearing impairment;

(d) Visual impairment;

(e) Reading; or

(f) Subjects for which no subject mastery test has been required by the commission for endorsement including but not limited to: Drama, Japanese, Latin, Russian and Adaptive Physical Education.

(6) Specialty Endorsements: Specialty endorsements such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, reading, special education and educational media specialists require multiple-authorizations and may involve additional coursework. (See, OAR 584-060-0071.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 3-2005(Temp), f. & cert. ef. 4-15-05 thru 9-30-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-070-0012

### Initial I School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial I School Counselor License for three years.

(2) The Initial I School Counselor License is valid as designated for regular counseling at early childhood and elementary grade levels; at elementary and middle-level grade levels; or at middle and high school grade levels, or at all four levels.

(a) The license is also valid for substitute counseling at any level; and

(b) The license is also valid for substitute teaching at any level in any specialty.

(3) To be eligible for an Initial I School Counselor License, an applicant must satisfy all of the following general preparation requirements:

(a) A teaching experience satisfied in one of the following ways:

(A) Two academic years of experience as a full-time licensed teacher in a public education setting or in a regionally accredited private school in any state or other U.S. jurisdiction; or

(B) Completion of a practicum approved by the commission in teaching at any grade authorization level, as part of an initial graduate program or separately;



# ADMINISTRATIVE RULES

(b) A master's or higher degree in counseling, education, or related behavioral sciences from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with any equally accredited bachelor's degree;

(c) Completion in Oregon or another U.S. jurisdiction, as part of the master's degree or separately, of an initial graduate program in school counseling at an institution approved for counselor education by the commission;

(d) A passing score as currently specified by the commission on a test of professional knowledge for school counselors, or five years of experience counseling full time on a nonprovisional license valid for the assignment in a public school or regionally accredited private school in any U.S. jurisdiction before holding any Oregon license;

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See OAR 584-036-0080 and 584-036-0082 for information related to Basic Skills Tests.)

(f) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission;

(g) Furnish fingerprints in the manner prescribed by the commission and satisfy the requirements of OAR 584-036-0060 Character Questions to Establish Fitness to Serve as an Educator; (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(h) Obtain a first aid card pursuant to ORS 342.126 if this is the applicant's first Oregon license; and

(i) Complete a recent experience during the three-year period immediately preceding application. (See OAR 584-005-0005 for definition of "Recent Experience.")

(4) The Initial I School Counselor License may be renewed two times for three years upon showing progress toward completion of the renewal requirements as described in OAR 584-070-0014 during the life of the Initial I School Counselor License under the following conditions:

(a) The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment; and

(b) The educator must qualify for an Initial II School Counselor License upon expiration of ten years following the date the first Initial School Counselor License was issued if the license was issued prior to July 1, 2005. All School Counselor Licenses issued after June 30, 2005 must qualify for an Initial II School Counselor License upon the expiration of nine years following the date the first Initial School Counselor License was issued; and

(c) If the Initial I School Counselor license was issued on the basis of an out-of-state nonprovisional license rather than completion of an Oregon-approved program; the educator must have completed any incomplete requirements in subsection (3) above;

(d) If the educator is eligible for application of OAR 584-048-0062, Special Provisions for Renewal of Personnel Service Licenses.

(5) The Executive Director may grant an extension to the Initial I School Counselor License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the school counselor was unable to complete the requirements for the Initial II School Counselor License during the life of the Initial I School Counselor License.

(6) School counselor licenses are authorized for grade levels that are the same as those used to authorize teachers (see OAR 584-060-0051), except that the levels are authorized in pairs: early childhood and elementary; or middle-level and high school.

(a) Early childhood and elementary authorization is valid up through grade eight in any school.

(b) Middle level and high school authorization is valid in grades five through nine of a school designated as a middle school or junior high school and in grades seven through twelve of a school designated as a high school.

(c) The Initial School Counselor License is authorized for either two or four grade authorization levels, i.e., one or both pairs, on the basis of professional education, experience, previous licensure, and specialized academic course work verified by one of the following:

(A) Evidence verified by an Oregon-approved School Counseling Program; or

(B) An out-of-state non-provisional School Counselor License valid for all grade levels;

(7) On an Initial I School Counselor License authorized for only two levels, the remaining pair of levels can be added prior to attainment of the Initial II School Counselor or the Continuing School Counselor License.

The remaining levels will be added upon acquisition of practical experience in one of two ways:

(a) A practicum of four (4) semester hours or six (6) quarter hours at either or both of the paired new grade authorization levels, entailing a minimum of 200 clock hours, in an institution approved to prepare for those grade authorization levels; or

(b) One academic year at either or both of the paired new grade authorization levels as permitted in subsection (9) below.

(8) A counselor authorized for only one of the paired grade authorization levels may counsel in the remaining unauthorized grade levels for a period of not more than three years while pursuing authorization at the other paired authorization grade levels upon request for a conditional assignment permit pursuant to OAR 584-036-0081.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-070-0014

### Initial II School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial II School Counselor License for three years.

(2) The Initial II School Counselor License is valid as designated for regular counseling at early childhood and elementary grade levels; at elementary and middle-level grade levels; or at middle and high school grade levels, or at all four levels.

(a) The license is also valid for substitute counseling at any level; and

(b) The license is also valid for substitute teaching at any level in any specialty

(3)(a) To be eligible for an Initial II School Counselor License, the applicant must complete six (6) semester hours or nine (9) quarter hours of graduate level academic credit from a regionally accredited college or university.

(b) The graduate level credit must:

(A) Be completed after the Initial I School Counselor License has first been issued; and

(B) Be germane to the School Counselor License or directly germane to public school employment.

(4) The Initial II School Counselor License may be renewed repeatedly for three years upon completion of:

(a) Any one of the following educational experiences as a licensed educator on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of six (6) semester hours or nine (9) quarter hours of preparation completed in an approved institution during the life of the current teaching license; or

(E) A combination of (A)-(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience or;

(F) Meeting any of the special provisions for renewal contained in OARs 584-048-0015; 584-048-0020 or 584-048-0067; and

(b) A professional development plan in accordance with OAR 584-090.

(5) A school counselor may choose to become eligible for the Continuing School Counselor License in lieu of obtaining the Initial II School Counselor License. (See OAR 584-070-0022 Continuing School Counselor License.)

(6) Educators issued an Initial School Counselor License prior to July 1, 2005 must meet the requirements of this rule prior to the expiration of ten years from the date the first Initial School Counselor License was issued. The additional year granted to licensees holding an Initial School Counselor License prior to October 13, 2003, will be included in the ten year calculation for meeting the requirements of this rule.

(7) Educators issued an Initial School Counselor License after June 30, 2005 must meet the requirements of this rule prior to the expiration of nine years from the date the first Initial School Counselor License was issued.

(8) This rule applies to all Initial School Counselor Licenses issued after January 1999.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07

# ADMINISTRATIVE RULES

## 584-070-0022

### Continuing School Counselor License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing School Counselor License.

(2) The Continuing School Counselor License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Continuing School Counselor License is valid for counseling at all age or grade levels in any school building and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing School Counselor License an applicant must:

(a) Meet or complete all requirements of the Initial I School Counselor License; and

(b) Hold a master's or higher degree in the behavioral sciences or their derivative therapeutic professions from a regionally accredited institution in the United States, or hold the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree.

(A) As part of the master's degree or separately, the applicant must have completed an initial graduate program in school counseling in any U.S. jurisdiction at an institution approved for school counselor licensure by the state in which the school counselor license was issued or in the alternative is approved by the commission; and

(c) Have five years of school counseling experience at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0451 by completing one of the following:

(A) An advanced program in counseling competencies in a TSPC-approved Continuing School Counselor Program consisting of at least six semester hours or nine quarter hours of graduate credit or the equivalent beyond the initial graduate program in school counseling. As part of the advanced program, the applicant must have had a practica in counseling school students.

(B) Validation of all advanced counseling competencies through assessment by a commission-approved professional development program offered by an institution, an employer, or the two working together; or

(C) An accredited doctor's degree in educational, vocational, or clinical counseling; or in clinical or counseling psychology.

(5) The Continuing School Counselor License may be renewed for five years upon completion of:

(a) Any one of the following educational experiences as a licensed school counselor on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current School Counselor license; or

(E) A combination of (A)-(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience; or

(F) Meeting any of the special provisions for renewal contained in OAR 584-048-0015 or 584-048-0020; and

(b) A professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-070-0120

### Assignment of Teachers as School Counselors

(1) A Basic or Standard Teaching License is valid for .49 or less time as a school counselor at the grade levels valid for the teaching license.

(2) Initial or Continuing Teaching Licenses are not valid for counseling assignments except as allowed under Conditional Assignment Permit rules in OAR 584-036-0081.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-080-0151

### Transitional Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an unrestricted Transitional Administrator License.

(2) The Transitional Administrator License is valid for regular or substitute administration at all age or grade levels and it is also valid for substitute teaching at any level in any specialty.

(3) The Transitional Administrator License is only valid for three years and upon expiration, the educator must qualify for either the Initial or Continuing Administrator License.

(4) To be eligible for a Transitional Administrator License, the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(a) Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution or approved foreign equivalent;

(b) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state may submit an affidavit for the first Oregon license assuring that the applicant has read *Discrimination and the Oregon Educator* and has completed the self-study questions. The applicant must complete the course or workshop prior to any further licensure

(c) Furnish fingerprints in the manner prescribed by the commission; and

(d) Obtain a first aid card within 90 days of receiving the license. An emergency license will be issued to the educator for up to 90 days until the applicant has demonstrated possession of a valid first aid card.

(5) The Transitional Administrator License will not be restricted as to employer if:

(a) The applicant has three academic years of experience as a full-time licensed educator on any license appropriate for the assignment in a public school or regionally accredited private school in any state or other U.S. jurisdiction; and

(b) The applicant has held an unrestricted license for school administration in any state or completed an approved graduate program in school administration in any state.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140 & 342.165

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-080-0152

### Transitional Superintendent License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant shall be granted a Transitional Superintendent License.

(2) The Transitional Superintendent License is not restricted as to employer and is issued only for three years, and cannot be renewed or reissued.

(3) The Transitional Superintendent License is valid for the position of superintendent when issued to a person who has been a superintendent on regular assignment and license in any state. The license is also valid for substitute teaching at any authorization level in any specialty.

(4) To be eligible for a Transitional Superintendent License, the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's degree or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution;

(c) Have been employed as a superintendent for five years or more in any state before holding an Oregon license;

(d) Hold a valid superintendent's license from that state based upon completion of an approved program;

(e) Furnish fingerprints in the manner prescribed by the Commission. (See OAR 584-036-0062 for Criminal Records Check Requirement);

(f) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state may submit an affidavit for the first Oregon license assuring that the applicant has read *Discrimination and the Oregon Educator* and has completed the self-study questions. The applicant must complete the course or workshop prior to any further licensure; and

(g) Obtain a first aid card within 90 days of receiving the license. An emergency license will be issued to the educator for up to 90 days until the applicant has demonstrated possession of a valid first aid card.

(5) While holding this license, an applicant must complete an Oregon school law and finance class.

(6) Upon completion of the requirements in subsections (4) and (5) above, in addition to three consecutive years of full-time experience as a

# ADMINISTRATIVE RULES

superintendent in the State of Oregon, the applicant shall qualify for a Continuing Administrator License as defined in OAR 584-080-0022.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140, 342.165

Hist.: TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-080-0153

### Restricted Transitional Administrator License

(1) Upon filing a correct and complete joint application with a co-applicant employing school district in form and manner prescribed by the commission, a qualified applicant shall be granted a Restricted Transitional Administrator License.

(2) The Restricted Transitional Administrator License is valid for regular or substitute administration at all age or grade levels and is restricted to the district from which the co-application is received.

(3) The Restricted Transitional Administrator License is not valid for substitute teaching at any level in any specialty

(4) The Restricted Transitional Administrator License is only valid for three years and is not renewable. Upon expiration of the license, the educator must qualify for the Initial Administrator License.

(5) To be eligible for a Restricted Transitional Administrator License, the applicant must have all of the following:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's degree or higher from a regionally accredited institution or approved foreign equivalent;

(c) Demonstrate knowledge of applicable civil rights laws. An applicant may submit an affidavit for the first Oregon license assuring that the applicant has read Discrimination and the Oregon Educator and has completed the self-study questions. The applicant must complete the course or workshop prior to any further licensure;

(d) Furnish fingerprints in the manner prescribed by the commission. (See OAR 584-036-0062 for Criminal Records Check Requirement);

(e) Obtain a first aid card within 90 days of receiving the license. An emergency license will be issued to the educator for up to 90 days until the applicant has demonstrated possession of a valid first aid card; and

(f) Submit a letter from the employing district describing the particular need in relation to the applicant's administrator qualifications which must be summarized on a submitted resume. The district must agree to provide a mentor and attest that circumstances prevent hiring a suitable administrator holding an unrestricted full-time license appropriate for the assignment to be filled.

(6) Upon filing an application and fee in the form and manner required by the commission; a restricted extension for the Restricted Transitional Administrator License may be issued for up to one year upon joint application from an educator and the employing district when the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for an Initial or Continuing Administrator License.

(a) If the extenuating circumstances are due to the lack of due diligence in completing licensure requirements by the applicant, only enough time to prevent the district from experiencing a true hardship may be granted at the Executive Director's discretion.

(b) The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the regular license upon expiration of the extended Restricted Transitional Administrator License.

(c) Additionally, an applicant may be eligible for an extension of the Restricted Transitional Administrator License, upon joint application with the same or another co-applicant district, if the applicant has completed all the requirements for the Initial Administrator License except for the experience described in OAR 584-080-0012(4)(b).

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140, 342.165

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-080-0161

### Exceptional Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, an unconventionally qualified applicant may be granted an Exceptional Administrator License at the sole discretion of the commission as permitted under ORS 342.200.

(2) The Exceptional Administrator License is issued for three years and renewable under conditions that the Executive Director may specify, is

valid only for a designated position with a job description approved by the Executive Director.

(3) To be eligible for an Exceptional Administrator License the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution or approved foreign equivalent;

(c) Demonstrate extraordinary professional experience that compensates for lack of experience in prekindergarten-12 schools;

(d) Demonstrate knowledge of applicable civil rights laws. An applicant may submit an affidavit for the first Oregon license assuring that the applicant has read Discrimination and the Oregon Educator and has completed the self-study questions. The applicant must complete the course or workshop prior to any further licensure or renewal of this license; and

(e) Furnish fingerprints in the manner prescribed by the commission; (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(f) Obtain a first aid card within 90 days of receiving the license. An emergency license will be issued to the educator for up to 90 days until the applicant has demonstrated possession of a valid first aid card; and

(4) Experience that included supervising teachers or working directly with students in some educational setting shall be required as a qualification for any Exceptional Administrator License to be used for supervising teachers or working directly with students in Oregon schools.

(5) The Exceptional Administrator License will be restricted to use in a district that has applied for it jointly with the administrator.

(a) Upon application, the co-applicant district must describe its particular need in relation to the co-applicant administrator's qualifications summarized on a submitted resume; and

(b) The district must attest that no suitable candidate with any unrestricted administrator license is comparably qualified and available for the role to be filled.

(6) The Exceptional Administrator License may be renewed the first time upon demonstration of the following:

(a) A passing score on the test of professional administrator knowledge approved by the Commission for the Continuing Administrator License.

(7) After the first renewal, the Exceptional Administrator License may be continuously renewed upon demonstration of the following during the life of the license:

(a) Completion of a licensed education experience under any of the following conditions:

(A) One academic year as a full-time licensed educator;

(B) Two consecutive years as a half-time licensed educator;

(C) 180 days of substitution in administration or teaching, on any license appropriate for the assignment, in any K-12 public or private school or district registered or licensed by the Oregon Department of Education; and

(b) Completing continuing professional development requirements in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140, 342.165 & 342.200

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 2-2007, f. & cert. ef. 4-23-07

## 584-100-0002

### Purpose of NCLB Rules

(1) These rules establish requirements and procedures under the federal No Child Left Behind Act that mandates all teachers in core academic areas meet the law's definition of "highly qualified" by the end of the 2005-2006 school year.

(2) Additionally, after the first day of the 2002-2003 school year, all teachers hired in all programs supported with Title IA funds or hired with Title IIA funds to specifically reduce class size must be "highly qualified."

(3) Teachers new to Oregon licensure must first be evaluated under the existing Oregon administrative rules to become licensed, and then meet the requirements for "highly qualified teacher" appropriate for the license with which they qualify.

(4) The rules in division 100 apply only to No Child Left Behind core academic subjects.

(5) These rules are advisory only as they relate to the consequences for not meeting the definition of "highly qualified teacher" as defined in the federal No Child Left Behind Act. The commission has promulgated these rules to assist school districts and charter schools in making determinations

# ADMINISTRATIVE RULES

whether teachers in core academic subjects meet the federal definition for “highly qualified teacher.”

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 2-2007, f. & cert. ef. 4-23-07

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**Rule Caption:** Suspend 584-060-0161 Transitional Teaching License. Replaced with temp rule 584-060-0163 Conversion of Transitional Teaching Licenses.

**Adm. Order No.:** TSPC 3-2007(Temp)

**Filed with Sec. of State:** 5-14-2007

**Certified to be Effective:** 5-14-07 thru 9-26-07

**Notice Publication Date:**

**Rules Suspended:** 584-060-0161

**Subject:** 584-060-0161 Transitional Teaching License – Suspend – Replaced with 584-060-0163 Conversion of Transitional Teaching License to allow for modification of existing rule requirements for the Initial I Teaching License.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-060-0161

### Transitional Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Transitional Teaching License.

(2)(a) This license is issued for three years. It is non-renewable except under extraordinary conditions described below in subsection (7) of this rule.

(b) Holders of the Transitional Teaching License must meet all the requirements for ongoing renewal of the Initial Teaching License as defined in OAR 584-060-0013 within ten (10) years of the date when the first Transitional Teaching License is issued.

(3) This license is valid for regular teaching with any employer at one or more designated levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(4) Upon expiration of the Transitional Teaching License, recipients of this license must meet the requirements of the Initial Teaching License for which they may apply at any time. Applicants are not eligible for a Restricted Transitional License.

(5) To be eligible for a Transitional Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor’s degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master’s degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor’s degree for licensure; and

(c) Complete an initial teacher education program in any state-approved teacher preparation program in any U.S. jurisdiction, or completion of a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program. Oregon graduates are not eligible for a Transitional Teaching License; and

(d) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state may submit an affidavit for the first Oregon license assuring that the applicant has read Discrimination and the Oregon Educator and has completed the self-study questions. The applicant must complete the course or workshop prior to any further licensure; and

(e) Furnish fingerprints in the manner prescribed by the commission. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(f) Obtain an approved first aid card within 90 days of receiving the license.

(6) Applicants who have completed programs from states other than Oregon will be required to submit a **C-2 form**, in addition to transcripts, verifying completion of the teacher education program. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval.

(7) When the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for the Initial Teaching License, a restricted extension may be issued for up to one year upon joint application from an educator and the employing district. The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the Initial Teaching License upon expiration of the restricted Transitional Teaching License.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; Administrative correction, 3-18-05; TSPC 2-2005, f. & cert. ef. 4-15-05; Suspended by TSPC 3-2007(Temp), f. & cert. ef. 5-14-07 thru 9-26-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
101-010-0005	12-14-06	Amend(T)	1-1-07	123-065-4440	1-8-07	Amend(T)	2-1-07
101-020-0040	11-28-06	Amend	1-1-07	123-065-4450	1-8-07	Amend(T)	2-1-07
101-040-0080	11-28-06	Amend	1-1-07	123-065-4470	1-8-07	Amend(T)	2-1-07
105-040-0020	5-1-07	Amend	6-1-07	123-065-4550	1-8-07	Amend(T)	2-1-07
105-040-0060	5-1-07	Amend	6-1-07	123-065-4610	1-8-07	Amend(T)	2-1-07
105-040-0065	5-1-07	Adopt	6-1-07	123-065-4970	1-8-07	Amend(T)	2-1-07
105-050-0020	5-1-07	Repeal	6-1-07	123-065-4980	1-8-07	Amend(T)	2-1-07
123-065-0000	1-8-07	Amend(T)	2-1-07	123-065-4990	1-8-07	Amend(T)	2-1-07
123-065-0010	1-8-07	Amend(T)	2-1-07	123-065-7200	1-8-07	Amend(T)	2-1-07
123-065-0049	1-8-07	Suspend	2-1-07	123-065-7300	1-8-07	Amend(T)	2-1-07
123-065-0057	1-8-07	Adopt(T)	2-1-07	123-065-7400	1-8-07	Amend(T)	2-1-07
123-065-0080	1-8-07	Amend(T)	2-1-07	123-065-7500	1-8-07	Amend(T)	2-1-07
123-065-0090	1-8-07	Amend(T)	2-1-07	123-065-8200	1-8-07	Amend(T)	2-1-07
123-065-0100	1-8-07	Amend(T)	2-1-07	123-065-8300	1-8-07	Amend(T)	2-1-07
123-065-0140	1-8-07	Amend(T)	2-1-07	123-065-8400	1-8-07	Amend(T)	2-1-07
123-065-0200	1-8-07	Amend(T)	2-1-07	125-007-0200	12-28-06	Amend	2-1-07
123-065-0210	1-8-07	Amend(T)	2-1-07	125-007-0200(T)	12-28-06	Repeal	2-1-07
123-065-0240	1-8-07	Amend(T)	2-1-07	125-007-0210	12-28-06	Amend	2-1-07
123-065-0310	1-8-07	Amend(T)	2-1-07	125-007-0210(T)	12-28-06	Repeal	2-1-07
123-065-0320	1-8-07	Amend(T)	2-1-07	125-007-0220	12-28-06	Amend	2-1-07
123-065-0330	1-8-07	Amend(T)	2-1-07	125-007-0220(T)	12-28-06	Repeal	2-1-07
123-065-0350	1-8-07	Amend(T)	2-1-07	125-007-0230	12-28-06	Amend	2-1-07
123-065-1050	1-8-07	Amend(T)	2-1-07	125-007-0230(T)	12-28-06	Repeal	2-1-07
123-065-1060	1-8-07	Adopt(T)	2-1-07	125-007-0240	12-28-06	Amend	2-1-07
123-065-1070	1-8-07	Adopt(T)	2-1-07	125-007-0240(T)	12-28-06	Repeal	2-1-07
123-065-1080	1-8-07	Adopt(T)	2-1-07	125-007-0250	12-28-06	Amend	2-1-07
123-065-1500	1-8-07	Amend(T)	2-1-07	125-007-0250(T)	12-28-06	Repeal	2-1-07
123-065-1520	1-8-07	Amend(T)	2-1-07	125-007-0260	12-28-06	Amend	2-1-07
123-065-1530	1-8-07	Amend(T)	2-1-07	125-007-0260(T)	12-28-06	Repeal	2-1-07
123-065-1540	1-8-07	Amend(T)	2-1-07	125-007-0270	12-28-06	Amend	2-1-07
123-065-1553	1-8-07	Amend(T)	2-1-07	125-007-0270(T)	12-28-06	Repeal	2-1-07
123-065-1590	1-8-07	Amend(T)	2-1-07	125-007-0280	12-28-06	Amend	2-1-07
123-065-1600	1-8-07	Amend(T)	2-1-07	125-007-0280(T)	12-28-06	Repeal	2-1-07
123-065-1620	1-8-07	Amend(T)	2-1-07	125-007-0290	12-28-06	Amend	2-1-07
123-065-1710	1-8-07	Amend(T)	2-1-07	125-007-0290(T)	12-28-06	Repeal	2-1-07
123-065-1720	1-8-07	Amend(T)	2-1-07	125-007-0300	12-28-06	Amend	2-1-07
123-065-1740	1-8-07	Amend(T)	2-1-07	125-007-0300(T)	12-28-06	Repeal	2-1-07
123-065-2520	1-8-07	Amend(T)	2-1-07	125-007-0310	12-28-06	Amend	2-1-07
123-065-2530	1-8-07	Amend(T)	2-1-07	125-007-0310(T)	12-28-06	Repeal	2-1-07
123-065-2550	1-8-07	Amend(T)	2-1-07	125-007-0320	12-28-06	Amend	2-1-07
123-065-3000	1-8-07	Amend(T)	2-1-07	125-007-0320(T)	12-28-06	Repeal	2-1-07
123-065-3030	1-8-07	Amend(T)	2-1-07	125-007-0330	12-28-06	Amend	2-1-07
123-065-3130	1-8-07	Amend(T)	2-1-07	125-007-0330(T)	12-28-06	Repeal	2-1-07
123-065-3200	1-8-07	Amend(T)	2-1-07	125-145-0020	12-6-06	Amend(T)	1-1-07
123-065-3230	1-8-07	Amend(T)	2-1-07	125-145-0040	12-6-06	Amend(T)	1-1-07
123-065-3300	1-8-07	Amend(T)	2-1-07	125-800-0005	12-28-06	Adopt	2-1-07
123-065-3330	1-8-07	Amend(T)	2-1-07	125-800-0010	12-28-06	Adopt	2-1-07
123-065-3400	1-8-07	Amend(T)	2-1-07	125-800-0020	12-28-06	Adopt	2-1-07
123-065-3480	1-8-07	Amend(T)	2-1-07	137-025-0060	1-1-07	Amend	1-1-07
123-065-3850	1-8-07	Amend(T)	2-1-07	137-025-0090	1-1-07	Amend	1-1-07
123-065-4020	1-8-07	Amend(T)	2-1-07	137-025-0150	1-1-07	Amend	1-1-07
123-065-4260	1-8-07	Amend(T)	2-1-07	137-025-0210	1-1-07	Amend	1-1-07
123-065-4310	1-8-07	Amend(T)	2-1-07	137-025-0280	1-1-07	Amend	1-1-07
123-065-4323	1-8-07	Amend(T)	2-1-07	137-025-0410	1-1-07	Amend	1-1-07
123-065-4328	1-8-07	Amend(T)	2-1-07	137-025-0415	1-1-07	Amend	1-1-07
123-065-4380	1-8-07	Amend(T)	2-1-07	137-025-0480	1-1-07	Amend	1-1-07

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
137-025-0530	1-1-07	Amend	1-1-07	150-314.665(3)	1-1-07	Adopt	2-1-07
137-055-1020	1-2-07	Amend	2-1-07	150-314.665(4)	1-1-07	Amend	2-1-07
137-055-1100	1-2-07	Amend	2-1-07	150-315.068	1-1-07	Amend	2-1-07
137-055-1120	1-2-07	Amend	2-1-07	150-315.156	1-1-07	Amend	2-1-07
137-055-1160	1-2-07	Amend	2-1-07	150-315.511(6)	1-1-07	Repeal	2-1-07
137-055-1320	1-2-07	Amend	2-1-07	150-316.007-(B)	1-1-07	Amend	2-1-07
137-055-4320	1-2-07	Amend	2-1-07	150-316.153	1-1-07	Adopt	2-1-07
137-055-5035	4-2-07	Adopt	5-1-07	150-316.162(2)(j)	2-1-07	Amend	3-1-07
137-055-5510	1-2-07	Amend	2-1-07	150-316.212	1-1-07	Amend	2-1-07
137-055-6010	1-2-07	Adopt	2-1-07	150-317.090	11-21-06	Amend(T)	1-1-07
137-055-6020	1-2-07	Amend	2-1-07	150-317.090	1-1-07	Amend	2-1-07
137-055-6021	1-2-07	Amend	2-1-07	150-317.705(3)(a)	1-1-07	Amend	2-1-07
137-055-6022	1-2-07	Amend	2-1-07	150-318.020(2)	1-1-07	Amend	2-1-07
137-055-6024	1-2-07	Amend	2-1-07	150-318.060	1-1-07	Adopt	2-1-07
137-055-6025	1-2-07	Amend	2-1-07	150-323.160(1)	3-21-07	Amend(T)	5-1-07
137-055-6120	1-2-07	Amend	2-1-07	150-334.400	1-1-07	Repeal	2-1-07
137-055-6210	1-2-07	Amend	2-1-07	150-401.794	1-1-07	Am. & Ren.	2-1-07
137-079-0110	4-16-07	Adopt	5-1-07	150-457.450	1-1-07	Amend	2-1-07
137-079-0120	4-16-07	Adopt	5-1-07	150-670.600	2-1-07	Adopt	3-1-07
137-079-0130	4-16-07	Adopt	5-1-07	160-100-0010	3-1-07	Amend	3-1-07
137-079-0140	4-16-07	Adopt	5-1-07	161-003-0020	2-9-07	Amend	3-1-07
137-079-0150	4-16-07	Adopt	5-1-07	161-010-0020	2-9-07	Amend	3-1-07
137-079-0170	4-16-07	Adopt	5-1-07	161-010-0025	2-9-07	Amend	3-1-07
137-079-0180	4-16-07	Adopt	5-1-07	161-010-0080	2-9-07	Amend	3-1-07
137-079-0190	4-16-07	Adopt	5-1-07	161-010-0085	2-9-07	Amend	3-1-07
137-079-0200	4-16-07	Adopt	5-1-07	161-015-0010	2-9-07	Amend	3-1-07
137-079-0210	4-16-07	Adopt	5-1-07	161-015-0030	2-9-07	Amend	3-1-07
137-084-0500	3-16-07	Adopt	5-1-07	161-020-0110	2-9-07	Amend	3-1-07
137-097-0160	4-16-07	Adopt	5-1-07	161-025-0025	2-9-07	Amend	3-1-07
141-085-0421	3-20-07	Amend(T)	5-1-07	161-025-0030	2-9-07	Amend	3-1-07
141-089-0450	3-26-07	Adopt(T)	5-1-07	161-025-0040	2-9-07	Amend	3-1-07
141-089-0455	3-26-07	Adopt(T)	5-1-07	161-050-0000	2-9-07	Amend	3-1-07
141-089-0460	3-26-07	Adopt(T)	5-1-07	161-050-0040	2-9-07	Amend	3-1-07
141-089-0465	3-26-07	Adopt(T)	5-1-07	165-005-0130	1-1-07	Amend	2-1-07
141-089-0470	3-26-07	Adopt(T)	5-1-07	165-007-0130	12-29-06	Amend	2-1-07
141-089-0475	3-26-07	Adopt(T)	5-1-07	165-012-0005	1-5-07	Amend	2-1-07
141-089-0480	3-26-07	Adopt(T)	5-1-07	165-012-0005	5-2-07	Amend(T)	6-1-07
150-294.181	4-5-07	Adopt(T)	5-1-07	165-012-0050	12-29-06	Amend	2-1-07
150-305.220(1)	1-1-07	Amend	2-1-07	165-012-0230	1-1-07	Repeal	2-1-07
150-305.220(2)	1-1-07	Amend	2-1-07	165-013-0010	12-29-06	Amend	2-1-07
150-305.230	1-1-07	Amend	2-1-07	165-014-0005	5-14-07	Amend(T)	6-1-07
150-307.080	1-1-07	Adopt	2-1-07	166-150-0065	12-15-06	Amend	1-1-07
150-308.875-(A)	1-1-07	Amend	2-1-07	166-200-0085	5-8-07	Amend	6-1-07
150-308A.253	1-1-07	Amend	2-1-07	170-061-0010	4-27-07	Repeal	6-1-07
150-309.024	1-1-07	Amend	2-1-07	177-040-0000	1-1-07	Amend	2-1-07
150-309.026(2)-(A)	1-1-07	Amend	2-1-07	177-040-0010	3-4-07	Amend	4-1-07
150-309.067(1)(b)	1-1-07	Amend	2-1-07	177-040-0017	2-4-07	Amend	3-1-07
150-309.100(2)-(B)	1-1-07	Amend	2-1-07	177-040-0061	2-4-07	Amend	3-1-07
150-309.100(3)-(C)	1-1-07	Amend	2-1-07	213-004-0001	4-25-07	Amend	6-1-07
150-311.672(1)(a)	1-1-07	Amend	2-1-07	250-014-0001	7-1-07	Amend	1-1-07
150-311.708	1-1-07	Amend	2-1-07	250-014-0002	7-1-07	Amend	1-1-07
150-314.385(1)-(B)	1-1-07	Amend	2-1-07	250-014-0003	7-1-07	Amend	1-1-07
150-314.385(3)	1-1-07	Amend	2-1-07	250-014-0004	7-1-07	Amend	1-1-07
150-314.415	1-1-07	Am. & Ren.	2-1-07	250-014-0005	7-1-07	Amend	1-1-07
150-314.415(1)(a)	1-1-07	Repeal	2-1-07	250-014-0010	7-1-07	Amend	1-1-07
150-314.415(5)(a)	1-1-07	Amend	2-1-07	250-014-0020	7-1-07	Amend	1-1-07

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
250-014-0030	7-1-07	Amend	1-1-07	257-030-0160	11-22-06	Adopt	1-1-07
250-014-0040	7-1-07	Amend	1-1-07	257-030-0160(T)	11-22-06	Repeal	1-1-07
250-014-0041	7-1-07	Amend	1-1-07	257-030-0170	11-22-06	Adopt	1-1-07
250-014-0080	7-1-07	Amend	1-1-07	257-030-0170(T)	11-22-06	Repeal	1-1-07
250-015-0006	3-21-07	Adopt	5-1-07	259-008-0005	1-12-07	Amend	2-1-07
250-018-0010	1-9-07	Amend(T)	2-1-07	259-008-0011	1-12-07	Amend	2-1-07
250-018-0010	3-21-07	Amend	5-1-07	259-008-0025	1-12-07	Amend	2-1-07
250-018-0010(T)	3-21-07	Repeal	5-1-07	259-008-0064	1-12-07	Amend	2-1-07
250-018-0020	1-9-07	Amend(T)	2-1-07	259-008-0065	1-12-07	Amend	2-1-07
250-018-0020	3-21-07	Amend	5-1-07	259-008-0065(T)	1-12-07	Repeal	2-1-07
250-018-0020(T)	3-21-07	Repeal	5-1-07	259-008-0085	1-12-07	Amend	2-1-07
250-018-0040	1-9-07	Amend(T)	2-1-07	259-009-0005	1-12-07	Amend	2-1-07
250-018-0040	3-21-07	Amend	5-1-07	259-009-0062	11-20-06	Amend	1-1-07
250-018-0040(T)	3-21-07	Repeal	5-1-07	259-009-0062	1-12-07	Amend	2-1-07
250-018-0050	1-9-07	Amend(T)	2-1-07	259-009-0067	3-14-07	Amend	4-1-07
250-018-0050	3-21-07	Amend	5-1-07	259-012-0005	11-20-06	Amend	1-1-07
250-018-0050(T)	3-21-07	Repeal	5-1-07	259-012-0005(T)	11-20-06	Repeal	1-1-07
250-018-0060	1-9-07	Amend(T)	2-1-07	259-012-0010	11-20-06	Amend	1-1-07
250-018-0060	3-21-07	Amend	5-1-07	259-012-0010(T)	11-20-06	Repeal	1-1-07
250-018-0060(T)	3-21-07	Repeal	5-1-07	259-012-0015	11-20-06	Repeal	1-1-07
250-018-0080	1-9-07	Amend(T)	2-1-07	259-012-0020	11-20-06	Repeal	1-1-07
250-018-0080	3-21-07	Amend	5-1-07	259-012-0025	11-20-06	Repeal	1-1-07
250-018-0080(T)	3-21-07	Repeal	5-1-07	259-012-0030	11-20-06	Repeal	1-1-07
250-018-0090	1-9-07	Amend(T)	2-1-07	259-012-0035	11-20-06	Amend	1-1-07
250-018-0090	3-21-07	Amend	5-1-07	259-012-0035	2-15-07	Amend(T)	3-1-07
250-018-0090(T)	3-21-07	Repeal	5-1-07	259-012-0035(T)	11-20-06	Repeal	1-1-07
250-018-0110	1-9-07	Adopt(T)	2-1-07	259-060-0010	2-15-07	Amend	3-1-07
250-018-0110	3-21-07	Adopt	5-1-07	259-060-0060	2-15-07	Amend	3-1-07
250-018-0110(T)	3-21-07	Repeal	5-1-07	259-060-0065	2-15-07	Amend	3-1-07
250-020-0261	5-2-07	Amend(T)	6-1-07	259-060-0075	2-15-07	Amend	3-1-07
250-020-0290	5-2-07	Suspend	6-1-07	259-060-0080	2-15-07	Amend	3-1-07
255-032-0022	2-1-07	Adopt(T)	3-1-07	259-060-0092	2-15-07	Adopt	3-1-07
255-032-0025	2-1-07	Amend(T)	3-1-07	259-060-0120	2-15-07	Amend	3-1-07
255-032-0027	2-1-07	Adopt(T)	3-1-07	259-060-0135	2-15-07	Amend	3-1-07
255-032-0029	2-1-07	Adopt(T)	3-1-07	259-061-0260	5-15-07	Amend	6-1-07
255-032-0030	2-1-07	Adopt(T)	3-1-07	259-070-0010	1-12-07	Amend	2-1-07
255-032-0031	2-1-07	Adopt(T)	3-1-07	291-017-0005	1-31-07	Repeal	3-1-07
255-032-0032	2-1-07	Adopt(T)	3-1-07	291-017-0010	1-31-07	Repeal	3-1-07
255-070-0003	2-1-07	Amend	3-1-07	291-017-0015	1-31-07	Repeal	3-1-07
257-030-0060	11-22-06	Amend	1-1-07	291-017-0017	1-31-07	Repeal	3-1-07
257-030-0060(T)	11-22-06	Repeal	1-1-07	291-017-0020	1-31-07	Repeal	3-1-07
257-030-0070	11-22-06	Amend	1-1-07	291-017-0025	1-31-07	Repeal	3-1-07
257-030-0070(T)	11-22-06	Repeal	1-1-07	291-039-0025	4-16-07	Amend	6-1-07
257-030-0075	11-22-06	Repeal	1-1-07	291-039-0026	4-16-07	Repeal	6-1-07
257-030-0105	11-22-06	Adopt	1-1-07	291-039-0035	4-16-07	Repeal	6-1-07
257-030-0105(T)	11-22-06	Repeal	1-1-07	291-100-0008	2-1-07	Amend	3-1-07
257-030-0110	11-22-06	Adopt	1-1-07	291-100-0130	2-1-07	Amend	3-1-07
257-030-0110(T)	11-22-06	Repeal	1-1-07	291-143-0010	12-18-06	Amend(T)	2-1-07
257-030-0120	11-22-06	Adopt	1-1-07	291-143-0130	12-18-06	Amend(T)	2-1-07
257-030-0120(T)	11-22-06	Repeal	1-1-07	291-143-0140	12-18-06	Amend(T)	2-1-07
257-030-0130	11-22-06	Adopt	1-1-07	309-019-0000	5-11-07	Repeal	6-1-07
257-030-0130(T)	11-22-06	Repeal	1-1-07	309-019-0010	5-11-07	Repeal	6-1-07
257-030-0140	11-22-06	Adopt	1-1-07	309-019-0020	5-11-07	Repeal	6-1-07
257-030-0140(T)	11-22-06	Repeal	1-1-07	309-019-0030	5-11-07	Repeal	6-1-07
257-030-0150	11-22-06	Adopt	1-1-07	309-031-0005	5-11-07	Repeal	6-1-07
257-030-0150(T)	11-22-06	Repeal	1-1-07	309-032-0450	4-24-07	Repeal	6-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
309-032-0455	4-24-07	Amend	6-1-07	325-020-0030	3-9-07	Adopt	4-1-07
309-032-0455(T)	4-24-07	Repeal	6-1-07	325-020-0035	3-9-07	Adopt	4-1-07
309-032-0460	4-24-07	Amend	6-1-07	325-020-0040	3-9-07	Adopt	4-1-07
309-032-0465	4-24-07	Amend	6-1-07	325-020-0045	3-9-07	Adopt	4-1-07
309-032-0470	4-24-07	Amend	6-1-07	325-020-0050	3-9-07	Adopt	4-1-07
309-032-0475	4-24-07	Amend	6-1-07	325-020-0055	3-9-07	Adopt	4-1-07
309-032-0475(T)	4-24-07	Repeal	6-1-07	325-025-0001	5-4-07	Adopt	6-1-07
309-032-0480	4-24-07	Amend	6-1-07	325-025-0005	5-4-07	Adopt	6-1-07
309-032-0480(T)	4-24-07	Repeal	6-1-07	325-025-0010	5-4-07	Adopt	6-1-07
309-032-0485	4-24-07	Amend	6-1-07	325-025-0015	5-4-07	Adopt	6-1-07
309-032-0490	4-24-07	Amend	6-1-07	325-025-0020	5-4-07	Adopt	6-1-07
309-032-0490(T)	4-24-07	Repeal	6-1-07	325-025-0025	5-4-07	Adopt	6-1-07
309-032-0495	4-24-07	Amend	6-1-07	325-025-0030	5-4-07	Adopt	6-1-07
309-032-0495(T)	4-24-07	Repeal	6-1-07	325-025-0035	5-4-07	Adopt	6-1-07
309-032-0500	4-24-07	Amend	6-1-07	325-025-0040	5-4-07	Adopt	6-1-07
309-032-0500(T)	4-24-07	Repeal	6-1-07	325-025-0045	5-4-07	Adopt	6-1-07
309-032-0505	4-24-07	Amend	6-1-07	325-025-0050	5-4-07	Adopt	6-1-07
309-032-0505(T)	4-24-07	Repeal	6-1-07	325-025-0055	5-4-07	Adopt	6-1-07
309-032-0510	4-24-07	Amend	6-1-07	325-025-0060	5-4-07	Adopt	6-1-07
309-032-0510(T)	4-24-07	Repeal	6-1-07	330-070-0010	1-1-07	Amend	2-1-07
309-032-0515	4-24-07	Amend	6-1-07	330-070-0013	1-1-07	Amend	2-1-07
309-032-0515(T)	4-24-07	Repeal	6-1-07	330-070-0020	1-1-07	Amend	2-1-07
309-040-0350	5-4-07	Adopt(T)	6-1-07	330-070-0026	1-1-07	Amend	2-1-07
325-010-0000	4-10-07	Adopt	5-1-07	330-070-0045	1-1-07	Amend	2-1-07
325-010-0001	4-10-07	Amend	5-1-07	330-070-0059	1-1-07	Amend	2-1-07
325-010-0005	4-10-07	Amend	5-1-07	330-070-0060	1-1-07	Amend	2-1-07
325-010-0010	4-10-07	Amend	5-1-07	330-070-0064	1-1-07	Amend	2-1-07
325-010-0015	4-10-07	Amend	5-1-07	330-070-0070	1-1-07	Amend	2-1-07
325-010-0020	4-10-07	Amend	5-1-07	330-070-0073	1-1-07	Amend	2-1-07
325-010-0025	4-10-07	Amend	5-1-07	330-090-0110	12-1-07	Amend	1-1-07
325-010-0030	4-10-07	Amend	5-1-07	331-105-0020	12-1-06	Amend	1-1-07
325-010-0035	4-10-07	Amend	5-1-07	331-105-0030	12-1-06	Amend	1-1-07
325-010-0040	4-10-07	Amend	5-1-07	331-110-0005	12-1-06	Amend	1-1-07
325-010-0045	4-10-07	Amend	5-1-07	331-110-0010	12-1-06	Amend	1-1-07
325-010-0050	4-10-07	Amend	5-1-07	331-110-0055	12-1-06	Amend	1-1-07
325-010-0055	4-10-07	Amend	5-1-07	331-120-0000	12-1-06	Amend	1-1-07
325-010-0060	4-10-07	Amend	5-1-07	331-120-0020	12-1-06	Amend	1-1-07
325-015-0001	1-1-07	Adopt	2-1-07	331-125-0010	12-1-06	Amend	1-1-07
325-015-0005	1-1-07	Adopt	2-1-07	331-135-0000	12-1-06	Amend	1-1-07
325-015-0010	1-1-07	Adopt	2-1-07	331-505-0010	4-1-07	Amend	5-1-07
325-015-0015	1-1-07	Adopt	2-1-07	331-550-0000	4-1-07	Amend	5-1-07
325-015-0020	1-1-07	Adopt	2-1-07	331-555-0010	4-1-07	Amend	5-1-07
325-015-0025	1-1-07	Adopt	2-1-07	331-565-0030	4-1-07	Amend	5-1-07
325-015-0030	1-1-07	Adopt	2-1-07	331-565-0060	4-1-07	Amend	5-1-07
325-015-0035	1-1-07	Adopt	2-1-07	331-565-0085	4-1-07	Adopt	5-1-07
325-015-0040	1-1-07	Adopt	2-1-07	331-575-0040	4-1-07	Amend	5-1-07
325-015-0045	1-1-07	Adopt	2-1-07	331-715-0030	4-1-07	Amend	5-1-07
325-015-0050	1-1-07	Adopt	2-1-07	333-002-0010	11-16-06	Amend	1-1-07
325-015-0055	1-1-07	Adopt	2-1-07	333-002-0035	11-16-06	Amend	1-1-07
325-015-0060	1-1-07	Adopt	2-1-07	333-002-0040	11-16-06	Amend	1-1-07
325-020-0001	3-9-07	Adopt	4-1-07	333-002-0050	11-16-06	Amend	1-1-07
325-020-0005	3-9-07	Adopt	4-1-07	333-002-0070	11-16-06	Amend	1-1-07
325-020-0010	3-9-07	Adopt	4-1-07	333-002-0080	11-16-06	Amend	1-1-07
325-020-0015	3-9-07	Adopt	4-1-07	333-002-0090	11-16-06	Amend	1-1-07
325-020-0020	3-9-07	Adopt	4-1-07	333-002-0100	11-16-06	Amend	1-1-07
325-020-0025	3-9-07	Adopt	4-1-07	333-002-0110	11-16-06	Amend	1-1-07



## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
333-002-0120	11-16-06	Amend	1-1-07	333-054-0060	12-27-06	Amend	2-1-07
333-002-0130	11-16-06	Amend	1-1-07	333-054-0070	12-27-06	Amend	2-1-07
333-002-0140	11-16-06	Amend	1-1-07	333-060-0020	12-13-06	Amend	1-1-07
333-002-0150	11-16-06	Amend	1-1-07	333-100-0001	3-1-07	Amend	4-1-07
333-002-0160	11-16-06	Amend	1-1-07	333-100-0005	3-1-07	Amend	4-1-07
333-002-0170	11-16-06	Amend	1-1-07	333-100-0010	3-1-07	Amend	4-1-07
333-002-0210	11-16-06	Amend	1-1-07	333-100-0015	3-1-07	Amend	4-1-07
333-002-0220	11-16-06	Amend	1-1-07	333-100-0020	3-1-07	Amend	4-1-07
333-002-0230	11-16-06	Amend	1-1-07	333-100-0025	3-1-07	Amend	4-1-07
333-004-0000	4-23-07	Amend	5-1-07	333-100-0030	3-1-07	Amend	4-1-07
333-004-0010	4-1-07	Amend(T)	4-1-07	333-100-0035	3-1-07	Amend	4-1-07
333-004-0010	4-23-07	Amend	5-1-07	333-100-0040	3-1-07	Amend	4-1-07
333-004-0010(T)	4-23-07	Repeal	5-1-07	333-100-0045	3-1-07	Amend	4-1-07
333-004-0020	4-23-07	Amend	5-1-07	333-100-0050	3-1-07	Amend	4-1-07
333-004-0030	4-23-07	Amend	5-1-07	333-100-0055	3-1-07	Amend	4-1-07
333-004-0040	4-23-07	Amend	5-1-07	333-100-0057	3-1-07	Amend	4-1-07
333-004-0050	4-23-07	Amend	5-1-07	333-100-0060	3-1-07	Amend	4-1-07
333-004-0060	4-23-07	Amend	5-1-07	333-100-0065	3-1-07	Amend	4-1-07
333-004-0070	4-23-07	Amend	5-1-07	333-100-0070	3-1-07	Amend	4-1-07
333-004-0080	4-1-07	Amend(T)	4-1-07	333-100-0080	3-1-07	Amend	4-1-07
333-004-0080	4-23-07	Amend	5-1-07	333-102-0001	3-1-07	Amend	4-1-07
333-004-0080(T)	4-23-07	Repeal	5-1-07	333-102-0005	3-1-07	Amend	4-1-07
333-004-0090	4-23-07	Amend	5-1-07	333-102-0010	3-1-07	Amend	4-1-07
333-004-0100	4-23-07	Amend	5-1-07	333-102-0015	3-1-07	Amend	4-1-07
333-004-0110	4-1-07	Amend(T)	4-1-07	333-102-0020	3-1-07	Amend	4-1-07
333-004-0110	4-23-07	Amend	5-1-07	333-102-0025	3-1-07	Amend	4-1-07
333-004-0110(T)	4-23-07	Repeal	5-1-07	333-102-0030	3-1-07	Amend	4-1-07
333-004-0120	4-23-07	Amend	5-1-07	333-102-0035	3-1-07	Amend	4-1-07
333-004-0130	4-23-07	Amend	5-1-07	333-102-0040	3-1-07	Amend	4-1-07
333-004-0140	4-23-07	Amend	5-1-07	333-102-0075	3-1-07	Amend	4-1-07
333-004-0150	4-23-07	Amend	5-1-07	333-102-0101	3-1-07	Amend	4-1-07
333-004-0160	4-23-07	Amend	5-1-07	333-102-0103	3-1-07	Amend	4-1-07
333-004-0170	4-23-07	Amend	5-1-07	333-102-0105	3-1-07	Amend	4-1-07
333-004-0180	4-23-07	Amend	5-1-07	333-102-0110	3-1-07	Amend	4-1-07
333-004-0190	4-23-07	Amend	5-1-07	333-102-0115	3-1-07	Amend	4-1-07
333-010-0600	4-13-07	Adopt	5-1-07	333-102-0120	3-1-07	Amend	4-1-07
333-010-0610	4-13-07	Adopt	5-1-07	333-102-0125	3-1-07	Amend	4-1-07
333-010-0620	4-13-07	Adopt	5-1-07	333-102-0130	3-1-07	Amend	4-1-07
333-010-0630	4-13-07	Adopt	5-1-07	333-102-0135	3-1-07	Amend	4-1-07
333-010-0640	4-13-07	Adopt	5-1-07	333-102-0190	3-1-07	Amend	4-1-07
333-010-0650	4-13-07	Adopt	5-1-07	333-102-0200	3-1-07	Amend	4-1-07
333-010-0660	4-13-07	Adopt	5-1-07	333-102-0203	3-1-07	Amend	4-1-07
333-011-0200	12-1-06	Adopt	1-1-07	333-102-0235	3-1-07	Amend	4-1-07
333-012-0270	1-16-07	Amend	3-1-07	333-102-0245	3-1-07	Amend	4-1-07
333-018-0005	1-16-07	Amend	3-1-07	333-102-0247	3-1-07	Amend	4-1-07
333-018-0018	12-18-06	Amend	1-1-07	333-102-0250	3-1-07	Amend	4-1-07
333-018-0030	1-16-07	Amend	3-1-07	333-102-0255	3-1-07	Amend	4-1-07
333-054-0000	12-27-06	Amend	2-1-07	333-102-0260	3-1-07	Amend	4-1-07
333-054-0010	12-27-06	Amend	2-1-07	333-102-0265	3-1-07	Amend	4-1-07
333-054-0020	12-27-06	Amend	2-1-07	333-102-0270	3-1-07	Amend	4-1-07
333-054-0020(T)	12-27-06	Repeal	2-1-07	333-102-0275	3-1-07	Amend	4-1-07
333-054-0025	12-27-06	Adopt	2-1-07	333-102-0285	3-1-07	Amend	4-1-07
333-054-0030	12-27-06	Amend	2-1-07	333-102-0290	3-1-07	Amend	4-1-07
333-054-0030(T)	12-27-06	Repeal	2-1-07	333-102-0293	3-1-07	Amend	4-1-07
333-054-0040	12-27-06	Amend	2-1-07	333-102-0297	3-1-07	Amend	4-1-07
333-054-0050	12-27-06	Amend	2-1-07	333-102-0300	3-1-07	Amend	4-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
333-102-0305	3-1-07	Amend	4-1-07	333-105-0670	3-1-07	Amend	4-1-07
333-102-0310	3-1-07	Amend	4-1-07	333-105-0680	3-1-07	Amend	4-1-07
333-102-0315	3-1-07	Amend	4-1-07	333-105-0690	3-1-07	Amend	4-1-07
333-102-0320	3-1-07	Amend	4-1-07	333-105-0700	3-1-07	Amend	4-1-07
333-102-0325	3-1-07	Amend	4-1-07	333-105-0710	3-1-07	Amend	4-1-07
333-102-0327	3-1-07	Amend	4-1-07	333-105-0720	3-1-07	Amend	4-1-07
333-102-0330	3-1-07	Amend	4-1-07	333-105-0730	3-1-07	Amend	4-1-07
333-102-0335	3-1-07	Amend	4-1-07	333-105-0740	3-1-07	Amend	4-1-07
333-102-0340	3-1-07	Amend	4-1-07	333-105-0750	3-1-07	Amend	4-1-07
333-102-0345	3-1-07	Amend	4-1-07	333-105-0760	3-1-07	Amend	4-1-07
333-102-0350	3-1-07	Amend	4-1-07	333-113-0001	3-1-07	Amend	4-1-07
333-102-0355	3-1-07	Amend	4-1-07	333-113-0005	3-1-07	Amend	4-1-07
333-102-0360	3-1-07	Amend	4-1-07	333-113-0007	3-1-07	Amend	4-1-07
333-102-0365	3-1-07	Amend	4-1-07	333-113-0010	3-1-07	Amend	4-1-07
333-102-0900	3-1-07	Amend	4-1-07	333-113-0101	3-1-07	Amend	4-1-07
333-102-0910	3-1-07	Amend	4-1-07	333-113-0105	3-1-07	Amend	4-1-07
333-103-0001	3-1-07	Amend	4-1-07	333-113-0110	3-1-07	Amend	4-1-07
333-103-0003	3-1-07	Amend	4-1-07	333-113-0115	3-1-07	Amend	4-1-07
333-103-0005	3-1-07	Amend	4-1-07	333-113-0120	3-1-07	Amend	4-1-07
333-103-0010	3-1-07	Amend	4-1-07	333-113-0125	3-1-07	Amend	4-1-07
333-103-0015	3-1-07	Amend	4-1-07	333-113-0130	3-1-07	Amend	4-1-07
333-103-0020	3-1-07	Amend	4-1-07	333-113-0135	3-1-07	Amend	4-1-07
333-103-0025	3-1-07	Amend	4-1-07	333-113-0140	3-1-07	Amend	4-1-07
333-103-0030	3-1-07	Amend	4-1-07	333-113-0145	3-1-07	Amend	4-1-07
333-103-0035	3-1-07	Amend	4-1-07	333-113-0150	3-1-07	Amend	4-1-07
333-103-0050	3-1-07	Amend	4-1-07	333-113-0201	3-1-07	Amend	4-1-07
333-105-0001	3-1-07	Amend	4-1-07	333-113-0203	3-1-07	Amend	4-1-07
333-105-0003	3-1-07	Amend	4-1-07	333-113-0205	3-1-07	Amend	4-1-07
333-105-0005	3-1-07	Amend	4-1-07	333-113-0210	3-1-07	Amend	4-1-07
333-105-0050	3-1-07	Amend	4-1-07	333-113-0301	3-1-07	Amend	4-1-07
333-105-0075	3-1-07	Amend	4-1-07	333-113-0305	3-1-07	Amend	4-1-07
333-105-0420	3-1-07	Amend	4-1-07	333-113-0310	3-1-07	Amend	4-1-07
333-105-0430	3-1-07	Amend	4-1-07	333-113-0315	3-1-07	Amend	4-1-07
333-105-0440	3-1-07	Amend	4-1-07	333-113-0325	3-1-07	Amend	4-1-07
333-105-0450	3-1-07	Amend	4-1-07	333-113-0335	3-1-07	Amend	4-1-07
333-105-0460	3-1-07	Amend	4-1-07	333-113-0401	3-1-07	Amend	4-1-07
333-105-0470	3-1-07	Amend	4-1-07	333-113-0403	3-1-07	Amend	4-1-07
333-105-0480	3-1-07	Amend	4-1-07	333-113-0405	3-1-07	Amend	4-1-07
333-105-0490	3-1-07	Amend	4-1-07	333-113-0410	3-1-07	Amend	4-1-07
333-105-0500	3-1-07	Amend	4-1-07	333-113-0501	3-1-07	Amend	4-1-07
333-105-0510	3-1-07	Amend	4-1-07	333-116-0010	3-1-07	Amend	4-1-07
333-105-0520	3-1-07	Amend	4-1-07	333-116-0020	3-1-07	Amend	4-1-07
333-105-0530	3-1-07	Amend	4-1-07	333-116-0025	3-1-07	Amend	4-1-07
333-105-0540	3-1-07	Amend	4-1-07	333-116-0027	3-1-07	Amend	4-1-07
333-105-0550	3-1-07	Amend	4-1-07	333-116-0030	3-1-07	Amend	4-1-07
333-105-0560	3-1-07	Amend	4-1-07	333-116-0035	3-1-07	Amend	4-1-07
333-105-0570	3-1-07	Amend	4-1-07	333-116-0040	3-1-07	Amend	4-1-07
333-105-0580	3-1-07	Amend	4-1-07	333-116-0045	3-1-07	Amend	4-1-07
333-105-0590	3-1-07	Amend	4-1-07	333-116-0050	3-1-07	Amend	4-1-07
333-105-0600	3-1-07	Amend	4-1-07	333-116-0055	3-1-07	Amend	4-1-07
333-105-0610	3-1-07	Amend	4-1-07	333-116-0057	3-1-07	Amend	4-1-07
333-105-0620	3-1-07	Amend	4-1-07	333-116-0059	3-1-07	Amend	4-1-07
333-105-0630	3-1-07	Amend	4-1-07	333-116-0090	3-1-07	Amend	4-1-07
333-105-0640	3-1-07	Amend	4-1-07	333-116-0100	3-1-07	Amend	4-1-07
333-105-0650	3-1-07	Amend	4-1-07	333-116-0105	3-1-07	Amend	4-1-07
333-105-0660	3-1-07	Amend	4-1-07	333-116-0107	3-1-07	Amend	4-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
333-116-0110	3-1-07	Amend	4-1-07	333-116-0585	3-1-07	Amend	4-1-07
333-116-0120	3-1-07	Amend	4-1-07	333-116-0587	3-1-07	Amend	4-1-07
333-116-0123	3-1-07	Amend	4-1-07	333-116-0590	3-1-07	Amend	4-1-07
333-116-0125	3-1-07	Amend	4-1-07	333-116-0600	3-1-07	Amend	4-1-07
333-116-0130	3-1-07	Amend	4-1-07	333-116-0605	3-1-07	Amend	4-1-07
333-116-0140	3-1-07	Amend	4-1-07	333-116-0610	3-1-07	Amend	4-1-07
333-116-0150	3-1-07	Amend	4-1-07	333-116-0620	3-1-07	Amend	4-1-07
333-116-0160	3-1-07	Amend	4-1-07	333-116-0640	3-1-07	Amend	4-1-07
333-116-0165	3-1-07	Amend	4-1-07	333-116-0650	3-1-07	Amend	4-1-07
333-116-0170	3-1-07	Amend	4-1-07	333-116-0660	3-1-07	Amend	4-1-07
333-116-0180	3-1-07	Amend	4-1-07	333-116-0670	3-1-07	Amend	4-1-07
333-116-0190	3-1-07	Amend	4-1-07	333-116-0680	3-1-07	Amend	4-1-07
333-116-0200	3-1-07	Amend	4-1-07	333-116-0683	3-1-07	Amend	4-1-07
333-116-0220	3-1-07	Amend	4-1-07	333-116-0687	3-1-07	Amend	4-1-07
333-116-0250	3-1-07	Amend	4-1-07	333-116-0690	3-1-07	Amend	4-1-07
333-116-0255	3-1-07	Amend	4-1-07	333-116-0700	3-1-07	Amend	4-1-07
333-116-0260	3-1-07	Amend	4-1-07	333-116-0710	3-1-07	Amend	4-1-07
333-116-0280	3-1-07	Amend	4-1-07	333-116-0715	3-1-07	Amend	4-1-07
333-116-0290	3-1-07	Amend	4-1-07	333-116-0720	3-1-07	Amend	4-1-07
333-116-0300	3-1-07	Amend	4-1-07	333-116-0730	3-1-07	Amend	4-1-07
333-116-0310	3-1-07	Amend	4-1-07	333-116-0740	3-1-07	Amend	4-1-07
333-116-0320	3-1-07	Amend	4-1-07	333-116-0750	3-1-07	Amend	4-1-07
333-116-0330	3-1-07	Amend	4-1-07	333-116-0760	3-1-07	Amend	4-1-07
333-116-0340	3-1-07	Amend	4-1-07	333-116-0800	3-1-07	Amend	4-1-07
333-116-0350	3-1-07	Amend	4-1-07	333-116-0810	3-1-07	Amend	4-1-07
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333-116-0370	3-1-07	Amend	4-1-07	333-116-0830	3-1-07	Amend	4-1-07
333-116-0380	3-1-07	Amend	4-1-07	333-116-0840	3-1-07	Amend	4-1-07
333-116-0390	3-1-07	Amend	4-1-07	333-116-0850	3-1-07	Amend	4-1-07
333-116-0400	3-1-07	Amend	4-1-07	333-116-0870	3-1-07	Amend	4-1-07
333-116-0405	3-1-07	Amend	4-1-07	333-116-0880	3-1-07	Amend	4-1-07
333-116-0410	3-1-07	Amend	4-1-07	333-116-0905	3-1-07	Amend	4-1-07
333-116-0420	3-1-07	Amend	4-1-07	333-116-0910	3-1-07	Amend	4-1-07
333-116-0425	3-1-07	Amend	4-1-07	333-116-0915	3-1-07	Amend	4-1-07
333-116-0430	3-1-07	Amend	4-1-07	333-116-1000	3-1-07	Amend	4-1-07
333-116-0440	3-1-07	Amend	4-1-07	333-116-1010	3-1-07	Amend	4-1-07
333-116-0445	3-1-07	Amend	4-1-07	333-116-1015	3-1-07	Amend	4-1-07
333-116-0447	3-1-07	Amend	4-1-07	333-116-1030	3-1-07	Amend	4-1-07
333-116-0450	3-1-07	Amend	4-1-07	333-118-0010	3-1-07	Amend	4-1-07
333-116-0460	3-1-07	Amend	4-1-07	333-118-0020	3-1-07	Amend	4-1-07
333-116-0470	3-1-07	Amend	4-1-07	333-118-0030	3-1-07	Amend	4-1-07
333-116-0475	3-1-07	Amend	4-1-07	333-118-0040	3-1-07	Amend	4-1-07
333-116-0480	3-1-07	Amend	4-1-07	333-118-0050	3-1-07	Amend	4-1-07
333-116-0490	3-1-07	Amend	4-1-07	333-118-0060	3-1-07	Amend	4-1-07
333-116-0495	3-1-07	Amend	4-1-07	333-118-0070	3-1-07	Amend	4-1-07
333-116-0500	3-1-07	Amend	4-1-07	333-118-0080	3-1-07	Amend	4-1-07
333-116-0525	3-1-07	Amend	4-1-07	333-118-0090	3-1-07	Amend	4-1-07
333-116-0530	3-1-07	Amend	4-1-07	333-118-0100	3-1-07	Amend	4-1-07
333-116-0540	3-1-07	Amend	4-1-07	333-118-0110	3-1-07	Amend	4-1-07
333-116-0550	3-1-07	Amend	4-1-07	333-118-0120	3-1-07	Amend	4-1-07
333-116-0560	3-1-07	Amend	4-1-07	333-118-0130	3-1-07	Amend	4-1-07
333-116-0570	3-1-07	Amend	4-1-07	333-118-0140	3-1-07	Amend	4-1-07
333-116-0573	3-1-07	Amend	4-1-07	333-118-0150	3-1-07	Amend	4-1-07
333-116-0577	3-1-07	Amend	4-1-07	333-118-0160	3-1-07	Amend	4-1-07
333-116-0580	3-1-07	Amend	4-1-07	333-118-0170	3-1-07	Amend	4-1-07
333-116-0583	3-1-07	Amend	4-1-07	333-118-0180	3-1-07	Amend	4-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
333-118-0190	3-1-07	Amend	4-1-07	333-120-0730	3-1-07	Amend	4-1-07
333-118-0200	3-1-07	Amend	4-1-07	333-120-0740	3-1-07	Amend	4-1-07
333-118-0800	3-1-07	Amend	4-1-07	333-250-0000	2-1-07	Amend	3-1-07
333-120-0000	3-1-07	Amend	4-1-07	333-250-0010	2-1-07	Amend	3-1-07
333-120-0010	3-1-07	Amend	4-1-07	333-250-0020	2-1-07	Amend	3-1-07
333-120-0015	3-1-07	Amend	4-1-07	333-250-0030	2-1-07	Amend	3-1-07
333-120-0017	3-1-07	Amend	4-1-07	333-250-0040	2-1-07	Amend	3-1-07
333-120-0020	3-1-07	Amend	4-1-07	333-250-0041	2-1-07	Amend	3-1-07
333-120-0100	3-1-07	Amend	4-1-07	333-250-0042	2-1-07	Amend	3-1-07
333-120-0110	3-1-07	Amend	4-1-07	333-250-0043	2-1-07	Amend	3-1-07
333-120-0120	3-1-07	Amend	4-1-07	333-250-0044	2-1-07	Amend	3-1-07
333-120-0130	3-1-07	Amend	4-1-07	333-250-0045	2-1-07	Amend	3-1-07
333-120-0150	3-1-07	Amend	4-1-07	333-250-0046	2-1-07	Amend	3-1-07
333-120-0160	3-1-07	Amend	4-1-07	333-250-0047	2-1-07	Amend	3-1-07
333-120-0170	3-1-07	Amend	4-1-07	333-250-0048	2-1-07	Amend	3-1-07
333-120-0180	3-1-07	Amend	4-1-07	333-250-0049	2-1-07	Amend	3-1-07
333-120-0190	3-1-07	Amend	4-1-07	333-250-0050	2-1-07	Amend	3-1-07
333-120-0200	3-1-07	Amend	4-1-07	333-250-0060	2-1-07	Amend	3-1-07
333-120-0210	3-1-07	Amend	4-1-07	333-250-0070	2-1-07	Amend	3-1-07
333-120-0215	3-1-07	Amend	4-1-07	333-250-0080	2-1-07	Amend	3-1-07
333-120-0220	3-1-07	Amend	4-1-07	333-250-0090	2-1-07	Repeal	3-1-07
333-120-0230	3-1-07	Amend	4-1-07	333-250-0100	2-1-07	Amend	3-1-07
333-120-0240	3-1-07	Amend	4-1-07	333-255-0000	2-1-07	Amend	3-1-07
333-120-0250	3-1-07	Amend	4-1-07	333-255-0010	2-1-07	Amend	3-1-07
333-120-0260	3-1-07	Amend	4-1-07	333-255-0020	2-1-07	Amend	3-1-07
333-120-0300	3-1-07	Amend	4-1-07	333-255-0030	2-1-07	Amend	3-1-07
333-120-0310	3-1-07	Amend	4-1-07	333-255-0040	2-1-07	Amend	3-1-07
333-120-0320	3-1-07	Amend	4-1-07	333-255-0050	2-1-07	Amend	3-1-07
333-120-0330	3-1-07	Amend	4-1-07	333-255-0060	2-1-07	Amend	3-1-07
333-120-0400	3-1-07	Amend	4-1-07	333-255-0070	2-1-07	Amend	3-1-07
333-120-0410	3-1-07	Amend	4-1-07	333-255-0071	2-1-07	Amend	3-1-07
333-120-0420	3-1-07	Amend	4-1-07	333-255-0072	2-1-07	Amend	3-1-07
333-120-0430	3-1-07	Amend	4-1-07	333-255-0073	2-1-07	Amend	3-1-07
333-120-0440	3-1-07	Amend	4-1-07	333-255-0079	2-1-07	Amend	3-1-07
333-120-0450	3-1-07	Amend	4-1-07	333-255-0080	2-1-07	Amend	3-1-07
333-120-0460	3-1-07	Amend	4-1-07	333-255-0081	2-1-07	Amend	3-1-07
333-120-0500	3-1-07	Amend	4-1-07	333-255-0082	2-1-07	Amend	3-1-07
333-120-0510	3-1-07	Amend	4-1-07	333-255-0090	2-1-07	Amend	3-1-07
333-120-0520	3-1-07	Amend	4-1-07	333-255-0091	2-1-07	Amend	3-1-07
333-120-0530	3-1-07	Amend	4-1-07	333-255-0092	2-1-07	Amend	3-1-07
333-120-0540	3-1-07	Amend	4-1-07	333-255-0093	2-1-07	Amend	3-1-07
333-120-0550	3-1-07	Amend	4-1-07	333-265-0130	2-1-07	Amend	3-1-07
333-120-0560	3-1-07	Amend	4-1-07	335-001-0000	2-9-07	Amend	3-1-07
333-120-0600	3-1-07	Amend	4-1-07	335-001-0005	2-9-07	Amend	3-1-07
333-120-0610	3-1-07	Amend	4-1-07	335-005-0030	2-9-07	Amend	3-1-07
333-120-0620	3-1-07	Amend	4-1-07	335-010-0060	2-1-07	Amend	3-1-07
333-120-0630	3-1-07	Amend	4-1-07	335-010-0070	2-1-07	Amend	3-1-07
333-120-0640	3-1-07	Amend	4-1-07	335-060-0005	2-1-07	Amend	3-1-07
333-120-0650	3-1-07	Amend	4-1-07	335-070-0020	2-1-07	Amend	3-1-07
333-120-0660	3-1-07	Amend	4-1-07	335-070-0030	2-1-07	Amend	3-1-07
333-120-0670	3-1-07	Amend	4-1-07	335-070-0040	2-1-07	Amend	3-1-07
333-120-0680	3-1-07	Amend	4-1-07	335-070-0050	2-1-07	Amend	3-1-07
333-120-0690	3-1-07	Amend	4-1-07	335-070-0055	2-1-07	Amend	3-1-07
333-120-0700	3-1-07	Amend	4-1-07	335-095-0050	2-1-07	Amend	3-1-07
333-120-0710	3-1-07	Amend	4-1-07	335-095-0060	2-1-07	Amend	3-1-07
333-120-0720	3-1-07	Amend	4-1-07	337-010-0010	1-1-07	Amend	1-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
337-010-0011	1-1-07	Adopt	1-1-07	340-228-0620	12-22-06	Adopt	2-1-07
337-010-0012	1-1-07	Amend	1-1-07	340-228-0622	12-22-06	Adopt	2-1-07
337-010-0030	1-1-07	Amend	1-1-07	340-228-0624	12-22-06	Adopt	2-1-07
337-010-0031	1-1-07	Amend	1-1-07	340-228-0626	12-22-06	Adopt	2-1-07
337-010-0055	1-1-07	Amend	1-1-07	340-228-0628	12-22-06	Adopt	2-1-07
339-010-0040	12-28-06	Amend	2-1-07	340-228-0630	12-22-06	Adopt	2-1-07
339-010-0055	12-28-06	Amend	2-1-07	340-228-0632	12-22-06	Adopt	2-1-07
340-041-0002	3-15-07	Amend	4-1-07	340-228-0634	12-22-06	Adopt	2-1-07
340-041-0004	3-15-07	Amend	4-1-07	340-228-0636	12-22-06	Adopt	2-1-07
340-041-0007	3-15-07	Amend	4-1-07	340-228-0638	12-22-06	Adopt	2-1-07
340-041-0016	3-15-07	Amend	4-1-07	340-228-0640	12-22-06	Adopt	2-1-07
340-041-0021	3-15-07	Amend	4-1-07	340-228-0642	12-22-06	Adopt	2-1-07
340-041-0028	3-14-07	Amend	4-1-07	340-228-0644	12-22-06	Adopt	2-1-07
340-041-0028	3-15-07	Amend	4-1-07	340-228-0646	12-22-06	Adopt	2-1-07
340-041-0032	3-15-07	Amend	4-1-07	340-228-0648	12-22-06	Adopt	2-1-07
340-041-0046	3-15-07	Amend	4-1-07	340-228-0650	12-22-06	Adopt	2-1-07
340-041-0053	3-14-07	Amend	4-1-07	340-228-0652	12-22-06	Adopt	2-1-07
340-041-0053	3-15-07	Amend	4-1-07	340-228-0654	12-22-06	Adopt	2-1-07
340-041-0104	3-15-07	Amend	4-1-07	340-228-0656	12-22-06	Adopt	2-1-07
340-041-0121	3-15-07	Amend	4-1-07	340-228-0658	12-22-06	Adopt	2-1-07
340-041-0175	3-15-07	Amend	4-1-07	340-228-0660	12-22-06	Adopt	2-1-07
340-041-0180	3-15-07	Amend	4-1-07	340-228-0662	12-22-06	Adopt	2-1-07
340-041-0185	3-14-07	Amend	4-1-07	340-228-0664	12-22-06	Adopt	2-1-07
340-041-0195	3-14-07	Amend	4-1-07	340-228-0666	12-22-06	Adopt	2-1-07
340-041-0201	3-15-07	Amend	4-1-07	340-228-0668	12-22-06	Adopt	2-1-07
340-041-0235	3-15-07	Amend	4-1-07	340-228-0670	12-22-06	Adopt	2-1-07
340-041-0260	3-15-07	Amend	4-1-07	340-228-0671	12-22-06	Adopt	2-1-07
340-041-0271	3-15-07	Amend	4-1-07	340-228-0672	12-22-06	Adopt	2-1-07
340-041-0300	3-15-07	Amend	4-1-07	340-228-0673	12-22-06	Adopt	2-1-07
340-041-0315	3-15-07	Amend	4-1-07	340-228-0674	12-22-06	Adopt	2-1-07
340-041-0320	3-15-07	Amend	4-1-07	340-228-0676	12-22-06	Adopt	2-1-07
340-041-0340	3-15-07	Amend	4-1-07	340-228-0678	12-22-06	Adopt	2-1-07
340-041-0345	3-15-07	Amend	4-1-07	340-232-0010	4-12-07	Amend	5-1-07
340-041-0350	3-15-07	Amend	4-1-07	340-232-0020	4-12-07	Amend	5-1-07
340-200-0025	4-12-07	Amend	5-1-07	340-238-0040	12-22-06	Amend	2-1-07
340-200-0040	4-12-07	Amend	5-1-07	340-238-0060	12-22-06	Amend	2-1-07
340-202-0090	4-12-07	Amend	5-1-07	340-242-0010	4-12-07	Amend	5-1-07
340-204-0010	4-12-07	Amend	5-1-07	340-242-0020	4-12-07	Amend	5-1-07
340-204-0030	4-12-07	Amend	5-1-07	340-242-0030	4-12-07	Amend	5-1-07
340-204-0040	4-12-07	Amend	5-1-07	340-242-0040	4-12-07	Amend	5-1-07
340-224-0050	4-12-07	Amend	5-1-07	340-242-0050	4-12-07	Amend	5-1-07
340-224-0060	4-12-07	Amend	5-1-07	340-242-0070	4-12-07	Amend	5-1-07
340-225-0090	4-12-07	Amend	5-1-07	340-242-0080	4-12-07	Amend	5-1-07
340-228-0300	12-22-06	Amend	2-1-07	340-242-0090	4-12-07	Amend	5-1-07
340-228-0600	12-22-06	Adopt	2-1-07	340-242-0100	4-12-07	Repeal	5-1-07
340-228-0602	12-22-06	Adopt	2-1-07	340-242-0110	4-12-07	Amend	5-1-07
340-228-0603	12-22-06	Adopt	2-1-07	340-242-0120	4-12-07	Amend	5-1-07
340-228-0604	12-22-06	Adopt	2-1-07	340-242-0130	4-12-07	Repeal	5-1-07
340-228-0605	12-22-06	Adopt	2-1-07	340-242-0160	4-12-07	Amend	5-1-07
340-228-0606	12-22-06	Adopt	2-1-07	340-242-0180	4-12-07	Amend	5-1-07
340-228-0608	12-22-06	Adopt	2-1-07	340-242-0190	4-12-07	Amend	5-1-07
340-228-0610	12-22-06	Adopt	2-1-07	340-242-0200	4-12-07	Amend	5-1-07
340-228-0612	12-22-06	Adopt	2-1-07	340-242-0210	4-12-07	Amend	5-1-07
340-228-0614	12-22-06	Adopt	2-1-07	340-242-0220	4-12-07	Amend	5-1-07
340-228-0616	12-22-06	Adopt	2-1-07	340-242-0240	4-12-07	Amend	5-1-07
340-228-0618	12-22-06	Adopt	2-1-07	340-242-0260	4-12-07	Amend	5-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
340-242-0270	4-12-07	Amend	5-1-07	345-020-0011	5-15-07	Amend	6-1-07
340-242-0280	4-12-07	Amend	5-1-07	345-020-0016	5-15-07	Amend	6-1-07
340-242-0290	4-12-07	Amend	5-1-07	345-020-0040	5-15-07	Amend	6-1-07
340-242-0400	4-12-07	Amend	5-1-07	345-020-0060	5-15-07	Amend	6-1-07
340-242-0410	4-12-07	Amend	5-1-07	345-021-0000	5-15-07	Amend	6-1-07
340-242-0420	4-12-07	Amend	5-1-07	345-021-0010	5-15-07	Amend	6-1-07
340-242-0430	4-12-07	Amend	5-1-07	345-021-0050	5-15-07	Amend	6-1-07
340-242-0440	4-12-07	Amend	5-1-07	345-021-0055	5-15-07	Amend	6-1-07
340-244-0030	12-22-06	Amend	2-1-07	345-021-0080	5-15-07	Amend	6-1-07
340-244-0040	12-22-06	Amend	2-1-07	345-021-0090	5-15-07	Amend	6-1-07
345-001-0000	5-15-07	Amend	6-1-07	345-021-0100	5-15-07	Amend	6-1-07
345-001-0005	5-15-07	Amend	6-1-07	345-022-0000	5-15-07	Amend	6-1-07
345-001-0010	5-15-07	Amend	6-1-07	345-022-0020	5-15-07	Amend	6-1-07
345-001-0020	5-15-07	Amend	6-1-07	345-022-0022	5-15-07	Amend	6-1-07
345-001-0040	5-15-07	Repeal	6-1-07	345-022-0040	5-15-07	Amend	6-1-07
345-001-0050	5-15-07	Amend	6-1-07	345-022-0060	5-15-07	Amend	6-1-07
345-001-0060	5-15-07	Amend	6-1-07	345-022-0070	5-15-07	Amend	6-1-07
345-001-0090	5-15-07	Repeal	6-1-07	345-022-0080	5-15-07	Amend	6-1-07
345-011-0005	5-15-07	Amend	6-1-07	345-022-0090	5-15-07	Amend	6-1-07
345-011-0010	5-15-07	Amend	6-1-07	345-022-0120	5-15-07	Amend	6-1-07
345-011-0015	5-15-07	Amend	6-1-07	345-023-0005	5-15-07	Amend	6-1-07
345-011-0020	5-15-07	Amend	6-1-07	345-023-0020	5-15-07	Amend	6-1-07
345-011-0025	5-15-07	Amend	6-1-07	345-024-0010	5-15-07	Amend	6-1-07
345-011-0035	5-15-07	Amend	6-1-07	345-024-0015	5-15-07	Amend	6-1-07
345-011-0045	5-15-07	Amend	6-1-07	345-024-0030	5-15-07	Amend	6-1-07
345-011-0050	5-15-07	Amend	6-1-07	345-024-0090	5-15-07	Amend	6-1-07
345-011-0055	5-15-07	Amend	6-1-07	345-024-0550	5-15-07	Amend	6-1-07
345-015-0001	5-15-07	Amend	6-1-07	345-024-0580	5-15-07	Amend	6-1-07
345-015-0014	5-15-07	Amend	6-1-07	345-024-0590	5-15-07	Amend	6-1-07
345-015-0016	5-15-07	Amend	6-1-07	345-024-0600	5-15-07	Amend	6-1-07
345-015-0023	5-15-07	Amend	6-1-07	345-024-0620	5-15-07	Amend	6-1-07
345-015-0046	5-15-07	Amend	6-1-07	345-024-0630	5-15-07	Amend	6-1-07
345-015-0051	5-15-07	Amend	6-1-07	345-024-0650	5-15-07	Repeal	6-1-07
345-015-0080	5-15-07	Amend	6-1-07	345-024-0680	5-15-07	Amend	6-1-07
345-015-0083	5-15-07	Amend	6-1-07	345-024-0720	5-15-07	Amend	6-1-07
345-015-0085	5-15-07	Amend	6-1-07	345-026-0005	5-15-07	Amend	6-1-07
345-015-0110	5-15-07	Amend	6-1-07	345-026-0010	5-15-07	Amend	6-1-07
345-015-0120	5-15-07	Amend	6-1-07	345-026-0048	5-15-07	Amend	6-1-07
345-015-0130	5-15-07	Amend	6-1-07	345-026-0050	5-15-07	Amend	6-1-07
345-015-0140	5-15-07	Amend	6-1-07	345-026-0080	5-15-07	Amend	6-1-07
345-015-0160	5-15-07	Amend	6-1-07	345-026-0100	5-15-07	Repeal	6-1-07
345-015-0180	5-15-07	Amend	6-1-07	345-026-0105	5-15-07	Amend	6-1-07
345-015-0190	5-15-07	Amend	6-1-07	345-026-0200	5-15-07	Repeal	6-1-07
345-015-0200	5-15-07	Amend	6-1-07	345-026-0390	5-15-07	Amend	6-1-07
345-015-0210	5-15-07	Amend	6-1-07	345-027-0000	5-15-07	Amend	6-1-07
345-015-0220	5-15-07	Amend	6-1-07	345-027-0020	5-15-07	Amend	6-1-07
345-015-0230	5-15-07	Amend	6-1-07	345-027-0023	5-15-07	Amend	6-1-07
345-015-0240	5-15-07	Amend	6-1-07	345-027-0028	5-15-07	Amend	6-1-07
345-015-0300	5-15-07	Amend	6-1-07	345-027-0030	5-15-07	Amend	6-1-07
345-015-0310	5-15-07	Amend	6-1-07	345-027-0050	5-15-07	Amend	6-1-07
345-015-0320	5-15-07	Amend	6-1-07	345-027-0060	5-15-07	Amend	6-1-07
345-015-0350	5-15-07	Amend	6-1-07	345-027-0070	5-15-07	Amend	6-1-07
345-015-0360	5-15-07	Amend	6-1-07	345-027-0080	5-15-07	Amend	6-1-07
345-015-0370	5-15-07	Amend	6-1-07	345-027-0090	5-15-07	Amend	6-1-07
345-015-0380	5-15-07	Amend	6-1-07	345-027-0095	5-15-07	Repeal	6-1-07
345-020-0006	5-15-07	Amend	6-1-07	345-027-0100	5-15-07	Amend	6-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
345-027-0110	5-15-07	Amend	6-1-07	345-092-0012	5-15-07	Amend	6-1-07
345-027-0210	5-15-07	Amend	6-1-07	345-092-0014	5-15-07	Amend	6-1-07
345-027-0220	5-15-07	Amend	6-1-07	345-092-0025	5-15-07	Amend	6-1-07
345-027-0230	5-15-07	Amend	6-1-07	345-092-0031	5-15-07	Amend	6-1-07
345-027-0240	5-15-07	Amend	6-1-07	345-092-0040	5-15-07	Amend	6-1-07
345-029-0000	5-15-07	Amend	6-1-07	345-092-0050	5-15-07	Amend	6-1-07
345-029-0005	5-15-07	Amend	6-1-07	345-092-0060	5-15-07	Repeal	6-1-07
345-029-0010	5-15-07	Amend	6-1-07	345-092-0070	5-15-07	Repeal	6-1-07
345-029-0020	5-15-07	Amend	6-1-07	345-092-0071	5-15-07	Repeal	6-1-07
345-029-0030	5-15-07	Amend	6-1-07	345-092-0080	5-15-07	Repeal	6-1-07
345-029-0050	5-15-07	Amend	6-1-07	345-092-0090	5-15-07	Repeal	6-1-07
345-029-0060	5-15-07	Amend	6-1-07	345-092-0100	5-15-07	Repeal	6-1-07
345-029-0070	5-15-07	Amend	6-1-07	345-092-0110	5-15-07	Amend	6-1-07
345-029-0100	5-15-07	Amend	6-1-07	345-095-0005	5-15-07	Amend	6-1-07
345-030-0005	5-15-07	Amend	6-1-07	345-095-0010	5-15-07	Repeal	6-1-07
345-030-0010	5-15-07	Amend	6-1-07	345-095-0015	5-15-07	Amend	6-1-07
345-050-0010	5-15-07	Amend	6-1-07	345-095-0017	5-15-07	Repeal	6-1-07
345-050-0030	5-15-07	Amend	6-1-07	345-095-0020	5-15-07	Amend	6-1-07
345-050-0035	5-15-07	Amend	6-1-07	345-095-0025	5-15-07	Repeal	6-1-07
345-050-0036	5-15-07	Amend	6-1-07	345-095-0040	5-15-07	Amend	6-1-07
345-050-0038	5-15-07	Adopt	6-1-07	345-095-0045	5-15-07	Amend	6-1-07
345-050-0050	5-15-07	Amend	6-1-07	345-095-0060	5-15-07	Amend	6-1-07
345-050-0070	5-15-07	Amend	6-1-07	345-095-0070	5-15-07	Amend	6-1-07
345-050-0120	5-15-07	Amend	6-1-07	345-095-0080	5-15-07	Amend	6-1-07
345-060-0001	5-15-07	Amend	6-1-07	345-095-0090	5-15-07	Amend	6-1-07
345-060-0003	5-15-07	Amend	6-1-07	345-095-0100	5-15-07	Amend	6-1-07
345-060-0004	5-15-07	Amend	6-1-07	345-095-0105	5-15-07	Repeal	6-1-07
345-060-0005	5-15-07	Amend	6-1-07	345-095-0110	5-15-07	Repeal	6-1-07
345-060-0006	5-15-07	Amend	6-1-07	345-095-0115	5-15-07	Amend	6-1-07
345-060-0007	5-15-07	Amend	6-1-07	345-095-0117	5-15-07	Amend	6-1-07
345-060-0045	5-15-07	Amend	6-1-07	345-095-0118	5-15-07	Amend	6-1-07
345-060-0055	5-15-07	Amend	6-1-07	345-095-0120	5-15-07	Amend	6-1-07
345-070-0005	5-15-07	Amend	6-1-07	345-095-0150	5-15-07	Amend	6-1-07
345-070-0010	5-15-07	Amend	6-1-07	345-095-0160	5-15-07	Amend	6-1-07
345-070-0015	5-15-07	Amend	6-1-07	407-003-0000	2-15-07	Adopt	3-1-07
345-070-0020	5-15-07	Amend	6-1-07	407-003-0010	2-15-07	Adopt	3-1-07
345-070-0025	5-15-07	Amend	6-1-07	407-020-0000	2-1-07	Adopt	3-1-07
345-070-0030	5-15-07	Amend	6-1-07	407-020-0005	2-1-07	Adopt	3-1-07
345-075-0015	5-15-07	Repeal	6-1-07	407-020-0010	2-1-07	Adopt	3-1-07
345-075-0020	5-15-07	Repeal	6-1-07	407-020-0015	2-1-07	Adopt	3-1-07
345-075-0025	5-15-07	Repeal	6-1-07	407-030-0010	3-1-07	Am. & Ren.	4-1-07
345-076-0010	5-15-07	Amend	6-1-07	407-030-0020	3-1-07	Am. & Ren.	4-1-07
345-076-0012	5-15-07	Amend	6-1-07	407-030-0030	3-1-07	Am. & Ren.	4-1-07
345-076-0015	5-15-07	Repeal	6-1-07	407-030-0040	3-1-07	Am. & Ren.	4-1-07
345-076-0020	5-15-07	Amend	6-1-07	409-021-0010	2-1-07	Amend	3-1-07
345-076-0025	5-15-07	Repeal	6-1-07	409-021-0115	2-1-07	Am. & Ren.	3-1-07
345-076-0026	5-15-07	Repeal	6-1-07	409-021-0120	2-1-07	Am. & Ren.	3-1-07
345-076-0027	5-15-07	Repeal	6-1-07	409-021-0130	2-1-07	Am. & Ren.	3-1-07
345-076-0029	5-15-07	Repeal	6-1-07	409-021-0140	2-1-07	Am. & Ren.	3-1-07
345-076-0030	5-15-07	Repeal	6-1-07	409-021-0150	2-1-07	Adopt	3-1-07
345-076-0032	5-15-07	Repeal	6-1-07	409-022-0010	1-1-07	Adopt	1-1-07
345-076-0035	5-15-07	Repeal	6-1-07	409-022-0020	1-1-07	Adopt	1-1-07
345-076-0040	5-15-07	Repeal	6-1-07	409-022-0030	1-1-07	Adopt	1-1-07
345-076-0045	5-15-07	Repeal	6-1-07	409-022-0040	1-1-07	Adopt	1-1-07
345-076-0050	5-15-07	Adopt	6-1-07	409-022-0050	1-1-07	Adopt	1-1-07
345-092-0010	5-15-07	Amend	6-1-07	409-022-0060	1-1-07	Adopt	1-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
409-022-0070	1-1-07	Adopt	1-1-07	410-122-0510	1-1-07	Amend	1-1-07
409-022-0080	1-1-07	Adopt	1-1-07	410-122-0530	1-1-07	Repeal	1-1-07
409-030-0000	11-28-06	Amend(T)	1-1-07	410-122-0580	1-1-07	Amend	1-1-07
409-030-0005	11-28-06	Amend(T)	1-1-07	410-122-0600	1-1-07	Amend	1-1-07
409-030-0020	11-28-06	Amend(T)	1-1-07	410-122-0620	1-1-07	Amend	1-1-07
409-030-0050	11-28-06	Amend(T)	1-1-07	410-122-0660	1-1-07	Amend	1-1-07
410-020-0000	3-30-07	Repeal	5-1-07	410-122-0678	1-1-07	Amend	1-1-07
410-020-0010	3-30-07	Repeal	5-1-07	410-122-0700	1-1-07	Amend	1-1-07
410-020-0020	3-30-07	Repeal	5-1-07	410-122-0720	1-1-07	Amend	1-1-07
410-020-0030	3-30-07	Repeal	5-1-07	410-125-0146	1-1-07	Amend	1-1-07
410-020-0040	3-30-07	Repeal	5-1-07	410-125-0195	1-1-07	Amend	1-1-07
410-020-0050	3-30-07	Repeal	5-1-07	410-127-0000	1-1-07	Repeal	2-1-07
410-120-0000	1-1-07	Amend	1-1-07	410-127-0065	1-1-07	Adopt	1-1-07
410-120-1280	1-1-07	Amend	1-1-07	410-129-0010	1-1-07	Repeal	2-1-07
410-120-1295	1-1-07	Amend(T)	1-1-07	410-129-0080	1-1-07	Amend	1-1-07
410-120-1295	4-5-07	Amend	5-1-07	410-131-0020	1-1-07	Repeal	2-1-07
410-120-1295(T)	4-5-07	Repeal	5-1-07	410-131-0080	1-1-07	Amend	1-1-07
410-120-1340	1-1-07	Amend	1-1-07	410-132-0000	1-1-07	Repeal	2-1-07
410-120-1380	1-1-07	Amend	1-1-07	410-136-0020	1-1-07	Repeal	2-1-07
410-120-1390	1-1-07	Amend	1-1-07	410-141-0000	1-1-07	Amend	1-1-07
410-120-1960	1-1-07	Amend	1-1-07	410-141-0060	1-1-07	Amend	1-1-07
410-121-0030	1-1-07	Amend	2-1-07	410-141-0070	1-1-07	Amend	1-1-07
410-121-0040	1-1-07	Amend	1-1-07	410-141-0080	1-1-07	Amend	1-1-07
410-121-0149	1-1-07	Amend	1-1-07	410-141-0220	1-1-07	Amend	1-1-07
410-121-0157	1-1-07	Amend	2-1-07	410-141-0420	1-1-07	Amend(T)	2-1-07
410-121-0300	1-1-07	Amend	2-1-07	410-141-0480	1-1-07	Amend	1-1-07
410-121-0320	1-1-07	Amend	2-1-07	410-141-0520	1-1-07	Amend	1-1-07
410-122-0000	1-1-07	Repeal	2-1-07	410-142-0000	1-1-07	Repeal	2-1-07
410-122-0020	1-1-07	Amend	1-1-07	410-142-0225	1-1-07	Adopt	1-1-07
410-122-0055	1-1-07	Amend	1-1-07	410-143-0000	1-1-07	Repeal	2-1-07
410-122-0080	1-1-07	Amend	1-1-07	410-147-0120	1-1-07	Amend	1-1-07
410-122-0085	1-1-07	Repeal	1-1-07	410-147-0320	1-1-07	Amend	1-1-07
410-122-0182	1-1-07	Amend	1-1-07	410-147-0365	1-1-07	Amend	1-1-07
410-122-0184	1-1-07	Amend	1-1-07	410-147-0460	1-1-07	Amend	1-1-07
410-122-0186	1-1-07	Amend	1-1-07	410-147-0480	1-1-07	Amend	1-1-07
410-122-0190	1-1-07	Repeal	1-1-07	410-147-0620	1-1-07	Amend	1-1-07
410-122-0202	1-1-07	Amend	1-1-07	410-148-0260	1-1-07	Amend	2-1-07
410-122-0203	1-1-07	Amend	1-1-07	411-020-0002	12-21-06	Amend	2-1-07
410-122-0204	1-1-07	Amend	1-1-07	411-020-0020	12-21-06	Amend	2-1-07
410-122-0205	1-1-07	Amend	1-1-07	411-020-0100	12-21-06	Amend	2-1-07
410-122-0207	1-1-07	Amend	1-1-07	411-020-0120	12-21-06	Amend	2-1-07
410-122-0208	1-1-07	Amend	1-1-07	411-026-0000	12-1-06	Amend	1-1-07
410-122-0209	1-1-07	Amend	1-1-07	411-026-0010	12-1-06	Amend	1-1-07
410-122-0210	1-1-07	Amend	1-1-07	411-026-0020	12-1-06	Amend	1-1-07
410-122-0240	1-1-07	Amend	1-1-07	411-026-0030	12-1-06	Amend	1-1-07
410-122-0280	1-1-07	Amend	1-1-07	411-026-0040	12-1-06	Amend	1-1-07
410-122-0320	1-1-07	Amend	1-1-07	411-026-0050	12-1-06	Amend	1-1-07
410-122-0325	1-1-07	Amend	1-1-07	411-026-0060	12-1-06	Amend	1-1-07
410-122-0340	1-1-07	Amend	1-1-07	411-026-0070	12-1-06	Amend	1-1-07
410-122-0360	1-1-07	Amend	1-1-07	411-026-0080	12-1-06	Amend	1-1-07
410-122-0365	1-1-07	Amend	1-1-07	411-027-0000	4-17-07	Amend	6-1-07
410-122-0375	1-1-07	Amend	1-1-07	411-027-0000(T)	4-17-07	Repeal	6-1-07
410-122-0380	1-1-07	Amend	1-1-07	411-030-0020	5-1-07	Amend(T)	5-1-07
410-122-0400	1-1-07	Amend	1-1-07	411-030-0080	5-1-07	Amend(T)	5-1-07
410-122-0420	1-1-07	Amend	1-1-07	411-030-0090	3-30-07	Amend(T)	5-1-07
410-122-0500	1-1-07	Amend	1-1-07	411-031-0020	4-17-07	Amend	5-1-07



## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
411-031-0020(T)	4-17-07	Repeal	5-1-07	411-335-0220	1-1-07	Amend	2-1-07
411-031-0040	4-17-07	Amend	5-1-07	411-335-0230	1-1-07	Amend	2-1-07
411-031-0040(T)	4-17-07	Repeal	5-1-07	411-335-0240	1-1-07	Amend	2-1-07
411-050-0400	1-1-07	Amend	2-1-07	411-335-0270	1-1-07	Amend	2-1-07
411-050-0401	1-1-07	Amend	2-1-07	411-335-0300	1-1-07	Amend	2-1-07
411-050-0405	1-1-07	Amend	2-1-07	411-335-0320	1-1-07	Amend	2-1-07
411-050-0408	1-1-07	Amend	2-1-07	411-335-0330	1-1-07	Amend	2-1-07
411-050-0410	1-1-07	Amend	2-1-07	411-335-0340	1-1-07	Amend	2-1-07
411-050-0412	1-1-07	Amend	2-1-07	411-335-0350	1-1-07	Amend	2-1-07
411-050-0415	1-1-07	Amend	2-1-07	411-335-0360	1-1-07	Amend	2-1-07
411-050-0420	1-1-07	Amend	2-1-07	411-335-0380	1-1-07	Amend	2-1-07
411-050-0430	1-1-07	Amend	2-1-07	411-335-0390	1-1-07	Amend	2-1-07
411-050-0435	1-1-07	Amend	2-1-07	413-015-0100	3-20-07	Amend	5-1-07
411-050-0437	1-1-07	Repeal	2-1-07	413-015-0105	3-20-07	Amend	5-1-07
411-050-0440	1-1-07	Amend	2-1-07	413-015-0110	3-20-07	Amend	5-1-07
411-050-0441	1-1-07	Repeal	2-1-07	413-015-0115	3-20-07	Amend	5-1-07
411-050-0442	1-1-07	Repeal	2-1-07	413-015-0120	3-20-07	Repeal	5-1-07
411-050-0443	1-1-07	Amend	2-1-07	413-015-0125	3-20-07	Amend	5-1-07
411-050-0444	1-1-07	Adopt	2-1-07	413-015-0200	3-20-07	Amend	5-1-07
411-050-0445	1-1-07	Amend	2-1-07	413-015-0205	3-20-07	Amend	5-1-07
411-050-0447	1-1-07	Amend	2-1-07	413-015-0210	3-20-07	Amend	5-1-07
411-050-0450	1-1-07	Amend	2-1-07	413-015-0211	3-20-07	Amend	5-1-07
411-050-0455	1-1-07	Amend	2-1-07	413-015-0212	3-20-07	Amend	5-1-07
411-050-0460	1-1-07	Amend	2-1-07	413-015-0213	3-20-07	Amend	5-1-07
411-050-0465	1-1-07	Amend	2-1-07	413-015-0215	3-20-07	Amend	5-1-07
411-050-0480	1-1-07	Amend	2-1-07	413-015-0220	3-20-07	Amend	5-1-07
411-050-0481	1-1-07	Amend	2-1-07	413-015-0225	3-20-07	Amend	5-1-07
411-050-0483	1-1-07	Amend	2-1-07	413-015-0300	3-20-07	Amend	5-1-07
411-050-0485	1-1-07	Amend	2-1-07	413-015-0302	3-20-07	Amend	5-1-07
411-050-0487	1-1-07	Amend	2-1-07	413-015-0305	3-20-07	Amend	5-1-07
411-050-0491	1-1-07	Adopt	2-1-07	413-015-0310	3-20-07	Amend	5-1-07
411-066-0000	5-15-07	Amend(T)	6-1-07	413-015-0400	3-20-07	Amend	5-1-07
411-066-0005	5-15-07	Amend(T)	6-1-07	413-015-0405	3-20-07	Amend	5-1-07
411-066-0010	5-15-07	Amend(T)	6-1-07	413-015-0409	3-20-07	Adopt	5-1-07
411-066-0015	5-15-07	Adopt(T)	6-1-07	413-015-0415	3-20-07	Adopt	5-1-07
411-066-0020	5-15-07	Amend(T)	6-1-07	413-015-0420	3-20-07	Adopt	5-1-07
411-070-0130	3-13-07	Amend	4-1-07	413-015-0425	3-20-07	Adopt	5-1-07
411-335-0010	1-1-07	Amend	2-1-07	413-015-0430	3-20-07	Adopt	5-1-07
411-335-0020	1-1-07	Amend	2-1-07	413-015-0435	3-20-07	Adopt	5-1-07
411-335-0030	1-1-07	Amend	2-1-07	413-015-0440	3-20-07	Adopt	5-1-07
411-335-0050	1-1-07	Amend	2-1-07	413-015-0445	3-20-07	Adopt	5-1-07
411-335-0060	1-1-07	Amend	2-1-07	413-015-0450	3-20-07	Adopt	5-1-07
411-335-0070	1-1-07	Amend	2-1-07	413-015-0455	3-20-07	Am. & Ren.	5-1-07
411-335-0080	1-1-07	Amend	2-1-07	413-015-0460	3-20-07	Adopt	5-1-07
411-335-0090	1-1-07	Amend	2-1-07	413-015-0465	3-20-07	Adopt	5-1-07
411-335-0100	1-1-07	Amend	2-1-07	413-015-0470	3-20-07	Adopt	5-1-07
411-335-0110	1-1-07	Amend	2-1-07	413-015-0475	3-20-07	Adopt	5-1-07
411-335-0120	1-1-07	Amend	2-1-07	413-015-0480	3-20-07	Adopt	5-1-07
411-335-0130	1-1-07	Amend	2-1-07	413-015-0485	3-20-07	Renumber	5-1-07
411-335-0140	1-1-07	Amend	2-1-07	413-015-0500	3-20-07	Repeal	5-1-07
411-335-0150	1-1-07	Amend	2-1-07	413-015-0505	3-20-07	Repeal	5-1-07
411-335-0160	1-1-07	Amend	2-1-07	413-015-0510	3-20-07	Repeal	5-1-07
411-335-0170	1-1-07	Amend	2-1-07	413-015-0511	3-20-07	Repeal	5-1-07
411-335-0190	1-1-07	Amend	2-1-07	413-015-0512	3-20-07	Repeal	5-1-07
411-335-0200	1-1-07	Amend	2-1-07	413-015-0513	3-20-07	Repeal	5-1-07
411-335-0210	1-1-07	Amend	2-1-07	413-015-0514	3-20-07	Repeal	5-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
413-015-0600	3-20-07	Repeal	5-1-07	413-030-0026	3-20-07	Adopt	5-1-07
413-015-0605	3-20-07	Repeal	5-1-07	413-030-0030	3-20-07	Amend	5-1-07
413-015-0610	3-20-07	Repeal	5-1-07	413-040-0000	3-20-07	Amend	5-1-07
413-015-0615	3-20-07	Repeal	5-1-07	413-040-0005	3-20-07	Amend	5-1-07
413-015-0700	3-20-07	Repeal	5-1-07	413-040-0006	3-20-07	Adopt	5-1-07
413-015-0705	3-20-07	Repeal	5-1-07	413-040-0008	3-20-07	Am. & Ren.	5-1-07
413-015-0710	3-20-07	Repeal	5-1-07	413-040-0009	3-20-07	Adopt	5-1-07
413-015-0715	3-20-07	Repeal	5-1-07	413-040-0010	3-20-07	Amend	5-1-07
413-015-0720	3-20-07	Repeal	5-1-07	413-040-0011	3-20-07	Adopt	5-1-07
413-015-0725	3-20-07	Repeal	5-1-07	413-040-0013	3-20-07	Adopt	5-1-07
413-015-0730	3-20-07	Repeal	5-1-07	413-040-0016	3-20-07	Am. & Ren.	5-1-07
413-015-0735	3-20-07	Repeal	5-1-07	413-040-0017	3-20-07	Amend	5-1-07
413-015-0800	3-20-07	Repeal	5-1-07	413-040-0021	3-20-07	Repeal	5-1-07
413-015-0900	3-20-07	Repeal	5-1-07	413-040-0024	3-20-07	Adopt	5-1-07
413-015-0905	3-20-07	Repeal	5-1-07	413-040-0027	3-20-07	Repeal	5-1-07
413-015-1000	3-20-07	Amend	5-1-07	413-040-0032	3-20-07	Adopt	5-1-07
413-015-1105	3-20-07	Amend	5-1-07	413-040-0037	3-20-07	Repeal	5-1-07
413-015-1110	3-20-07	Amend	5-1-07	413-040-0042	3-20-07	Repeal	5-1-07
413-015-1120	3-20-07	Amend	5-1-07	413-040-0047	3-20-07	Repeal	5-1-07
413-015-1125	3-20-07	Amend	5-1-07	413-040-0052	3-20-07	Repeal	5-1-07
413-020-0000	3-20-07	Amend	5-1-07	413-040-0057	3-20-07	Repeal	5-1-07
413-020-0005	3-20-07	Amend	5-1-07	413-040-0061	3-20-07	Repeal	5-1-07
413-020-0010	3-20-07	Amend	5-1-07	413-040-0071	3-20-07	Repeal	5-1-07
413-020-0020	3-20-07	Amend	5-1-07	413-070-0300	5-1-07	Amend	6-1-07
413-020-0025	3-20-07	Adopt	5-1-07	413-070-0310	5-1-07	Amend	6-1-07
413-020-0040	3-20-07	Amend	5-1-07	413-070-0320	5-1-07	Amend	6-1-07
413-020-0045	3-20-07	Adopt	5-1-07	413-070-0340	5-1-07	Amend	6-1-07
413-020-0050	3-20-07	Amend	5-1-07	413-070-0345	5-1-07	Am. & Ren.	6-1-07
413-020-0060	3-20-07	Adopt	5-1-07	413-070-0350	5-1-07	Amend	6-1-07
413-020-0065	3-20-07	Adopt	5-1-07	413-070-0360	5-1-07	Amend	6-1-07
413-020-0070	3-20-07	Adopt	5-1-07	413-070-0370	5-1-07	Amend	6-1-07
413-020-0075	3-20-07	Adopt	5-1-07	413-070-0380	5-1-07	Amend	6-1-07
413-020-0080	3-20-07	Adopt	5-1-07	413-070-0400	5-1-07	Amend	6-1-07
413-020-0085	3-20-07	Adopt	5-1-07	413-070-0410	5-1-07	Amend	6-1-07
413-020-0090	3-20-07	Adopt	5-1-07	413-070-0420	5-1-07	Repeal	6-1-07
413-020-0200	5-1-07	Amend	6-1-07	413-070-0430	5-1-07	Amend	6-1-07
413-020-0210	5-1-07	Amend	6-1-07	413-070-0440	5-1-07	Amend	6-1-07
413-020-0220	5-1-07	Repeal	6-1-07	413-070-0450	5-1-07	Amend	6-1-07
413-020-0230	5-1-07	Amend	6-1-07	413-070-0460	5-1-07	Repeal	6-1-07
413-020-0233	5-1-07	Adopt	6-1-07	413-070-0470	5-1-07	Amend	6-1-07
413-020-0236	5-1-07	Adopt	6-1-07	413-070-0480	5-1-07	Amend	6-1-07
413-020-0240	5-1-07	Amend	6-1-07	413-070-0490	5-1-07	Amend	6-1-07
413-020-0245	5-1-07	Adopt	6-1-07	413-070-0600	3-20-07	Amend	5-1-07
413-020-0250	5-1-07	Repeal	6-1-07	413-070-0610	3-20-07	Repeal	5-1-07
413-020-0255	5-1-07	Adopt	6-1-07	413-070-0620	3-20-07	Amend	5-1-07
413-020-0260	5-1-07	Repeal	6-1-07	413-070-0625	3-20-07	Adopt	5-1-07
413-020-0270	5-1-07	Repeal	6-1-07	413-070-0630	3-20-07	Amend	5-1-07
413-030-0000	3-20-07	Amend	5-1-07	413-070-0640	3-20-07	Amend	5-1-07
413-030-0003	3-20-07	Adopt	5-1-07	413-070-0645	3-20-07	Adopt	5-1-07
413-030-0006	3-20-07	Am. & Ren.	5-1-07	413-070-0650	3-20-07	Repeal	5-1-07
413-030-0009	3-20-07	Adopt	5-1-07	413-070-0800	3-20-07	Amend	5-1-07
413-030-0010	3-20-07	Repeal	5-1-07	413-070-0810	3-20-07	Amend	5-1-07
413-030-0013	3-20-07	Adopt	5-1-07	413-070-0820	3-20-07	Repeal	5-1-07
413-030-0016	3-20-07	Adopt	5-1-07	413-070-0830	3-20-07	Amend	5-1-07
413-030-0019	3-20-07	Adopt	5-1-07	413-070-0840	3-20-07	Amend	5-1-07
413-030-0023	3-20-07	Adopt	5-1-07	413-070-0850	3-20-07	Repeal	5-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
413-070-0855	3-20-07	Amend	5-1-07	413-200-0270	3-20-07	Amend	5-1-07
413-070-0860	3-20-07	Amend	5-1-07	413-200-0272	3-20-07	Am. & Ren.	5-1-07
413-070-0870	3-20-07	Amend	5-1-07	413-200-0274	3-20-07	Adopt	5-1-07
413-070-0880	3-20-07	Amend	5-1-07	413-200-0276	3-20-07	Adopt	5-1-07
413-080-0040	3-20-07	Amend	5-1-07	413-200-0278	3-20-07	Adopt	5-1-07
413-080-0045	3-20-07	Repeal	5-1-07	413-200-0281	3-20-07	Adopt	5-1-07
413-080-0050	3-20-07	Amend	5-1-07	413-200-0283	3-20-07	Adopt	5-1-07
413-080-0052	3-20-07	Adopt	5-1-07	413-200-0285	3-20-07	Adopt	5-1-07
413-080-0055	3-20-07	Amend	5-1-07	413-200-0287	3-20-07	Adopt	5-1-07
413-080-0059	3-20-07	Adopt	5-1-07	413-200-0289	3-20-07	Adopt	5-1-07
413-080-0059	5-15-07	Amend(T)	6-1-07	413-200-0290	3-20-07	Repeal	5-1-07
413-080-0063	3-20-07	Adopt	5-1-07	413-200-0292	3-20-07	Adopt	5-1-07
413-080-0067	3-20-07	Am. & Ren.	5-1-07	413-200-0294	3-20-07	Adopt	5-1-07
413-090-0000	4-1-07	Amend	5-1-07	413-200-0296	3-20-07	Adopt	5-1-07
413-090-0000(T)	4-1-07	Repeal	5-1-07	413-200-0301	3-20-07	Amend	5-1-07
413-090-0005	4-1-07	Amend	5-1-07	413-200-0305	3-20-07	Amend	5-1-07
413-090-0005(T)	4-1-07	Repeal	5-1-07	413-200-0306	3-20-07	Amend	5-1-07
413-090-0010	4-1-07	Amend	5-1-07	413-200-0307	3-20-07	Repeal	5-1-07
413-090-0010(T)	4-1-07	Repeal	5-1-07	413-200-0308	3-20-07	Amend	5-1-07
413-090-0030	4-1-07	Amend	5-1-07	413-200-0309	3-20-07	Repeal	5-1-07
413-090-0030(T)	4-1-07	Repeal	5-1-07	413-200-0311	3-20-07	Repeal	5-1-07
413-090-0040	4-1-07	Amend	5-1-07	413-200-0314	3-20-07	Am. & Ren.	5-1-07
413-090-0050	4-1-07	Amend	5-1-07	413-200-0335	3-20-07	Amend	5-1-07
413-090-0050(T)	4-1-07	Repeal	5-1-07	413-200-0338	3-20-07	Repeal	5-1-07
413-090-0100	4-1-07	Amend	5-1-07	413-200-0341	3-20-07	Repeal	5-1-07
413-090-0100(T)	4-1-07	Repeal	5-1-07	413-200-0345	3-20-07	Repeal	5-1-07
413-090-0110	4-1-07	Amend	5-1-07	413-200-0348	3-20-07	Amend	5-1-07
413-090-0110(T)	4-1-07	Repeal	5-1-07	413-200-0352	3-20-07	Am. & Ren.	5-1-07
413-090-0120	4-1-07	Amend	5-1-07	413-200-0354	3-20-07	Adopt	5-1-07
413-090-0120(T)	4-1-07	Repeal	5-1-07	413-200-0358	3-20-07	Am. & Ren.	5-1-07
413-090-0130	4-1-07	Amend	5-1-07	413-200-0362	3-20-07	Am. & Ren.	5-1-07
413-090-0130(T)	4-1-07	Repeal	5-1-07	413-200-0371	3-20-07	Amend	5-1-07
413-090-0140	4-1-07	Amend	5-1-07	413-200-0376	3-20-07	Repeal	5-1-07
413-090-0140(T)	4-1-07	Repeal	5-1-07	413-200-0377	3-20-07	Amend	5-1-07
413-090-0150	4-1-07	Amend	5-1-07	413-200-0379	3-20-07	Am. & Ren.	5-1-07
413-090-0150(T)	4-1-07	Repeal	5-1-07	413-200-0383	3-20-07	Adopt	5-1-07
413-090-0160	4-1-07	Amend	5-1-07	413-200-0386	3-20-07	Adopt	5-1-07
413-090-0160(T)	4-1-07	Repeal	5-1-07	413-200-0388	3-20-07	Adopt	5-1-07
413-090-0170	4-1-07	Amend	5-1-07	413-200-0390	3-20-07	Amend	5-1-07
413-090-0170(T)	4-1-07	Repeal	5-1-07	413-200-0391	3-20-07	Repeal	5-1-07
413-090-0180	4-1-07	Amend	5-1-07	413-200-0392	3-20-07	Repeal	5-1-07
413-090-0180(T)	4-1-07	Repeal	5-1-07	413-200-0393	3-20-07	Amend	5-1-07
413-090-0190	4-1-07	Amend	5-1-07	413-200-0394	3-20-07	Amend	5-1-07
413-090-0190(T)	4-1-07	Repeal	5-1-07	413-200-0395	3-20-07	Amend	5-1-07
413-090-0200	4-1-07	Amend	5-1-07	413-200-0396	3-20-07	Amend	5-1-07
413-090-0200(T)	4-1-07	Repeal	5-1-07	413-200-0401	3-20-07	Repeal	5-1-07
413-090-0210	4-1-07	Amend	5-1-07	413-210-0806	5-1-07	Amend	6-1-07
413-090-0210(T)	4-1-07	Repeal	5-1-07	414-205-0010	3-20-07	Amend(T)	5-1-07
413-090-0220	4-1-07	Repeal	5-1-07	414-205-0020	3-20-07	Amend(T)	5-1-07
413-090-0220(T)	4-1-07	Repeal	5-1-07	414-205-0035	3-20-07	Amend(T)	5-1-07
413-100-0020	2-7-07	Amend(T)	3-1-07	414-205-0055	3-20-07	Amend(T)	5-1-07
413-100-0130	2-7-07	Amend(T)	3-1-07	414-300-0005	3-20-07	Amend(T)	5-1-07
413-100-0135	2-7-07	Amend(T)	3-1-07	414-300-0080	3-20-07	Amend(T)	5-1-07
413-120-0020	2-26-07	Amend(T)	4-1-07	414-350-0010	3-20-07	Amend(T)	5-1-07
413-120-0040	2-26-07	Amend(T)	4-1-07	414-350-0050	12-1-06	Amend	1-1-07
413-120-0075	2-26-07	Amend(T)	4-1-07	414-350-0100	12-1-06	Amend	1-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
414-350-0110	12-1-06	Amend	1-1-07	423-045-0165	2-12-07	Adopt	3-1-07
414-350-0120	12-1-06	Amend	1-1-07	423-045-0170	2-12-07	Adopt	3-1-07
415-056-0000	3-8-07	Amend	4-1-07	423-045-0175	2-12-07	Adopt	3-1-07
415-056-0005	3-8-07	Amend	4-1-07	423-045-0185	2-12-07	Adopt	3-1-07
415-056-0010	3-8-07	Amend	4-1-07	436-170-0002	2-1-07	Adopt	3-1-07
415-056-0015	3-8-07	Amend	4-1-07	436-170-0100	2-1-07	Adopt	3-1-07
415-056-0020	3-8-07	Amend	4-1-07	436-170-0200	2-1-07	Adopt	3-1-07
415-056-0025	3-8-07	Amend	4-1-07	436-170-0300	2-1-07	Adopt	3-1-07
416-115-0000	2-13-07	Adopt	3-1-07	437-002-0120	11-30-06	Amend	1-1-07
416-115-0010	2-13-07	Adopt	3-1-07	437-002-0360	11-30-06	Amend	1-1-07
416-115-0020	2-13-07	Adopt	3-1-07	437-003-0001	11-30-06	Amend	1-1-07
416-115-0030	2-13-07	Adopt	3-1-07	437-004-1041	11-30-06	Amend	1-1-07
416-115-0040	2-13-07	Adopt	3-1-07	437-005-0001	11-30-06	Amend	1-1-07
416-115-0050	2-13-07	Adopt	3-1-07	437-005-0001	1-16-07	Amend	2-1-07
416-115-0060	2-13-07	Adopt	3-1-07	438-005-0046	3-1-07	Amend	3-1-07
416-115-0070	2-13-07	Adopt	3-1-07	438-022-0005	3-1-07	Amend	3-1-07
416-115-0080	2-13-07	Adopt	3-1-07	441-730-0000	12-21-06	Amend	2-1-07
416-115-0090	2-13-07	Adopt	3-1-07	441-730-0010	12-21-06	Amend	2-1-07
416-115-0100	2-13-07	Adopt	3-1-07	441-730-0015	12-21-06	Am. & Ren.	2-1-07
416-115-0110	2-13-07	Adopt	3-1-07	441-730-0025	12-21-06	Adopt	2-1-07
416-115-0120	2-13-07	Adopt	3-1-07	441-730-0050	12-21-06	Amend	2-1-07
416-115-0130	2-13-07	Adopt	3-1-07	441-730-0080	12-21-06	Amend	2-1-07
416-115-0140	2-13-07	Adopt	3-1-07	441-730-0120	12-21-06	Amend	2-1-07
416-115-0150	2-13-07	Adopt	3-1-07	441-730-0255	12-21-06	Adopt	2-1-07
416-115-0160	2-13-07	Adopt	3-1-07	441-730-0320	12-21-06	Amend	2-1-07
416-115-0170	2-13-07	Adopt	3-1-07	441-860-0010	1-17-07	Amend	3-1-07
416-115-0180	2-13-07	Adopt	3-1-07	441-860-0020	1-17-07	Amend	3-1-07
416-115-0190	2-13-07	Adopt	3-1-07	441-860-0030	1-17-07	Amend	3-1-07
416-115-0200	2-13-07	Adopt	3-1-07	441-860-0040	1-17-07	Amend	3-1-07
416-115-0210	2-13-07	Adopt	3-1-07	441-860-0060	1-17-07	Amend	3-1-07
416-115-0220	2-13-07	Adopt	3-1-07	441-875-0020	1-17-07	Amend	3-1-07
416-115-0230	2-13-07	Adopt	3-1-07	441-880-0020	1-17-07	Amend	3-1-07
416-115-0240	2-13-07	Adopt	3-1-07	441-880-0030	1-17-07	Amend	3-1-07
416-115-0250	2-13-07	Adopt	3-1-07	442-005-0050	11-27-06	Amend(T)	1-1-07
416-115-0260	2-13-07	Adopt	3-1-07	459-005-0100	2-21-07	Amend	4-1-07
416-115-0270	2-13-07	Adopt	3-1-07	459-005-0110	2-21-07	Amend	4-1-07
416-115-0280	2-13-07	Adopt	3-1-07	459-005-0120	2-21-07	Repeal	4-1-07
423-001-0006	5-11-07	Amend(T)	6-1-07	459-005-0130	2-21-07	Amend	4-1-07
423-010-0023	5-11-07	Amend(T)	6-1-07	459-005-0140	2-21-07	Amend	4-1-07
423-010-0024	2-12-07	Amend	3-1-07	459-005-0150	2-21-07	Amend	4-1-07
423-045-0005	2-16-07	Amend(T)	4-1-07	459-005-0591	2-16-07	Amend(T)	4-1-07
423-045-0010	2-16-07	Amend(T)	4-1-07	459-005-0595	2-16-07	Amend(T)	4-1-07
423-045-0015	2-16-07	Amend(T)	4-1-07	459-005-0599	2-16-07	Amend(T)	4-1-07
423-045-0101	2-12-07	Adopt	3-1-07	459-007-0025	1-23-07	Amend	3-1-07
423-045-0105	2-12-07	Adopt	3-1-07	459-007-0300	1-23-07	Amend	3-1-07
423-045-0110	2-12-07	Adopt	3-1-07	459-009-0084	11-24-06	Amend	1-1-07
423-045-0112	2-12-07	Adopt	3-1-07	459-009-0085	11-24-06	Amend	1-1-07
423-045-0115	2-12-07	Adopt	3-1-07	459-009-0090	11-24-06	Adopt	1-1-07
423-045-0120	2-12-07	Adopt	3-1-07	459-011-0050	1-23-07	Amend	3-1-07
423-045-0125	2-12-07	Adopt	3-1-07	459-011-0100	11-24-06	Amend	1-1-07
423-045-0130	2-12-07	Adopt	3-1-07	459-016-0100	11-24-06	Amend	1-1-07
423-045-0135	2-12-07	Adopt	3-1-07	459-050-0025	1-23-07	Amend	3-1-07
423-045-0140	2-12-07	Adopt	3-1-07	459-050-0037	5-1-07	Adopt	3-1-07
423-045-0150	2-12-07	Adopt	3-1-07	459-050-0070	1-23-07	Amend	3-1-07
423-045-0155	2-12-07	Adopt	3-1-07	459-050-0077	5-1-07	Adopt	3-1-07
423-045-0160	2-12-07	Adopt	3-1-07	459-050-0090	2-16-07	Amend(T)	4-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
459-050-0150	1-23-07	Amend	3-1-07	461-135-0210	1-1-07	Amend	2-1-07
459-076-0001	4-4-07	Amend	5-1-07	461-135-0400	1-1-07	Amend	2-1-07
459-076-0020	4-4-07	Amend	5-1-07	461-135-0475	1-1-07	Amend	2-1-07
459-076-0050	4-4-07	Amend	5-1-07	461-135-0491	4-1-07	Adopt	5-1-07
459-076-0060	4-4-07	Amend	5-1-07	461-135-0492	4-1-07	Adopt	5-1-07
459-080-0100	11-24-06	Amend	1-1-07	461-135-0493	4-1-07	Adopt	5-1-07
461-001-0000	1-1-07	Amend	2-1-07	461-135-0494	4-1-07	Adopt	5-1-07
461-001-0000	4-1-07	Amend	5-1-07	461-135-0495	4-1-07	Adopt	5-1-07
461-001-0015	1-1-07	Adopt	2-1-07	461-135-0496	4-1-07	Adopt	5-1-07
461-001-0020	1-1-07	Adopt	2-1-07	461-135-0497	4-1-07	Adopt	5-1-07
461-001-0030	4-1-07	Amend	5-1-07	461-135-0506	1-1-07	Amend	2-1-07
461-005-0735	4-1-07	Repeal	5-1-07	461-135-0510	1-1-07	Amend	2-1-07
461-025-0310	4-1-07	Amend	5-1-07	461-135-0520	1-1-07	Amend	2-1-07
461-105-0010	1-1-07	Amend	2-1-07	461-135-0708	1-1-07	Amend	2-1-07
461-105-0010	4-1-07	Amend	5-1-07	461-135-0725	1-1-07	Amend	2-1-07
461-105-0060	4-1-07	Amend	5-1-07	461-135-0730	4-1-07	Amend	5-1-07
461-105-0130	4-1-07	Amend	5-1-07	461-135-0750	1-1-07	Amend	2-1-07
461-105-0150	4-1-07	Amend	5-1-07	461-135-0750	4-1-07	Amend	5-1-07
461-105-0160	4-1-07	Amend	5-1-07	461-135-0780	1-1-07	Amend	2-1-07
461-110-0110	1-1-07	Repeal	2-1-07	461-135-0950	1-1-07	Amend	2-1-07
461-110-0115	1-1-07	Am. & Ren.	2-1-07	461-135-0960	1-1-07	Amend	2-1-07
461-110-0370	1-1-07	Amend	2-1-07	461-140-0040	4-1-07	Amend	5-1-07
461-110-0410	1-1-07	Amend	2-1-07	461-140-0120	4-1-07	Amend	5-1-07
461-110-0510	1-1-07	Repeal	2-1-07	461-140-0210	1-1-07	Amend	2-1-07
461-110-0530	1-1-07	Amend	2-1-07	461-140-0220	1-1-07	Amend	2-1-07
461-110-0610	1-1-07	Repeal	2-1-07	461-140-0242	1-1-07	Amend	2-1-07
461-110-0630	1-1-07	Amend	2-1-07	461-140-0242	1-1-07	Amend	2-1-07
461-110-0630	4-1-07	Amend	5-1-07	461-140-0242	4-1-07	Amend	5-1-07
461-110-0720	1-1-07	Repeal	2-1-07	461-140-0270	1-1-07	Amend	2-1-07
461-110-0750	1-1-07	Amend	2-1-07	461-140-0296	1-1-07	Amend	2-1-07
461-115-0010	1-1-07	Amend	2-1-07	461-140-0296	4-1-07	Amend	5-1-07
461-115-0030	4-1-07	Amend	5-1-07	461-140-0300	1-1-07	Amend	2-1-07
461-115-0050	1-1-07	Amend	2-1-07	461-145-0001	1-1-07	Amend	2-1-07
461-115-0510	1-1-07	Am. & Ren.	2-1-07	461-145-0005	4-1-07	Amend	5-1-07
461-115-0530	1-1-07	Amend	2-1-07	461-145-0008	4-1-07	Amend	5-1-07
461-115-0540	1-1-07	Amend	2-1-07	461-145-0010	4-1-07	Amend	5-1-07
461-115-0651	1-1-07	Amend	2-1-07	461-145-0020	1-1-07	Amend	2-1-07
461-115-0705	1-1-07	Amend	2-1-07	461-145-0020	4-1-07	Amend	5-1-07
461-120-0005	1-1-07	Repeal	2-1-07	461-145-0022	1-1-07	Amend	2-1-07
461-120-0125	1-1-07	Amend	2-1-07	461-145-0022	4-1-07	Amend	5-1-07
461-120-0210	4-1-07	Amend	5-1-07	461-145-0025	1-1-07	Amend	2-1-07
461-120-0230	4-1-07	Repeal	5-1-07	461-145-0030	4-1-07	Amend	5-1-07
461-120-0235	4-1-07	Repeal	5-1-07	461-145-0050	4-1-07	Amend	5-1-07
461-120-0610	1-1-07	Repeal	2-1-07	461-145-0055	1-1-07	Amend	2-1-07
461-125-0255	4-1-07	Amend	5-1-07	461-145-0055	4-1-07	Repeal	5-1-07
461-125-0370	1-1-07	Amend	2-1-07	461-145-0060	4-1-07	Amend	5-1-07
461-125-0370	4-1-07	Amend	5-1-07	461-145-0086	4-1-07	Am. & Ren.	5-1-07
461-130-0310	1-1-07	Amend	2-1-07	461-145-0100	4-1-07	Amend	5-1-07
461-130-0315	1-1-07	Amend	2-1-07	461-145-0108	1-1-07	Amend	2-1-07
461-130-0325	1-1-07	Amend	2-1-07	461-145-0120	4-1-07	Amend	5-1-07
461-130-0327	1-1-07	Amend	2-1-07	461-145-0130	1-1-07	Amend	2-1-07
461-130-0335	1-1-07	Amend	2-1-07	461-145-0130	4-1-07	Amend	5-1-07
461-135-0010	1-1-07	Amend	2-1-07	461-145-0140	1-1-07	Amend	2-1-07
461-135-0070	1-1-07	Amend	2-1-07	461-145-0140	4-1-07	Amend	5-1-07
461-135-0070	4-1-07	Amend	5-1-07	461-145-0175	1-1-07	Amend	2-1-07
461-135-0075	1-1-07	Amend	2-1-07	461-145-0185	1-1-07	Adopt	2-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
461-145-0220	1-1-07	Amend	2-1-07	461-160-0400	1-1-07	Amend	2-1-07
461-145-0250	1-1-07	Amend	2-1-07	461-160-0415	1-1-07	Amend	2-1-07
461-145-0250	4-1-07	Amend	5-1-07	461-160-0430	1-1-07	Amend	2-1-07
461-145-0280	1-1-07	Amend	2-1-07	461-160-0500	1-1-07	Amend	2-1-07
461-145-0310	1-1-07	Amend	2-1-07	461-160-0560	1-1-07	Am. & Ren.	2-1-07
461-145-0330	1-1-07	Amend	2-1-07	461-160-0580	1-1-07	Amend	2-1-07
461-145-0340	1-1-07	Amend	2-1-07	461-160-0580	4-1-07	Amend	5-1-07
461-145-0343	1-1-07	Adopt	2-1-07	461-160-0610	1-1-07	Amend	2-1-07
461-145-0380	4-1-07	Amend	5-1-07	461-160-0610	4-1-07	Amend	5-1-07
461-145-0420	4-1-07	Amend	5-1-07	461-160-0620	1-1-07	Amend	2-1-07
461-145-0433	4-1-07	Amend	5-1-07	461-160-0620	4-1-07	Amend	5-1-07
461-145-0440	1-1-07	Amend	2-1-07	461-160-0780	1-1-07	Amend	2-1-07
461-145-0455	4-1-07	Amend	5-1-07	461-165-0120	4-1-07	Amend	5-1-07
461-145-0470	1-1-07	Amend	2-1-07	461-165-0180	1-1-07	Amend	2-1-07
461-145-0490	4-1-07	Amend	5-1-07	461-170-0020	1-1-07	Amend	2-1-07
461-145-0505	1-1-07	Amend	2-1-07	461-170-0020	4-1-07	Amend	5-1-07
461-145-0510	4-1-07	Amend	5-1-07	461-170-0035	4-1-07	Amend	5-1-07
461-145-0540	1-1-07	Amend	2-1-07	461-170-0101	1-1-07	Amend	2-1-07
461-145-0540	1-1-07	Amend	2-1-07	461-170-0102	1-1-07	Amend	2-1-07
461-145-0540	4-1-07	Amend	5-1-07	461-170-0103	1-1-07	Amend	2-1-07
461-145-0570	1-1-07	Amend	2-1-07	461-170-0130	1-1-07	Amend	2-1-07
461-145-0580	1-1-07	Amend	2-1-07	461-175-0010	1-1-07	Amend	2-1-07
461-145-0600	4-1-07	Amend	5-1-07	461-175-0030	1-1-07	Repeal	2-1-07
461-145-0920	4-1-07	Amend	5-1-07	461-175-0050	4-1-07	Amend	5-1-07
461-145-0930	4-1-07	Amend	5-1-07	461-175-0206	4-1-07	Amend	5-1-07
461-150-0010	1-1-07	Repeal	2-1-07	461-175-0250	1-1-07	Amend	2-1-07
461-150-0055	1-1-07	Amend	2-1-07	461-175-0270	4-1-07	Amend	5-1-07
461-150-0070	1-1-07	Amend	2-1-07	461-180-0010	4-1-07	Amend	5-1-07
461-150-0080	1-1-07	Amend	2-1-07	461-180-0020	4-1-07	Amend	5-1-07
461-155-0180	1-24-07	Amend	3-1-07	461-180-0044	1-1-07	Amend	2-1-07
461-155-0225	1-1-07	Amend	2-1-07	461-180-0044	4-1-07	Amend	5-1-07
461-155-0225	4-1-07	Amend	5-1-07	461-180-0085	1-1-07	Amend	2-1-07
461-155-0235	1-24-07	Amend	3-1-07	461-180-0090	1-1-07	Amend	2-1-07
461-155-0250	1-1-07	Amend	2-1-07	461-185-0050	1-1-07	Amend	2-1-07
461-155-0250	3-1-07	Amend(T)	4-1-07	461-190-0110	1-1-07	Am. & Ren.	2-1-07
461-155-0250	3-9-07	Amend(T)	4-1-07	461-190-0161	1-1-07	Repeal	2-1-07
461-155-0250	4-1-07	Amend	5-1-07	461-190-0195	4-1-07	Amend	5-1-07
461-155-0250	4-1-07	Amend(T)	5-1-07	461-190-0197	1-1-07	Amend	2-1-07
461-155-0250(T)	3-9-07	Suspend	4-1-07	461-190-0310	1-1-07	Amend	2-1-07
461-155-0250(T)	4-1-07	Suspend	5-1-07	461-195-0301	1-1-07	Amend	2-1-07
461-155-0270	1-1-07	Amend	2-1-07	461-195-0305	1-1-07	Amend	2-1-07
461-155-0290	3-1-07	Amend(T)	4-1-07	461-195-0310	1-1-07	Amend	2-1-07
461-155-0290	4-1-07	Amend	5-1-07	461-195-0325	1-1-07	Amend	2-1-07
461-155-0291	3-1-07	Amend(T)	4-1-07	461-195-0511	1-1-07	Amend	2-1-07
461-155-0291	4-1-07	Amend	5-1-07	461-195-0541	1-1-07	Amend	2-1-07
461-155-0295	3-1-07	Amend(T)	4-1-07	461-195-0541	4-1-07	Amend	5-1-07
461-155-0295	4-1-07	Amend	5-1-07	461-195-0611	1-1-07	Amend	2-1-07
461-155-0300	1-1-07	Amend	2-1-07	462-160-0010	3-7-07	Repeal	4-1-07
461-155-0530	4-1-07	Amend	5-1-07	462-160-0020	3-7-07	Repeal	4-1-07
461-155-0660	1-1-07	Amend	2-1-07	462-160-0030	3-7-07	Repeal	4-1-07
461-155-0670	4-1-07	Amend	5-1-07	462-160-0100	3-7-07	Adopt	4-1-07
461-160-0010	1-1-07	Amend	2-1-07	462-160-0100(T)	3-7-07	Repeal	4-1-07
461-160-0015	1-1-07	Amend	2-1-07	462-160-0110	3-7-07	Adopt	4-1-07
461-160-0020	1-1-07	Repeal	2-1-07	462-160-0110(T)	3-7-07	Repeal	4-1-07
461-160-0055	1-1-07	Amend	2-1-07	462-160-0120	3-7-07	Adopt	4-1-07
461-160-0090	1-1-07	Amend	2-1-07	462-160-0120(T)	3-7-07	Repeal	4-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
462-160-0130	3-7-07	Adopt	4-1-07	571-021-0230	2-14-07	Adopt(T)	3-1-07
462-160-0130(T)	3-7-07	Repeal	4-1-07	571-021-0240	2-14-07	Adopt(T)	3-1-07
462-160-0140	3-7-07	Adopt	4-1-07	571-021-0250	2-14-07	Adopt(T)	3-1-07
462-160-0140	3-7-07	Amend(T)	4-1-07	571-023-0000	2-14-07	Adopt(T)	3-1-07
462-160-0140(T)	3-7-07	Repeal	4-1-07	571-023-0005	2-14-07	Amend(T)	3-1-07
462-210-0030	7-1-07	Amend	5-1-07	571-023-0010	2-14-07	Suspend	3-1-07
462-220-0030	7-1-07	Amend	5-1-07	571-023-0015	2-14-07	Suspend	3-1-07
462-220-0070	7-1-07	Amend	5-1-07	571-023-0020	2-14-07	Suspend	3-1-07
462-220-0090	7-1-07	Adopt	5-1-07	571-023-0025	2-14-07	Amend(T)	3-1-07
471-030-0074	12-3-06	Amend(T)	1-1-07	571-023-0030	2-14-07	Suspend	3-1-07
471-030-0074	1-29-07	Amend	3-1-07	571-023-0035	2-14-07	Suspend	3-1-07
471-030-0075	12-3-06	Amend(T)	1-1-07	571-023-0040	2-14-07	Suspend	3-1-07
471-030-0075	1-29-07	Amend	3-1-07	571-023-0100	2-14-07	Adopt(T)	3-1-07
471-031-0181	2-1-07	Adopt	3-1-07	571-023-0105	2-14-07	Adopt(T)	3-1-07
471-040-0010	12-3-06	Amend	1-1-07	571-023-0110	2-14-07	Adopt(T)	3-1-07
471-040-0040	12-3-06	Amend	1-1-07	571-023-0115	2-14-07	Adopt(T)	3-1-07
471-040-0041	12-3-06	Adopt	1-1-07	571-023-0120	2-14-07	Adopt(T)	3-1-07
571-004-0016	2-14-07	Amend(T)	3-1-07	571-040-0010	2-14-07	Adopt(T)	3-1-07
571-011-0015	3-1-07	Amend	4-1-07	571-040-0015	2-14-07	Adopt(T)	3-1-07
571-021-0005	2-14-07	Suspend	3-1-07	571-040-0020	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0009	2-14-07	Suspend	3-1-07	571-040-0030	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0015	2-14-07	Suspend	3-1-07	571-040-0040	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0019	2-14-07	Suspend	3-1-07	571-040-0050	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0024	2-14-07	Suspend	3-1-07	571-040-0060	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0029	2-14-07	Suspend	3-1-07	571-040-0070	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0030	2-14-07	Suspend	3-1-07	571-040-0080	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0035	2-14-07	Suspend	3-1-07	571-040-0100	2-14-07	Adopt(T)	3-1-07
571-021-0038	2-14-07	Suspend	3-1-07	571-040-0201	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0040	2-14-07	Suspend	3-1-07	571-040-0220	2-14-07	Suspend	3-1-07
571-021-0045	2-14-07	Suspend	3-1-07	571-040-0240	2-14-07	Suspend	3-1-07
571-021-0050	2-14-07	Suspend	3-1-07	571-040-0251	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0055	2-14-07	Suspend	3-1-07	571-040-0253	2-14-07	Suspend	3-1-07
571-021-0056	2-14-07	Suspend	3-1-07	571-040-0261	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0057	2-14-07	Suspend	3-1-07	571-040-0280	2-14-07	Suspend	3-1-07
571-021-0060	2-14-07	Suspend	3-1-07	571-040-0380	2-14-07	Amend(T)	3-1-07
571-021-0064	2-14-07	Suspend	3-1-07	571-040-0382	2-14-07	Amend(T)	3-1-07
571-021-0068	2-14-07	Suspend	3-1-07	571-040-0390	2-14-07	Amend(T)	3-1-07
571-021-0070	2-14-07	Suspend	3-1-07	571-040-0400	2-14-07	Adopt(T)	3-1-07
571-021-0072	2-14-07	Suspend	3-1-07	571-040-0410	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0073	2-14-07	Suspend	3-1-07	571-040-0420	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0100	2-14-07	Adopt(T)	3-1-07	571-040-0430	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0105	2-14-07	Adopt(T)	3-1-07	571-040-0440	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0110	2-14-07	Adopt(T)	3-1-07	571-040-0450	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0115	2-14-07	Adopt(T)	3-1-07	571-040-0450	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0120	2-14-07	Adopt(T)	3-1-07	571-040-0450	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0125	2-14-07	Adopt(T)	3-1-07	571-040-0460	2-14-07	Am. & Ren.(T)	3-1-07
571-021-0130	2-14-07	Adopt(T)	3-1-07	571-060-0005	2-22-07	Amend	4-1-07
571-021-0140	2-14-07	Adopt(T)	3-1-07	571-060-0005	3-12-07	Amend	4-1-07
571-021-0150	2-14-07	Adopt(T)	3-1-07	571-060-0005	6-29-07	Amend	6-1-07
571-021-0160	2-14-07	Adopt(T)	3-1-07	571-100-0000	2-20-07	Adopt(T)	4-1-07
571-021-0165	2-14-07	Adopt(T)	3-1-07	571-100-0010	2-20-07	Adopt(T)	4-1-07
571-021-0200	2-14-07	Adopt(T)	3-1-07	571-100-0020	2-20-07	Adopt(T)	4-1-07
571-021-0205	2-14-07	Adopt(T)	3-1-07	571-100-0030	2-20-07	Adopt(T)	4-1-07
571-021-0210	2-14-07	Adopt(T)	3-1-07	571-100-0040	2-20-07	Adopt(T)	4-1-07
571-021-0215	2-14-07	Adopt(T)	3-1-07	571-100-0050	2-20-07	Adopt(T)	4-1-07
571-021-0220	2-14-07	Adopt(T)	3-1-07	571-100-0060	2-20-07	Adopt(T)	4-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
571-100-0070	2-20-07	Adopt(T)	4-1-07	581-015-0805	4-25-07	Repeal	6-1-07
571-100-0080	2-20-07	Adopt(T)	4-1-07	581-015-0811	4-25-07	Repeal	6-1-07
571-100-0090	2-20-07	Adopt(T)	4-1-07	581-015-0816	4-25-07	Repeal	6-1-07
571-100-0100	2-20-07	Adopt(T)	4-1-07	581-015-0820	4-25-07	Repeal	6-1-07
571-100-0110	2-20-07	Adopt(T)	4-1-07	581-015-0825	4-25-07	Repeal	6-1-07
571-100-0120	2-20-07	Adopt(T)	4-1-07	581-015-2000	4-25-07	Am. & Ren.	6-1-07
571-100-0130	2-20-07	Adopt(T)	4-1-07	581-015-2005	4-25-07	Am. & Ren.	6-1-07
571-100-0140	2-20-07	Adopt(T)	4-1-07	581-015-2010	4-25-07	Am. & Ren.	6-1-07
571-100-0150	2-20-07	Adopt(T)	4-1-07	581-015-2015	4-25-07	Am. & Ren.	6-1-07
571-100-0160	2-20-07	Adopt(T)	4-1-07	581-015-2020	4-25-07	Am. & Ren.	6-1-07
573-040-0005	4-25-07	Amend	6-1-07	581-015-2025	4-25-07	Am. & Ren.	6-1-07
574-050-0005	3-5-07	Amend	4-1-07	581-015-2030	4-25-07	Am. & Ren.	6-1-07
577-031-0140	1-5-07	Amend	2-1-07	581-015-2040	4-25-07	Am. & Ren.	6-1-07
577-070-0005	1-5-07	Amend	2-1-07	581-015-2045	4-25-07	Am. & Ren.	6-1-07
577-070-0010	1-5-07	Amend	2-1-07	581-015-2050	4-25-07	Am. & Ren.	6-1-07
577-070-0015	1-5-07	Amend	2-1-07	581-015-2055	4-25-07	Am. & Ren.	6-1-07
577-070-0020	1-5-07	Amend	2-1-07	581-015-2060	4-25-07	Adopt	6-1-07
577-070-0025	1-5-07	Amend	2-1-07	581-015-2065	4-25-07	Am. & Ren.	6-1-07
577-070-0030	1-5-07	Amend	2-1-07	581-015-2070	4-25-07	Am. & Ren.	6-1-07
577-070-0035	1-5-07	Amend	2-1-07	581-015-2075	4-25-07	Adopt	6-1-07
577-070-0045	1-5-07	Amend	2-1-07	581-015-2080	4-25-07	Am. & Ren.	6-1-07
577-070-0050	1-5-07	Amend	2-1-07	581-015-2085	4-25-07	Adopt	6-1-07
579-020-0006	5-14-07	Amend	6-1-07	581-015-2090	4-25-07	Am. & Ren.	6-1-07
580-020-0020	1-11-07	Repeal	2-1-07	581-015-2095	4-25-07	Am. & Ren.	6-1-07
580-023-0005	11-29-06	Adopt	1-1-07	581-015-2100	4-25-07	Am. & Ren.	6-1-07
580-023-0010	11-29-06	Adopt	1-1-07	581-015-2105	4-25-07	Adopt	6-1-07
580-023-0015	11-29-06	Adopt	1-1-07	581-015-2110	4-25-07	Adopt	6-1-07
580-023-0020	11-29-06	Adopt	1-1-07	581-015-2115	4-25-07	Am. & Ren.	6-1-07
580-023-0025	11-29-06	Adopt	1-1-07	581-015-2120	4-25-07	Am. & Ren.	6-1-07
580-023-0030	11-29-06	Adopt	1-1-07	581-015-2125	4-25-07	Am. & Ren.	6-1-07
580-023-0035	11-29-06	Adopt	1-1-07	581-015-2130	4-25-07	Am. & Ren.	6-1-07
580-023-0040	11-29-06	Adopt	1-1-07	581-015-2135	4-25-07	Am. & Ren.	6-1-07
580-023-0045	11-29-06	Adopt	1-1-07	581-015-2140	4-25-07	Am. & Ren.	6-1-07
580-023-0050	11-29-06	Adopt	1-1-07	581-015-2145	4-25-07	Am. & Ren.	6-1-07
580-023-0055	11-29-06	Adopt	1-1-07	581-015-2150	4-25-07	Am. & Ren.	6-1-07
580-023-0060	11-29-06	Adopt	1-1-07	581-015-2155	4-25-07	Am. & Ren.	6-1-07
580-023-0065	11-29-06	Adopt	1-1-07	581-015-2160	4-25-07	Am. & Ren.	6-1-07
580-040-0035	1-11-07	Amend	2-1-07	581-015-2165	4-25-07	Am. & Ren.	6-1-07
581-001-0005	2-21-07	Amend	4-1-07	581-015-2170	4-25-07	Am. & Ren.	6-1-07
581-011-0050	4-27-07	Amend	6-1-07	581-015-2175	4-25-07	Am. & Ren.	6-1-07
581-011-0052	4-27-07	Adopt	6-1-07	581-015-2180	4-25-07	Am. & Ren.	6-1-07
581-011-0077	12-12-06	Amend	1-1-07	581-015-2190	4-25-07	Am. & Ren.	6-1-07
581-011-0131	1-26-07	Adopt	3-1-07	581-015-2195	4-25-07	Am. & Ren.	6-1-07
581-015-0033	4-25-07	Repeal	6-1-07	581-015-2200	4-25-07	Am. & Ren.	6-1-07
581-015-0051	4-25-07	Repeal	6-1-07	581-015-2205	4-25-07	Am. & Ren.	6-1-07
581-015-0071	4-25-07	Repeal	6-1-07	581-015-2210	4-25-07	Am. & Ren.	6-1-07
581-015-0072	4-25-07	Repeal	6-1-07	581-015-2215	4-25-07	Am. & Ren.	6-1-07
581-015-0074	4-25-07	Repeal	6-1-07	581-015-2220	4-25-07	Am. & Ren.	6-1-07
581-015-0085	4-25-07	Repeal	6-1-07	581-015-2225	4-25-07	Adopt	6-1-07
581-015-0087	4-25-07	Repeal	6-1-07	581-015-2230	4-25-07	Adopt	6-1-07
581-015-0111	4-25-07	Repeal	6-1-07	581-015-2235	4-25-07	Am. & Ren.	6-1-07
581-015-0115	4-25-07	Repeal	6-1-07	581-015-2240	4-25-07	Am. & Ren.	6-1-07
581-015-0702	4-25-07	Repeal	6-1-07	581-015-2245	4-25-07	Am. & Ren.	6-1-07
581-015-0704	4-25-07	Repeal	6-1-07	581-015-2250	4-25-07	Am. & Ren.	6-1-07
581-015-0709	4-25-07	Repeal	6-1-07	581-015-2255	4-25-07	Adopt	6-1-07
581-015-0750	4-25-07	Repeal	6-1-07	581-015-2260	4-25-07	Am. & Ren.	6-1-07





## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
581-015-2910	4-25-07	Am. & Ren.	6-1-07	584-017-0261	11-16-06	Amend	1-1-07
581-021-0032	4-25-07	Adopt	6-1-07	584-017-0441	11-22-06	Amend	1-1-07
581-021-0034	4-25-07	Amend	6-1-07	584-017-0442	11-22-06	Amend	1-1-07
581-021-0061	12-12-06	Amend	1-1-07	584-017-0451	11-22-06	Amend	1-1-07
581-021-0062	12-12-06	Adopt	1-1-07	584-017-0452	11-22-06	Amend	1-1-07
581-021-0072	4-25-07	Amend	6-1-07	584-021-0140	4-23-07	Amend	6-1-07
581-021-0073	4-25-07	Adopt	6-1-07	584-036-0080	4-23-07	Adopt	6-1-07
581-021-0220	3-1-07	Amend	4-1-07	584-036-0082	4-23-07	Adopt	6-1-07
581-021-0250	3-1-07	Amend	4-1-07	584-038-0290	11-22-06	Amend	1-1-07
581-021-0255	3-1-07	Adopt	4-1-07	584-038-0295	11-22-06	Amend	1-1-07
581-021-0260	3-1-07	Amend	4-1-07	584-038-0310	11-22-06	Amend	1-1-07
581-021-0265	3-1-07	Adopt	4-1-07	584-038-0320	11-22-06	Amend	1-1-07
581-021-0270	3-1-07	Amend	4-1-07	584-038-0330	11-22-06	Amend	1-1-07
581-021-0330	3-1-07	Amend	4-1-07	584-038-0335	11-22-06	Amend	1-1-07
581-021-0340	3-1-07	Amend	4-1-07	584-038-0336	11-22-06	Amend	1-1-07
581-021-0350	3-1-07	Amend	4-1-07	584-040-0260	11-22-06	Amend	1-1-07
581-021-0360	3-1-07	Amend	4-1-07	584-040-0265	11-22-06	Amend	1-1-07
581-021-0371	3-1-07	Adopt	4-1-07	584-040-0280	11-22-06	Amend	1-1-07
581-021-0372	3-1-07	Adopt	4-1-07	584-040-0290	11-22-06	Amend	1-1-07
581-021-0380	3-1-07	Amend	4-1-07	584-040-0310	11-22-06	Amend	1-1-07
581-021-0391	3-1-07	Adopt	4-1-07	584-040-0315	11-22-06	Amend	1-1-07
581-021-0400	3-1-07	Amend	4-1-07	584-042-0006	4-23-07	Amend	6-1-07
581-021-0410	3-1-07	Amend	4-1-07	584-042-0008	4-23-07	Amend	6-1-07
581-021-0440	3-1-07	Repeal	4-1-07	584-048-0006	11-22-06	Amend	1-1-07
581-022-0613	3-1-07	Adopt(T)	4-1-07	584-048-0010	11-22-06	Amend	1-1-07
581-022-1060	2-21-07	Amend	4-1-07	584-048-0015	11-22-06	Amend	1-1-07
581-022-1065	2-21-07	Adopt	4-1-07	584-048-0015	4-23-07	Amend	6-1-07
581-022-1109	3-22-07	Adopt(T)	5-1-07	584-048-0020	11-22-06	Amend	1-1-07
581-022-1130	12-12-06	Amend	1-1-07	584-048-0020	4-23-07	Amend	6-1-07
581-022-1350	4-25-07	Amend	6-1-07	584-048-0025	11-22-06	Amend	1-1-07
581-022-1640	4-27-07	Amend	6-1-07	584-048-0030	11-22-06	Amend	1-1-07
581-023-0006	2-21-07	Amend	4-1-07	584-048-0032	11-22-06	Amend	1-1-07
581-023-0035	1-26-07	Amend	3-1-07	584-048-0035	11-22-06	Amend	1-1-07
581-045-0001	1-1-07	Amend	1-1-07	584-048-0040	11-22-06	Amend	1-1-07
581-045-0006	1-1-07	Amend	1-1-07	584-048-0042	11-22-06	Repeal	1-1-07
581-045-0012	1-1-07	Amend	1-1-07	584-048-0065	11-22-06	Amend	1-1-07
581-045-0014	1-1-07	Amend	1-1-07	584-048-0067	11-22-06	Amend	1-1-07
581-045-0018	1-1-07	Amend	1-1-07	584-048-0070	11-22-06	Amend	1-1-07
581-045-0019	1-1-07	Amend	1-1-07	584-048-0085	11-22-06	Amend	1-1-07
581-045-0023	1-1-07	Amend	1-1-07	584-048-0090	11-22-06	Amend	1-1-07
581-045-0028	1-1-07	Renumber	1-1-07	584-048-0095	11-22-06	Amend	1-1-07
581-045-0032	1-1-07	Amend	1-1-07	584-048-0105	11-22-06	Amend	1-1-07
581-045-0036	1-1-07	Am. & Ren.	1-1-07	584-048-0110	11-22-06	Amend	1-1-07
581-045-0037	1-1-07	Am. & Ren.	1-1-07	584-048-0115	11-22-06	Amend	1-1-07
581-045-0038	1-1-07	Adopt	1-1-07	584-048-0120	11-22-06	Amend	1-1-07
581-045-0060	1-1-07	Amend	1-1-07	584-050-0004	11-22-06	Amend	1-1-07
581-045-0061	1-1-07	Amend	1-1-07	584-050-0005	11-22-06	Amend	1-1-07
581-045-0062	1-1-07	Amend	1-1-07	584-050-0006	11-22-06	Amend	1-1-07
581-045-0064	1-1-07	Amend	1-1-07	584-050-0007	11-22-06	Repeal	1-1-07
581-045-0200	1-1-07	Amend	1-1-07	584-050-0008	11-22-06	Repeal	1-1-07
581-045-0210	1-1-07	Amend	1-1-07	584-050-0009	11-22-06	Amend	1-1-07
584-005-0005	4-23-07	Amend	6-1-07	584-050-0012	11-22-06	Amend	1-1-07
584-017-0120	11-22-06	Amend	1-1-07	584-050-0015	11-22-06	Amend	1-1-07
584-017-0120	4-23-07	Amend	6-1-07	584-050-0016	11-22-06	Adopt	1-1-07
584-017-0200	4-23-07	Amend	6-1-07	584-050-0018	11-22-06	Adopt	1-1-07
584-017-0251	11-16-06	Amend	1-1-07	584-050-0019	11-22-06	Adopt	1-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
584-050-0020	11-22-06	Amend	1-1-07	603-051-0856	3-16-07	Amend	5-1-07
584-050-0022	11-22-06	Amend	1-1-07	603-051-0857	3-16-07	Amend	5-1-07
584-050-0025	11-22-06	Repeal	1-1-07	603-051-0858	3-16-07	Amend	5-1-07
584-050-0027	11-22-06	Amend	1-1-07	603-051-0859	3-16-07	Amend	5-1-07
584-050-0035	11-22-06	Amend	1-1-07	603-052-0114	1-30-07	Amend	3-1-07
584-050-0040	11-22-06	Amend	1-1-07	603-052-0115	1-30-07	Amend	3-1-07
584-050-0042	11-22-06	Amend	1-1-07	603-052-0120	1-30-07	Amend	3-1-07
584-050-0043	11-22-06	Adopt	1-1-07	603-052-0129	1-30-07	Amend	3-1-07
584-060-0012	3-30-07	Amend(T)	5-1-07	603-052-0136	3-16-07	Amend	5-1-07
584-060-0014	3-30-07	Adopt(T)	5-1-07	603-052-0150	1-30-07	Amend	3-1-07
584-060-0022	11-22-06	Amend	1-1-07	603-052-0360	1-30-07	Amend	3-1-07
584-060-0022	4-23-07	Amend	6-1-07	603-052-0450	1-30-07	Amend	3-1-07
584-060-0051	11-22-06	Amend	1-1-07	603-052-1200	1-30-07	Amend	3-1-07
584-060-0051	4-23-07	Amend	6-1-07	603-052-1221	1-30-07	Amend	3-1-07
584-060-0062	4-23-07	Amend	6-1-07	603-052-1230	3-27-07	Amend	5-1-07
584-060-0071	11-22-06	Amend	1-1-07	603-052-1250	3-27-07	Amend	5-1-07
584-060-0141	4-23-07	Repeal	6-1-07	603-054-0027	3-16-07	Amend	5-1-07
584-060-0161	5-14-07	Suspend	6-1-07	603-057-0140	3-1-07	Amend(T)	4-1-07
584-060-0163	3-30-07	Adopt(T)	5-1-07	603-057-0140	5-9-07	Amend	6-1-07
584-070-0012	4-23-07	Adopt	6-1-07	603-095-0300	12-21-06	Amend	2-1-07
584-070-0014	4-23-07	Adopt	6-1-07	603-095-0320	12-21-06	Amend	2-1-07
584-070-0022	4-23-07	Adopt	6-1-07	603-095-0340	12-21-06	Amend	2-1-07
584-070-0120	4-23-07	Amend	6-1-07	603-095-0360	12-21-06	Repeal	2-1-07
584-070-0400	4-23-07	Repeal	6-1-07	603-095-0380	12-21-06	Amend	2-1-07
584-080-0001	11-22-06	Amend	1-1-07	603-100-0000	1-2-07	Amend	2-1-07
584-080-0002	11-22-06	Amend	1-1-07	603-100-0010	1-2-07	Amend	2-1-07
584-080-0011	11-22-06	Repeal	1-1-07	603-100-0040	1-2-07	Adopt	2-1-07
584-080-0012	11-22-06	Adopt	1-1-07	603-110-0100	11-20-06	Adopt	1-1-07
584-080-0021	11-22-06	Repeal	1-1-07	603-110-0200	11-20-06	Adopt	1-1-07
584-080-0022	11-22-06	Adopt	1-1-07	603-110-0300	11-20-06	Adopt	1-1-07
584-080-0031	11-22-06	Amend	1-1-07	603-110-0400	11-20-06	Adopt	1-1-07
584-080-0050	4-23-07	Repeal	6-1-07	603-110-0500	11-20-06	Adopt	1-1-07
584-080-0051	4-23-07	Repeal	6-1-07	603-110-0600	11-20-06	Adopt	1-1-07
584-080-0052	4-23-07	Repeal	6-1-07	603-110-0700	11-20-06	Adopt	1-1-07
584-080-0081	4-23-07	Repeal	6-1-07	603-110-0800	11-20-06	Adopt	1-1-07
584-080-0131	4-23-07	Repeal	6-1-07	603-110-0900	11-20-06	Adopt	1-1-07
584-080-0151	4-23-07	Amend	6-1-07	603-110-1000	11-20-06	Adopt	1-1-07
584-080-0152	4-23-07	Amend	6-1-07	603-110-1100	11-20-06	Adopt	1-1-07
584-080-0153	4-23-07	Adopt	6-1-07	606-001-0000	5-9-07	Repeal	6-1-07
584-080-0161	4-23-07	Amend	6-1-07	606-010-0010	5-9-07	Repeal	6-1-07
584-100-0002	4-23-07	Amend	6-1-07	606-010-0015	5-9-07	Repeal	6-1-07
584-100-0006	11-22-06	Amend	1-1-07	606-010-0020	5-9-07	Repeal	6-1-07
585-001-0015	11-24-06	Amend(T)	1-1-07	606-010-0025	5-9-07	Repeal	6-1-07
585-001-0015	4-23-07	Adopt	6-1-07	606-010-0030	5-9-07	Repeal	6-1-07
589-002-0100	12-15-06	Amend	1-1-07	606-030-0010	5-9-07	Repeal	6-1-07
603-011-0371	12-4-06	Amend	1-1-07	606-030-0020	5-9-07	Repeal	6-1-07
603-027-0105	2-2-07	Amend	3-1-07	606-030-0040	5-9-07	Repeal	6-1-07
603-027-0170	2-2-07	Amend	3-1-07	606-040-0010	5-9-07	Repeal	6-1-07
603-027-0180	2-2-07	Amend	3-1-07	622-001-0000	7-1-07	Repeal	6-1-07
603-027-0206	2-2-07	Amend	3-1-07	622-001-0005	7-1-07	Repeal	6-1-07
603-027-0220	2-2-07	Amend	3-1-07	622-010-0000	7-1-07	Repeal	6-1-07
603-027-0635	2-2-07	Amend	3-1-07	622-010-0006	7-1-07	Repeal	6-1-07
603-027-0640	2-2-07	Amend	3-1-07	622-010-0011	7-1-07	Repeal	6-1-07
603-027-0670	2-2-07	Amend	3-1-07	622-020-0001	7-1-07	Repeal	6-1-07
603-027-0680	2-2-07	Amend	3-1-07	622-020-0140	7-1-07	Repeal	6-1-07
603-027-0700	2-2-07	Amend	3-1-07	622-020-0141	7-1-07	Repeal	6-1-07

## OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
622-020-0142	7-1-07	Repeal	6-1-07	629-022-0380	1-11-07	Amend	2-1-07
622-020-0143	7-1-07	Repeal	6-1-07	629-022-0390	1-11-07	Amend	2-1-07
622-020-0144	7-1-07	Repeal	6-1-07	629-022-0410	1-11-07	Amend	2-1-07
622-020-0145	7-1-07	Repeal	6-1-07	629-600-0100	1-8-07	Amend	2-1-07
622-020-0147	7-1-07	Repeal	6-1-07	629-606-0000	11-21-06	Repeal	1-1-07
622-020-0148	7-1-07	Repeal	6-1-07	629-606-0010	11-21-06	Repeal	1-1-07
622-020-0149	7-1-07	Repeal	6-1-07	629-606-0100	11-21-06	Repeal	1-1-07
622-020-0153	7-1-07	Repeal	6-1-07	629-606-0200	11-21-06	Repeal	1-1-07
622-030-0005	7-1-07	Repeal	6-1-07	629-606-0300	11-21-06	Repeal	1-1-07
622-030-0010	7-1-07	Repeal	6-1-07	629-606-0400	11-21-06	Repeal	1-1-07
622-045-0000	7-1-07	Repeal	6-1-07	629-606-0500	11-21-06	Repeal	1-1-07
622-045-0005	7-1-07	Repeal	6-1-07	629-606-0600	11-21-06	Repeal	1-1-07
622-045-0010	7-1-07	Repeal	6-1-07	629-606-0700	11-21-06	Repeal	1-1-07
622-045-0015	7-1-07	Repeal	6-1-07	629-606-0800	11-21-06	Repeal	1-1-07
622-045-0019	7-1-07	Repeal	6-1-07	629-606-0900	11-21-06	Repeal	1-1-07
622-055-0003	7-1-07	Repeal	6-1-07	629-606-1000	11-21-06	Repeal	1-1-07
622-055-0005	7-1-07	Repeal	6-1-07	629-640-0105	1-8-07	Adopt	2-1-07
622-055-0009	7-1-07	Repeal	6-1-07	629-640-0110	1-8-07	Amend	2-1-07
622-055-0010	7-1-07	Repeal	6-1-07	635-003-0003	5-1-07	Amend	6-1-07
622-055-0015	7-1-07	Repeal	6-1-07	635-003-0004	5-1-07	Amend	6-1-07
622-055-0020	7-1-07	Repeal	6-1-07	635-003-0085	5-1-07	Amend	6-1-07
622-055-0025	7-1-07	Repeal	6-1-07	635-004-0005	1-12-07	Amend	2-1-07
622-065-0001	7-1-07	Repeal	6-1-07	635-004-0009	1-12-07	Amend	2-1-07
622-065-0002	7-1-07	Repeal	6-1-07	635-004-0018	1-1-07	Amend(T)	2-1-07
622-065-0003	7-1-07	Repeal	6-1-07	635-004-0018	1-12-07	Amend	2-1-07
622-065-0010	7-1-07	Repeal	6-1-07	635-004-0018(T)	1-12-07	Repeal	2-1-07
622-065-0011	7-1-07	Repeal	6-1-07	635-004-0019	5-1-07	Amend(T)	6-1-07
629-021-0100	11-21-06	Adopt	1-1-07	635-004-0027	1-1-07	Amend(T)	2-1-07
629-021-0200	11-21-06	Adopt	1-1-07	635-004-0033	1-1-07	Amend(T)	2-1-07
629-021-0300	11-21-06	Adopt	1-1-07	635-004-0033	1-12-07	Amend	2-1-07
629-021-0400	11-21-06	Adopt	1-1-07	635-004-0033(T)	1-12-07	Repeal	2-1-07
629-021-0500	11-21-06	Adopt	1-1-07	635-005-0030	2-14-07	Amend	3-1-07
629-021-0600	11-21-06	Adopt	1-1-07	635-005-0031	2-14-07	Amend	3-1-07
629-021-0700	11-21-06	Adopt	1-1-07	635-005-0042	1-1-07	Amend(T)	1-1-07
629-021-0800	11-21-06	Adopt	1-1-07	635-005-0055	12-1-06	Amend(T)	1-1-07
629-021-0900	11-21-06	Adopt	1-1-07	635-005-0055	12-26-06	Amend	2-1-07
629-021-1000	11-21-06	Adopt	1-1-07	635-005-0055	2-14-07	Amend	3-1-07
629-021-1100	11-21-06	Adopt	1-1-07	635-005-0055(T)	12-26-06	Suspend	2-1-07
629-022-0040	1-11-07	Amend	2-1-07	635-006-0232	1-12-07	Amend	2-1-07
629-022-0110	1-11-07	Amend	2-1-07	635-006-1015	1-12-07	Amend	2-1-07
629-022-0120	1-11-07	Amend	2-1-07	635-006-1015	2-14-07	Amend	3-1-07
629-022-0130	1-11-07	Amend	2-1-07	635-006-1015(T)	1-12-07	Repeal	2-1-07
629-022-0150	1-11-07	Amend	2-1-07	635-006-1035	1-12-07	Amend	2-1-07
629-022-0160	1-11-07	Amend	2-1-07	635-006-1065	1-12-07	Amend(T)	2-1-07
629-022-0200	1-11-07	Amend	2-1-07	635-006-1065	2-14-07	Amend	3-1-07
629-022-0220	1-11-07	Amend	2-1-07	635-006-1075	1-12-07	Amend	2-1-07
629-022-0230	1-11-07	Amend	2-1-07	635-006-1095	4-17-07	Amend(T)	5-1-07
629-022-0250	1-11-07	Amend	2-1-07	635-008-0110	4-19-07	Amend	6-1-07
629-022-0300	1-11-07	Amend	2-1-07	635-008-0170	4-19-07	Amend	6-1-07
629-022-0310	1-11-07	Repeal	2-1-07	635-013-0003	5-1-07	Amend	6-1-07
629-022-0320	1-11-07	Amend	2-1-07	635-013-0004	5-1-07	Amend	6-1-07
629-022-0330	1-11-07	Repeal	2-1-07	635-013-0009	5-1-07	Amend	6-1-07
629-022-0340	1-11-07	Repeal	2-1-07	635-014-0090	5-1-07	Amend	6-1-07
629-022-0350	1-11-07	Repeal	2-1-07	635-017-0090	6-1-07	Amend	6-1-07
629-022-0360	1-11-07	Repeal	2-1-07	635-017-0095	1-1-07	Amend(T)	2-1-07
629-022-0370	1-11-07	Repeal	2-1-07	635-017-0095	2-1-07	Amend(T)	3-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
635-017-0095	5-1-07	Amend	6-1-07	635-042-0160(T)	3-6-07	Suspend	4-1-07
635-017-0095(T)	5-1-07	Repeal	6-1-07	635-042-0180	2-1-07	Amend(T)	3-1-07
635-018-0090	4-15-07	Amend(T)	5-1-07	635-042-0180	2-14-07	Amend	3-1-07
635-019-0090	3-1-07	Amend(T)	4-1-07	635-042-0180	3-6-07	Amend(T)	4-1-07
635-019-0090	5-10-07	Amend(T)	6-1-07	635-042-0180	4-18-07	Amend(T)	6-1-07
635-023-0095	1-1-07	Amend(T)	2-1-07	635-042-0180	4-26-07	Amend(T)	6-1-07
635-023-0095	2-1-07	Amend(T)	3-1-07	635-045-0000	1-1-07	Amend	1-1-07
635-023-0095	2-14-07	Amend	3-1-07	635-045-0002	1-1-07	Amend	1-1-07
635-023-0095	3-28-07	Amend(T)	5-1-07	635-047-0025	1-18-07	Amend	3-1-07
635-023-0125	2-1-07	Amend(T)	3-1-07	635-047-0025	3-30-07	Amend	5-1-07
635-023-0125	2-14-07	Amend	3-1-07	635-060-0000	1-1-07	Amend	1-1-07
635-023-0125	4-26-07	Amend(T)	6-1-07	635-060-0046	1-1-07	Amend	1-1-07
635-023-0125	5-16-07	Amend(T)	6-1-07	635-060-0055	4-1-07	Amend	1-1-07
635-023-0128	5-1-07	Amend	6-1-07	635-065-0001	1-1-07	Amend	1-1-07
635-023-0130	5-1-07	Amend	6-1-07	635-065-0401	1-1-07	Amend	1-1-07
635-023-0134	5-11-07	Amend(T)	6-1-07	635-065-0625	1-1-07	Amend	1-1-07
635-039-0080	1-1-07	Amend(T)	2-1-07	635-065-0635	1-1-07	Amend	1-1-07
635-039-0080	1-12-07	Amend	2-1-07	635-065-0720	1-1-07	Amend	1-1-07
635-039-0080(T)	1-12-07	Repeal	2-1-07	635-065-0740	1-1-07	Amend	1-1-07
635-039-0085	1-12-07	Amend	2-1-07	635-065-0760	6-1-07	Amend	1-1-07
635-039-0090	1-1-07	Amend(T)	2-1-07	635-066-0000	1-1-07	Amend	1-1-07
635-039-0090	1-12-07	Amend	2-1-07	635-067-0000	1-1-07	Amend	1-1-07
635-039-0090	2-14-07	Amend	3-1-07	635-067-0015	1-1-07	Amend	1-1-07
635-039-0090(T)	1-12-07	Repeal	2-1-07	635-067-0029	12-15-06	Amend(T)	1-1-07
635-041-0063	1-1-07	Amend(T)	2-1-07	635-067-0034	12-15-06	Amend(T)	1-1-07
635-041-0063	2-14-07	Amend	3-1-07	635-067-0041	12-15-06	Amend(T)	1-1-07
635-041-0065	2-1-07	Amend(T)	3-1-07	635-068-0000	3-1-07	Amend	1-1-07
635-041-0065	2-14-07	Amend	3-1-07	635-069-0000	2-1-07	Amend	1-1-07
635-041-0065	3-9-07	Amend(T)	4-1-07	635-070-0000	4-1-07	Amend	1-1-07
635-041-0065	3-14-07	Amend(T)	4-1-07	635-071-0000	4-1-07	Amend	1-1-07
635-042-0001	2-14-07	Amend	3-1-07	635-072-0000	1-1-07	Amend	1-1-07
635-042-0010	2-14-07	Amend	3-1-07	635-073-0000	2-1-07	Amend	1-1-07
635-042-0010	3-6-07	Amend(T)	4-1-07	635-080-0051	11-17-06	Amend(T)	1-1-07
635-042-0022	2-14-07	Amend	3-1-07	635-080-0052	11-17-06	Amend(T)	1-1-07
635-042-0022	3-6-07	Amend(T)	4-1-07	635-090-0140	12-15-06	Amend(T)	1-1-07
635-042-0022	3-20-07	Amend(T)	5-1-07	635-090-0200	1-18-07	Adopt	3-1-07
635-042-0022	3-22-07	Amend(T)	5-1-07	635-100-0125	4-19-07	Amend	6-1-07
635-042-0110	2-1-07	Amend(T)	3-1-07	635-500-0200	4-5-07	Amend	5-1-07
635-042-0110	2-14-07	Amend	3-1-07	635-500-0410	4-5-07	Amend	5-1-07
635-042-0130	1-1-07	Amend(T)	2-1-07	635-500-0510	4-5-07	Amend	5-1-07
635-042-0130	3-6-07	Amend(T)	4-1-07	635-500-0615	4-5-07	Amend	5-1-07
635-042-0133	1-1-07	Amend(T)	2-1-07	635-500-4050	4-5-07	Amend	5-1-07
635-042-0133	2-14-07	Amend	3-1-07	635-500-4360	4-5-07	Amend	5-1-07
635-042-0135	1-1-07	Amend(T)	2-1-07	635-500-4570	4-5-07	Amend	5-1-07
635-042-0135	2-13-07	Amend(T)	3-1-07	635-500-4870	4-5-07	Amend	5-1-07
635-042-0135	2-14-07	Amend	3-1-07	635-500-5060	4-5-07	Amend	5-1-07
635-042-0145	2-1-07	Amend(T)	3-1-07	635-500-5260	4-5-07	Amend	5-1-07
635-042-0145	2-14-07	Amend	3-1-07	635-500-6500	4-5-07	Adopt	5-1-07
635-042-0145	3-6-07	Amend(T)	4-1-07	644-010-0010	1-1-07	Amend	1-1-07
635-042-0145	3-14-07	Amend(T)	4-1-07	647-010-0010	6-1-07	Amend	6-1-07
635-042-0145	4-18-07	Amend(T)	6-1-07	660-041-0000	12-4-06	Adopt(T)	1-1-07
635-042-0145(T)	3-6-07	Suspend	4-1-07	660-041-0000	2-9-07	Adopt	3-1-07
635-042-0160	2-1-07	Amend(T)	3-1-07	660-041-0000(T)	2-9-07	Repeal	3-1-07
635-042-0160	2-14-07	Amend	3-1-07	660-041-0010	12-4-06	Adopt(T)	1-1-07
635-042-0160	3-6-07	Amend(T)	4-1-07	660-041-0010	2-9-07	Adopt	3-1-07
635-042-0160	4-18-07	Amend(T)	6-1-07	660-041-0020	12-4-06	Adopt(T)	1-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
660-041-0020	2-9-07	Adopt	3-1-07	731-001-0440	3-26-07	Repeal	5-1-07
660-041-0020(T)	2-9-07	Repeal	3-1-07	731-001-0450	3-26-07	Repeal	5-1-07
660-041-0030	12-4-06	Adopt(T)	1-1-07	731-001-0460	3-26-07	Repeal	5-1-07
660-041-0030	2-9-07	Adopt	3-1-07	731-001-0470	3-26-07	Repeal	5-1-07
660-041-0030(T)	2-9-07	Repeal	3-1-07	731-001-0480	3-26-07	Repeal	5-1-07
660-041-0040	2-9-07	Adopt	3-1-07	731-001-0490	3-26-07	Repeal	5-1-07
660-041-0050	2-9-07	Adopt	3-1-07	731-001-0500	3-26-07	Repeal	5-1-07
679-010-0010	3-28-07	Amend	5-1-07	731-001-0510	3-26-07	Repeal	5-1-07
690-310-0040	3-29-07	Amend	5-1-07	731-001-0520	3-26-07	Repeal	5-1-07
690-310-0280	3-29-07	Amend	5-1-07	731-001-0530	3-26-07	Repeal	5-1-07
690-340-0050	3-29-07	Repeal	5-1-07	731-001-0540	3-26-07	Repeal	5-1-07
690-340-0060	3-29-07	Adopt	5-1-07	731-001-0550	3-26-07	Repeal	5-1-07
690-385-0100	1-5-07	Amend	2-1-07	731-001-0560	3-26-07	Repeal	5-1-07
690-385-3100	1-5-07	Amend	2-1-07	731-001-0570	3-26-07	Repeal	5-1-07
690-385-3145	1-5-07	Adopt	2-1-07	731-001-0580	3-26-07	Repeal	5-1-07
690-385-3200	1-5-07	Amend	2-1-07	731-001-0590	3-26-07	Repeal	5-1-07
690-385-3500	1-5-07	Amend	2-1-07	731-001-0600	3-26-07	Repeal	5-1-07
690-518-0020	1-5-07	Amend	2-1-07	731-001-0610	3-26-07	Repeal	5-1-07
695-007-0010	2-1-07	Adopt	3-1-07	731-001-0620	3-26-07	Repeal	5-1-07
695-007-0020	2-1-07	Adopt	3-1-07	731-001-0630	3-26-07	Repeal	5-1-07
695-007-0030	2-1-07	Adopt	3-1-07	731-001-0640	3-26-07	Repeal	5-1-07
695-007-0040	2-1-07	Adopt	3-1-07	731-001-0650	3-26-07	Repeal	5-1-07
731-001-0100	3-26-07	Repeal	5-1-07	731-001-0660	3-26-07	Repeal	5-1-07
731-001-0110	3-26-07	Repeal	5-1-07	731-001-0670	3-26-07	Repeal	5-1-07
731-001-0120	3-26-07	Repeal	5-1-07	731-001-0680	3-26-07	Repeal	5-1-07
731-001-0130	3-26-07	Repeal	5-1-07	731-001-0690	3-26-07	Repeal	5-1-07
731-001-0140	3-26-07	Repeal	5-1-07	731-001-0700	3-26-07	Repeal	5-1-07
731-001-0150	3-26-07	Repeal	5-1-07	731-001-0710	3-26-07	Repeal	5-1-07
731-001-0160	3-26-07	Repeal	5-1-07	731-001-0720	3-26-07	Adopt	5-1-07
731-001-0170	3-26-07	Repeal	5-1-07	731-001-0730	3-26-07	Adopt	5-1-07
731-001-0180	3-26-07	Repeal	5-1-07	731-005-0450	1-24-07	Amend	3-1-07
731-001-0190	3-26-07	Repeal	5-1-07	731-005-0600	1-24-07	Amend	3-1-07
731-001-0200	3-26-07	Repeal	5-1-07	731-005-0600(T)	1-24-07	Repeal	3-1-07
731-001-0210	3-26-07	Repeal	5-1-07	731-146-0010	11-17-06	Amend	1-1-07
731-001-0220	3-26-07	Repeal	5-1-07	731-147-0010	11-17-06	Amend	1-1-07
731-001-0230	3-26-07	Repeal	5-1-07	731-148-0010	11-17-06	Amend	1-1-07
731-001-0240	3-26-07	Repeal	5-1-07	731-149-0010	11-17-06	Amend	1-1-07
731-001-0250	3-26-07	Repeal	5-1-07	733-030-0011	3-1-07	Amend	4-1-07
731-001-0260	3-26-07	Repeal	5-1-07	733-030-0016	3-1-07	Amend	4-1-07
731-001-0270	3-26-07	Repeal	5-1-07	733-030-0021	3-1-07	Amend	4-1-07
731-001-0280	3-26-07	Repeal	5-1-07	733-030-0026	3-1-07	Amend	4-1-07
731-001-0290	3-26-07	Repeal	5-1-07	733-030-0036	3-1-07	Amend	4-1-07
731-001-0300	3-26-07	Repeal	5-1-07	733-030-0045	3-1-07	Amend	4-1-07
731-001-0310	3-26-07	Repeal	5-1-07	733-030-0050	3-1-07	Amend	4-1-07
731-001-0320	3-26-07	Repeal	5-1-07	733-030-0055	3-1-07	Amend	4-1-07
731-001-0330	3-26-07	Repeal	5-1-07	733-030-0065	11-24-06	Amend	1-1-07
731-001-0340	3-26-07	Repeal	5-1-07	733-030-0090	3-1-07	Amend	4-1-07
731-001-0350	3-26-07	Repeal	5-1-07	733-030-0100	3-1-07	Amend	4-1-07
731-001-0360	3-26-07	Repeal	5-1-07	733-030-0105	3-1-07	Amend	4-1-07
731-001-0370	3-26-07	Repeal	5-1-07	733-030-0110	3-1-07	Amend	4-1-07
731-001-0380	3-26-07	Repeal	5-1-07	733-030-0135	11-24-06	Amend	1-1-07
731-001-0390	3-26-07	Repeal	5-1-07	733-030-0350	11-24-06	Amend	1-1-07
731-001-0400	3-26-07	Repeal	5-1-07	734-010-0230	1-24-07	Amend	3-1-07
731-001-0410	3-26-07	Repeal	5-1-07	734-010-0240	1-24-07	Amend	3-1-07
731-001-0420	3-26-07	Repeal	5-1-07	734-051-0020	1-26-07	Amend	3-1-07
731-001-0430	3-26-07	Repeal	5-1-07	734-051-0035	1-26-07	Amend	3-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
734-051-0040	1-26-07	Amend	3-1-07	736-017-0010	12-15-06	Adopt	1-1-07
734-051-0070	1-26-07	Amend	3-1-07	736-017-0015	12-15-06	Adopt	1-1-07
734-051-0115	1-26-07	Amend	3-1-07	736-017-0020	12-15-06	Adopt	1-1-07
734-051-0125	1-26-07	Amend	3-1-07	736-017-0025	12-15-06	Adopt	1-1-07
734-051-0145	1-26-07	Amend	3-1-07	736-017-0030	12-15-06	Adopt	1-1-07
734-051-0155	1-26-07	Amend	3-1-07	736-017-0035	12-15-06	Adopt	1-1-07
734-051-0225	1-26-07	Amend	3-1-07	736-017-0040	12-15-06	Adopt	1-1-07
734-051-0285	1-26-07	Amend	3-1-07	736-017-0050	12-15-06	Adopt	1-1-07
734-051-0295	1-26-07	Amend	3-1-07	736-050-0120	2-8-07	Amend	3-1-07
734-051-0500	1-26-07	Amend	3-1-07	736-050-0120	4-13-07	Amend	5-1-07
734-051-0510	1-26-07	Amend	3-1-07	736-146-0010	2-7-07	Adopt	3-1-07
735-022-0000	11-17-06	Amend	1-1-07	736-146-0012	2-7-07	Adopt	3-1-07
735-022-0020	11-17-06	Repeal	1-1-07	736-146-0015	2-7-07	Adopt	3-1-07
735-022-0030	11-17-06	Amend	1-1-07	736-146-0020	2-7-07	Adopt	3-1-07
735-022-0040	11-17-06	Amend	1-1-07	736-146-0025	2-7-07	Adopt	3-1-07
735-022-0070	11-17-06	Amend	1-1-07	736-146-0030	2-7-07	Adopt	3-1-07
735-022-0080	11-17-06	Amend	1-1-07	736-146-0040	2-7-07	Adopt	3-1-07
735-022-0090	11-17-06	Amend	1-1-07	736-146-0050	2-7-07	Adopt	3-1-07
735-028-0020	11-17-06	Amend	1-1-07	736-146-0060	2-7-07	Adopt	3-1-07
735-040-0030	11-17-06	Amend	1-1-07	736-146-0070	2-7-07	Adopt	3-1-07
735-062-0080	12-13-06	Amend	1-1-07	736-146-0080	2-7-07	Adopt	3-1-07
735-062-0080(T)	12-13-06	Repeal	1-1-07	736-146-0090	2-7-07	Adopt	3-1-07
735-062-0140	12-13-06	Amend	1-1-07	736-146-0100	2-7-07	Adopt	3-1-07
735-062-0140(T)	12-13-06	Repeal	1-1-07	736-146-0110	2-7-07	Adopt	3-1-07
735-062-0150	2-26-07	Amend	4-1-07	736-146-0120	2-7-07	Adopt	3-1-07
735-064-0005	11-17-06	Amend	1-1-07	736-146-0130	2-7-07	Adopt	3-1-07
735-064-0230	12-13-06	Amend	1-1-07	736-146-0140	2-7-07	Adopt	3-1-07
735-064-0235	12-13-06	Amend	1-1-07	736-147-0010	2-7-07	Adopt	3-1-07
735-064-0237	12-13-06	Amend	1-1-07	736-147-0020	2-7-07	Adopt	3-1-07
735-070-0010	12-13-06	Amend	1-1-07	736-147-0030	2-7-07	Adopt	3-1-07
735-072-0030	1-24-07	Repeal	3-1-07	736-147-0050	2-7-07	Adopt	3-1-07
735-072-0031	1-24-07	Repeal	3-1-07	736-147-0060	2-7-07	Adopt	3-1-07
735-072-0040	1-24-07	Repeal	3-1-07	736-148-0010	2-7-07	Adopt	3-1-07
735-072-0060	1-24-07	Repeal	3-1-07	736-148-0020	2-7-07	Adopt	3-1-07
735-072-0120	1-24-07	Repeal	3-1-07	736-149-0010	2-7-07	Adopt	3-1-07
735-072-0130	1-24-07	Repeal	3-1-07	736-201-0000	7-1-07	Adopt	6-1-07
735-072-0150	1-24-07	Repeal	3-1-07	736-201-0005	7-1-07	Adopt	6-1-07
735-090-0101	11-1-06	Amend	3-1-07	736-201-0010	7-1-07	Adopt	6-1-07
735-158-0000	11-17-06	Amend	1-1-07	736-201-0015	7-1-07	Adopt	6-1-07
736-004-0005	4-13-07	Amend	5-1-07	736-201-0020	7-1-07	Adopt	6-1-07
736-004-0010	4-13-07	Amend	5-1-07	736-201-0025	7-1-07	Adopt	6-1-07
736-004-0015	4-13-07	Amend	5-1-07	736-201-0030	7-1-07	Adopt	6-1-07
736-004-0020	4-13-07	Amend	5-1-07	736-201-0035	7-1-07	Adopt	6-1-07
736-004-0025	4-13-07	Amend	5-1-07	736-201-0040	7-1-07	Adopt	6-1-07
736-004-0030	4-13-07	Amend	5-1-07	736-201-0045	7-1-07	Adopt	6-1-07
736-004-0040	4-13-07	Repeal	5-1-07	736-201-0050	7-1-07	Adopt	6-1-07
736-004-0045	4-13-07	Amend	5-1-07	736-201-0055	7-1-07	Adopt	6-1-07
736-004-0050	4-13-07	Repeal	5-1-07	736-201-0060	7-1-07	Adopt	6-1-07
736-004-0060	4-13-07	Amend	5-1-07	736-201-0065	7-1-07	Adopt	6-1-07
736-004-0062	4-13-07	Adopt	5-1-07	736-201-0070	7-1-07	Adopt	6-1-07
736-004-0065	4-13-07	Amend	5-1-07	736-201-0075	7-1-07	Adopt	6-1-07
736-004-0070	4-13-07	Amend	5-1-07	736-201-0080	7-1-07	Adopt	6-1-07
736-004-0080	4-13-07	Amend	5-1-07	736-201-0085	7-1-07	Adopt	6-1-07
736-004-0085	4-13-07	Amend	5-1-07	736-201-0090	7-1-07	Adopt	6-1-07
736-017-0000	12-15-06	Adopt	1-1-07	736-201-0095	7-1-07	Adopt	6-1-07
736-017-0005	12-15-06	Adopt	1-1-07	736-201-0100	7-1-07	Adopt	6-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
736-201-0105	7-1-07	Adopt	6-1-07	800-015-0020	2-1-07	Amend	2-1-07
736-201-0110	7-1-07	Adopt	6-1-07	800-020-0015	2-1-07	Amend	2-1-07
736-201-0115	7-1-07	Adopt	6-1-07	800-020-0030	2-1-07	Amend	2-1-07
736-201-0120	7-1-07	Adopt	6-1-07	800-020-0035	2-1-07	Amend	2-1-07
736-201-0125	7-1-07	Adopt	6-1-07	800-020-0065	2-1-07	Amend	2-1-07
736-201-0130	7-1-07	Adopt	6-1-07	800-025-0023	2-1-07	Amend	2-1-07
736-201-0135	7-1-07	Adopt	6-1-07	800-025-0027	2-1-07	Amend	2-1-07
736-201-0140	7-1-07	Adopt	6-1-07	800-025-0040	2-1-07	Amend	2-1-07
736-201-0145	7-1-07	Adopt	6-1-07	800-025-0050	2-1-07	Amend	2-1-07
736-201-0150	7-1-07	Adopt	6-1-07	800-025-0060	2-1-07	Amend	2-1-07
736-201-0155	7-1-07	Adopt	6-1-07	801-001-0035	1-1-07	Amend	2-1-07
736-201-0160	7-1-07	Adopt	6-1-07	801-005-0010	1-1-07	Amend	2-1-07
736-201-0165	7-1-07	Adopt	6-1-07	801-010-0010	1-1-07	Amend	2-1-07
736-201-0170	7-1-07	Adopt	6-1-07	801-010-0050	1-1-07	Amend	2-1-07
736-201-0175	7-1-07	Adopt	6-1-07	801-010-0065	1-1-07	Amend	2-1-07
736-201-0180	7-1-07	Adopt	6-1-07	801-010-0080	1-1-07	Amend	2-1-07
737-015-0020	4-1-07	Amend	5-1-07	801-010-0100	1-1-07	Amend	2-1-07
737-015-0030	4-1-07	Amend	5-1-07	801-010-0110	1-1-07	Amend	2-1-07
737-015-0040	4-1-07	Repeal	5-1-07	801-010-0345	1-1-07	Amend	2-1-07
737-015-0050	4-1-07	Amend	5-1-07	801-020-0620	1-1-07	Amend	2-1-07
737-015-0060	4-1-07	Amend	5-1-07	801-020-0690	1-1-07	Amend	2-1-07
737-015-0070	4-1-07	Amend	5-1-07	801-030-0005	1-1-07	Amend	2-1-07
737-015-0080	4-1-07	Repeal	5-1-07	801-030-0010	1-1-07	Amend	2-1-07
737-015-0090	4-1-07	Amend	5-1-07	801-030-0015	1-1-07	Amend	2-1-07
737-015-0100	4-1-07	Amend	5-1-07	801-030-0020	1-1-07	Amend	2-1-07
737-015-0110	4-1-07	Adopt	5-1-07	801-040-0010	1-1-07	Amend	2-1-07
740-100-0010	4-1-07	Amend	5-1-07	804-010-0000	4-27-07	Amend	6-1-07
740-100-0060	4-1-07	Amend	5-1-07	804-010-0010	4-27-07	Amend	6-1-07
740-100-0070	4-1-07	Amend	5-1-07	804-010-0020	4-27-07	Am. & Ren.	6-1-07
740-100-0080	4-1-07	Amend	5-1-07	804-020-0001	4-27-07	Am. & Ren.	6-1-07
740-100-0090	4-1-07	Amend	5-1-07	804-020-0003	4-27-07	Am. & Ren.	6-1-07
740-100-0100	4-1-07	Amend	5-1-07	804-020-0005	4-27-07	Amend	6-1-07
740-110-0010	4-1-07	Amend	5-1-07	804-020-0030	4-27-07	Amend	6-1-07
741-060-0010	3-7-07	Amend	4-1-07	804-020-0045	4-27-07	Amend	6-1-07
741-060-0020	3-7-07	Amend	4-1-07	804-022-0000	4-27-07	Am. & Ren.	6-1-07
741-060-0025	3-7-07	Adopt	4-1-07	804-022-0005	4-27-07	Adopt	6-1-07
741-060-0030	3-7-07	Amend	4-1-07	804-022-0010	4-27-07	Am. & Ren.	6-1-07
741-060-0035	3-7-07	Adopt	4-1-07	806-001-0003	7-1-07	Amend	6-1-07
741-060-0040	3-7-07	Amend	4-1-07	806-010-0060	12-13-06	Amend	1-1-07
741-060-0050	3-7-07	Amend	4-1-07	806-010-0145	12-13-06	Amend	1-1-07
741-060-0060	3-7-07	Amend	4-1-07	808-003-0260	2-1-07	Amend	3-1-07
741-060-0070	3-7-07	Amend	4-1-07	809-015-0010	3-14-07	Amend	4-1-07
741-060-0080	3-7-07	Amend	4-1-07	809-020-0025	3-14-07	Amend	4-1-07
741-060-0090	3-7-07	Amend	4-1-07	811-010-0085	11-24-06	Amend	1-1-07
741-060-0095	3-7-07	Adopt	4-1-07	812-001-0130	1-1-07	Amend	1-1-07
741-060-0100	3-7-07	Amend	4-1-07	812-001-0135	1-1-07	Adopt	1-1-07
741-060-0110	3-7-07	Amend	4-1-07	812-001-0500	1-1-07	Amend	1-1-07
800-010-0015	2-1-07	Amend	2-1-07	812-002-0130	1-1-07	Repeal	1-1-07
800-010-0030	2-1-07	Amend	2-1-07	812-002-0140	1-1-07	Amend	1-1-07
800-010-0031	2-1-07	Amend	2-1-07	812-002-0143	1-1-07	Adopt	1-1-07
800-010-0040	2-1-07	Amend	2-1-07	812-002-0250	1-1-07	Amend	1-1-07
800-010-0041	2-1-07	Amend	2-1-07	812-002-0440	1-1-07	Amend	1-1-07
800-010-0050	2-1-07	Amend	2-1-07	812-002-0460	1-1-07	Amend	1-1-07
800-014-0070	2-1-07	Amend	2-1-07	812-002-0480	1-1-07	Amend	1-1-07
800-015-0005	2-1-07	Amend	2-1-07	812-002-0537	1-1-07	Amend	1-1-07
800-015-0010	2-1-07	Amend	2-1-07	812-002-0540	1-1-07	Amend	1-1-07



## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
812-002-0670	1-1-07	Amend	1-1-07	812-007-0050	1-1-07	Amend	1-1-07
812-003-0140	1-1-07	Amend	1-1-07	812-007-0060	1-1-07	Amend	1-1-07
812-003-0150	1-1-07	Amend	1-1-07	812-007-0070	1-1-07	Amend	1-1-07
812-003-0160	1-1-07	Amend	1-1-07	812-007-0080	1-1-07	Amend	1-1-07
812-003-0175	1-1-07	Amend	1-1-07	812-007-0090	1-1-07	Amend	1-1-07
812-003-0240	2-1-07	Amend	3-1-07	812-008-0040	1-1-06	Amend	1-1-07
812-003-0260	1-1-07	Amend	1-1-07	812-008-0072	1-1-06	Amend	1-1-07
812-003-0280	1-1-07	Amend	1-1-07	812-008-0074	1-1-06	Amend	1-1-07
812-003-0300	1-1-07	Amend	1-1-07	812-009-0010	1-1-07	Amend	1-1-07
812-003-0400	1-1-07	Amend	1-1-07	812-009-0020	1-1-07	Amend	1-1-07
812-003-0430	1-1-07	Amend	1-1-07	812-009-0050	1-1-07	Amend	1-1-07
812-003-0450	5-1-07	Adopt	6-1-07	812-009-0070	1-1-07	Amend	1-1-07
812-004-0001	1-1-07	Amend	1-1-07	812-009-0090	1-1-07	Amend	1-1-07
812-004-0110	1-1-07	Amend	1-1-07	812-009-0100	1-1-07	Amend	1-1-07
812-004-0120	1-1-07	Amend	1-1-07	812-009-0120	1-1-07	Amend	1-1-07
812-004-0140	1-1-07	Amend	1-1-07	812-009-0140	1-1-07	Amend	1-1-07
812-004-0160	1-1-07	Amend	1-1-07	812-009-0160	1-1-07	Amend	1-1-07
812-004-0180	1-1-07	Amend	1-1-07	812-009-0200	1-1-07	Amend	1-1-07
812-004-0195	1-1-07	Amend	1-1-07	812-009-0220	1-1-07	Amend	1-1-07
812-004-0210	1-1-07	Amend	1-1-07	812-009-0400	1-1-07	Amend	1-1-07
812-004-0240	1-1-07	Amend	1-1-07	812-009-0430	1-1-07	Amend	1-1-07
812-004-0250	1-1-07	Amend	1-1-07	812-010-0020	1-1-07	Amend	1-1-07
812-004-0260	1-1-07	Amend	1-1-07	812-010-0040	1-1-07	Amend	1-1-07
812-004-0300	1-1-07	Amend	1-1-07	812-010-0085	1-1-07	Amend	1-1-07
812-004-0320	1-1-07	Amend	1-1-07	812-010-0090	1-1-07	Amend	1-1-07
812-004-0340	1-1-07	Amend	1-1-07	812-010-0100	1-1-07	Amend	1-1-07
812-004-0350	1-1-07	Amend	1-1-07	812-010-0110	1-1-07	Amend	1-1-07
812-004-0360	1-1-07	Amend	1-1-07	812-010-0120	1-1-07	Amend	1-1-07
812-004-0400	1-1-07	Amend	1-1-07	812-010-0140	1-1-07	Amend	1-1-07
812-004-0420	1-1-07	Amend	1-1-07	812-010-0200	1-1-07	Amend	1-1-07
812-004-0440	1-1-07	Amend	1-1-07	812-010-0220	1-1-07	Amend	1-1-07
812-004-0450	1-1-07	Amend	1-1-07	812-010-0260	1-1-07	Amend	1-1-07
812-004-0460	1-1-07	Amend	1-1-07	812-010-0290	1-1-07	Amend	1-1-07
812-004-0470	1-1-07	Amend	1-1-07	812-010-0300	1-1-07	Amend	1-1-07
812-004-0480	1-1-07	Amend	1-1-07	812-010-0320	1-1-07	Amend	1-1-07
812-004-0500	1-1-07	Amend	1-1-07	812-010-0340	1-1-07	Amend	1-1-07
812-004-0510	1-1-07	Amend	1-1-07	812-010-0360	1-1-07	Amend	1-1-07
812-004-0520	1-1-07	Amend	1-1-07	812-010-0380	1-1-07	Amend	1-1-07
812-004-0530	1-1-07	Amend	1-1-07	812-010-0420	1-1-07	Amend	1-1-07
812-004-0535	1-1-07	Amend	1-1-07	812-010-0425	1-1-07	Amend	1-1-07
812-004-0540	1-1-07	Amend	1-1-07	812-010-0430	1-1-07	Amend	1-1-07
812-004-0550	1-1-07	Amend	1-1-07	812-010-0460	1-1-07	Amend	1-1-07
812-004-0560	1-1-07	Amend	1-1-07	812-010-0470	1-1-07	Amend	1-1-07
812-004-0590	1-1-07	Amend	1-1-07	812-010-0480	1-1-07	Amend	1-1-07
812-004-0600	1-1-07	Amend	1-1-07	813-010-0006	1-11-07	Amend	2-1-07
812-005-0200	1-1-07	Amend	1-1-07	813-010-0011	1-11-07	Amend	2-1-07
812-005-0210	1-1-07	Amend	1-1-07	813-010-0016	1-11-07	Amend	2-1-07
812-005-0800	1-1-07	Amend	1-1-07	813-010-0021	1-11-07	Amend	2-1-07
812-006-0300	3-1-07	Amend	4-1-07	813-010-0023	1-11-07	Repeal	2-1-07
812-006-0400	3-1-07	Amend	4-1-07	813-010-0024	1-11-07	Repeal	2-1-07
812-006-0400(T)	3-1-07	Repeal	4-1-07	813-010-0028	1-11-07	Repeal	2-1-07
812-007-0000	1-1-07	Amend	1-1-07	813-010-0029	1-11-07	Amend	2-1-07
812-007-0010	1-1-07	Amend	1-1-07	813-010-0032	1-11-07	Amend	2-1-07
812-007-0020	1-1-07	Amend	1-1-07	813-010-0033	1-11-07	Amend	2-1-07
812-007-0030	1-1-07	Amend	1-1-07	813-010-0036	1-11-07	Amend	2-1-07
812-007-0040	1-1-07	Amend	1-1-07	813-010-0042	1-11-07	Amend	2-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
813-010-0051	1-11-07	Amend	2-1-07	813-035-0700	1-11-07	Repeal	2-1-07
813-010-0700	1-11-07	Amend	2-1-07	813-035-0705	1-11-07	Repeal	2-1-07
813-010-0705	1-11-07	Amend	2-1-07	813-035-0710	1-11-07	Repeal	2-1-07
813-010-0710	1-11-07	Amend	2-1-07	813-035-0715	1-11-07	Repeal	2-1-07
813-010-0715	1-11-07	Amend	2-1-07	813-035-0720	1-11-07	Repeal	2-1-07
813-010-0720	1-11-07	Amend	2-1-07	813-038-0005	5-10-07	Adopt	6-1-07
813-010-0740	1-11-07	Adopt	2-1-07	813-038-0010	5-10-07	Adopt	6-1-07
813-012-0010	1-11-07	Amend	2-1-07	813-038-0015	5-10-07	Adopt	6-1-07
813-012-0020	1-11-07	Amend	2-1-07	813-038-0020	5-10-07	Adopt	6-1-07
813-012-0030	1-11-07	Amend	2-1-07	813-038-0025	5-10-07	Adopt	6-1-07
813-012-0040	1-11-07	Amend	2-1-07	813-038-0030	5-10-07	Adopt	6-1-07
813-012-0050	1-11-07	Amend	2-1-07	813-038-0035	5-10-07	Adopt	6-1-07
813-012-0060	1-11-07	Amend	2-1-07	813-038-0040	5-10-07	Adopt	6-1-07
813-012-0070	1-11-07	Amend	2-1-07	813-042-0000	1-11-07	Adopt	2-1-07
813-012-0080	1-11-07	Amend	2-1-07	813-042-0000(T)	1-11-07	Repeal	2-1-07
813-012-0090	1-11-07	Amend	2-1-07	813-042-0010	1-11-07	Adopt	2-1-07
813-012-0100	1-11-07	Amend	2-1-07	813-042-0010(T)	1-11-07	Repeal	2-1-07
813-012-0110	1-11-07	Amend	2-1-07	813-042-0020	1-11-07	Adopt	2-1-07
813-012-0120	1-11-07	Amend	2-1-07	813-042-0020(T)	1-11-07	Repeal	2-1-07
813-012-0130	1-11-07	Amend	2-1-07	813-042-0030	1-11-07	Adopt	2-1-07
813-012-0140	1-11-07	Amend	2-1-07	813-042-0030(T)	1-11-07	Repeal	2-1-07
813-012-0150	1-11-07	Amend	2-1-07	813-042-0040	1-11-07	Adopt	2-1-07
813-012-0160	1-11-07	Amend	2-1-07	813-042-0040(T)	1-11-07	Repeal	2-1-07
813-012-0170	1-11-07	Amend	2-1-07	813-042-0050	1-11-07	Adopt	2-1-07
813-012-0180	1-11-07	Adopt	2-1-07	813-042-0050(T)	1-11-07	Repeal	2-1-07
813-030-0005	1-11-07	Amend	2-1-07	813-042-0060	1-11-07	Adopt	2-1-07
813-030-0010	1-11-07	Amend	2-1-07	813-042-0060(T)	1-11-07	Repeal	2-1-07
813-030-0020	1-11-07	Amend	2-1-07	813-042-0070	1-11-07	Adopt	2-1-07
813-030-0025	1-11-07	Amend	2-1-07	813-042-0070(T)	1-11-07	Repeal	2-1-07
813-030-0030	1-11-07	Amend	2-1-07	813-042-0080	1-11-07	Adopt	2-1-07
813-030-0031	1-11-07	Amend	2-1-07	813-042-0080(T)	1-11-07	Repeal	2-1-07
813-030-0032	1-11-07	Amend	2-1-07	813-042-0090	1-11-07	Adopt	2-1-07
813-030-0034	1-11-07	Amend	2-1-07	813-042-0090(T)	1-11-07	Repeal	2-1-07
813-030-0035	1-11-07	Amend	2-1-07	813-042-0100	1-11-07	Adopt	2-1-07
813-030-0040	1-11-07	Amend	2-1-07	813-042-0100(T)	1-11-07	Repeal	2-1-07
813-030-0044	1-11-07	Amend	2-1-07	813-042-0110	1-11-07	Adopt	2-1-07
813-030-0046	1-11-07	Amend	2-1-07	813-042-0110(T)	1-11-07	Repeal	2-1-07
813-030-0047	1-11-07	Amend	2-1-07	813-060-0005	1-11-07	Amend	2-1-07
813-030-0060	1-11-07	Amend	2-1-07	813-060-0010	1-11-07	Amend	2-1-07
813-030-0062	1-11-07	Amend	2-1-07	813-060-0020	1-11-07	Amend	2-1-07
813-030-0066	1-11-07	Amend	2-1-07	813-060-0025	1-11-07	Amend	2-1-07
813-030-0067	1-11-07	Amend	2-1-07	813-060-0030	1-11-07	Amend	2-1-07
813-030-0068	1-11-07	Amend	2-1-07	813-060-0031	1-11-07	Amend	2-1-07
813-030-0070	1-11-07	Adopt	2-1-07	813-060-0032	1-11-07	Amend	2-1-07
813-035-0005	1-11-07	Amend	2-1-07	813-060-0036	1-11-07	Adopt	2-1-07
813-035-0011	1-11-07	Amend	2-1-07	813-060-0038	1-11-07	Am. & Ren.	2-1-07
813-035-0016	1-11-07	Amend	2-1-07	813-060-0040	1-11-07	Amend	2-1-07
813-035-0018	1-11-07	Amend	2-1-07	813-060-0044	1-11-07	Amend	2-1-07
813-035-0021	1-11-07	Amend	2-1-07	813-060-0045	1-11-07	Amend	2-1-07
813-035-0029	1-11-07	Amend	2-1-07	813-060-0047	1-11-07	Amend	2-1-07
813-035-0033	1-11-07	Amend	2-1-07	813-060-0055	1-11-07	Amend	2-1-07
813-035-0036	1-11-07	Amend	2-1-07	813-060-0056	1-11-07	Amend	2-1-07
813-035-0040	1-11-07	Amend	2-1-07	813-060-0061	1-11-07	Amend	2-1-07
813-035-0045	1-11-07	Amend	2-1-07	813-060-0062	1-11-07	Amend	2-1-07
813-035-0051	1-11-07	Amend	2-1-07	813-060-0065	1-11-07	Amend	2-1-07
813-035-0070	1-11-07	Adopt	2-1-07	813-060-0070	1-11-07	Adopt	2-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
813-090-0031	1-11-07	Amend	2-1-07	813-205-0020	1-11-07	Amend	2-1-07
813-090-0031(T)	1-11-07	Repeal	2-1-07	813-205-0020(T)	1-11-07	Repeal	2-1-07
813-090-0035	1-11-07	Amend	2-1-07	813-205-0030	1-11-07	Amend	2-1-07
813-090-0035(T)	1-11-07	Repeal	2-1-07	813-205-0030(T)	1-11-07	Repeal	2-1-07
813-090-0036	1-11-07	Amend	2-1-07	813-205-0040	1-11-07	Amend	2-1-07
813-090-0036(T)	1-11-07	Repeal	2-1-07	813-205-0040(T)	1-11-07	Repeal	2-1-07
813-090-0070	1-11-07	Amend	2-1-07	813-205-0050	1-11-07	Amend	2-1-07
813-090-0070(T)	1-11-07	Repeal	2-1-07	813-205-0050(T)	1-11-07	Repeal	2-1-07
813-110-0010	1-11-07	Amend	2-1-07	813-205-0051	1-11-07	Amend	2-1-07
813-110-0010(T)	1-11-07	Repeal	2-1-07	813-205-0051(T)	1-11-07	Repeal	2-1-07
813-110-0015	1-11-07	Amend	2-1-07	813-205-0052	1-11-07	Adopt	2-1-07
813-110-0015(T)	1-11-07	Repeal	2-1-07	813-205-0052(T)	1-11-07	Repeal	2-1-07
813-110-0030	1-11-07	Amend	2-1-07	813-205-0060	1-11-07	Amend	2-1-07
813-110-0030(T)	1-11-07	Repeal	2-1-07	813-205-0060(T)	1-11-07	Repeal	2-1-07
813-110-0033	1-11-07	Amend	2-1-07	813-205-0070	1-11-07	Amend	2-1-07
813-110-0033(T)	1-11-07	Repeal	2-1-07	813-205-0070(T)	1-11-07	Repeal	2-1-07
813-110-0035	1-11-07	Amend	2-1-07	813-205-0080	1-11-07	Amend	2-1-07
813-110-0035(T)	1-11-07	Repeal	2-1-07	813-205-0080(T)	1-11-07	Repeal	2-1-07
813-120-0080	1-11-07	Amend	2-1-07	813-205-0085	1-11-07	Adopt	2-1-07
813-120-0080(T)	1-11-07	Repeal	2-1-07	813-205-0085(T)	1-11-07	Repeal	2-1-07
813-120-0100	1-11-07	Amend	2-1-07	813-205-0100	1-11-07	Adopt	2-1-07
813-120-0100(T)	1-11-07	Repeal	2-1-07	813-205-0100(T)	1-11-07	Repeal	2-1-07
813-130-0000	1-11-07	Amend	2-1-07	813-205-0110	1-11-07	Adopt	2-1-07
813-130-0000(T)	1-11-07	Repeal	2-1-07	813-205-0110(T)	1-11-07	Repeal	2-1-07
813-130-0010	1-11-07	Amend	2-1-07	813-205-0120	1-11-07	Adopt	2-1-07
813-130-0010(T)	1-11-07	Repeal	2-1-07	813-205-0120(T)	1-11-07	Repeal	2-1-07
813-130-0020	1-11-07	Amend	2-1-07	813-205-0130	1-11-07	Adopt	2-1-07
813-130-0020(T)	1-11-07	Repeal	2-1-07	813-205-0130(T)	1-11-07	Repeal	2-1-07
813-130-0030	1-11-07	Amend	2-1-07	818-001-0015	3-1-07	Repeal	4-1-07
813-130-0030(T)	1-11-07	Repeal	2-1-07	818-001-0021	3-1-07	Repeal	4-1-07
813-130-0040	1-11-07	Amend	2-1-07	818-001-0087	5-1-07	Amend	6-1-07
813-130-0040(T)	1-11-07	Repeal	2-1-07	818-012-0030	3-1-07	Amend	4-1-07
813-130-0050	1-11-07	Amend	2-1-07	818-035-0025	5-1-07	Amend	6-1-07
813-130-0050(T)	1-11-07	Repeal	2-1-07	818-035-0040	5-1-07	Amend	6-1-07
813-130-0060	1-11-07	Amend	2-1-07	818-035-0072	5-1-07	Adopt	6-1-07
813-130-0060(T)	1-11-07	Repeal	2-1-07	820-001-0000	11-21-06	Amend	1-1-07
813-130-0070	1-11-07	Amend	2-1-07	820-001-0020	11-21-06	Amend	1-1-07
813-130-0070(T)	1-11-07	Repeal	2-1-07	820-010-0010	11-21-06	Amend	1-1-07
813-130-0080	1-11-07	Amend	2-1-07	820-010-0010	4-5-07	Amend	5-1-07
813-130-0080(T)	1-11-07	Repeal	2-1-07	820-010-0200	11-21-06	Amend	1-1-07
813-130-0090	1-11-07	Amend	2-1-07	820-010-0204	11-21-06	Adopt	1-1-07
813-130-0090(T)	1-11-07	Repeal	2-1-07	820-010-0205	11-21-06	Amend	1-1-07
813-130-0100	1-11-07	Amend	2-1-07	820-010-0206	11-21-06	Adopt	1-1-07
813-130-0100(T)	1-11-07	Repeal	2-1-07	820-010-0207	11-21-06	Amend	1-1-07
813-130-0110	1-11-07	Amend	2-1-07	820-010-0208	11-21-06	Adopt	1-1-07
813-130-0110(T)	1-11-07	Repeal	2-1-07	820-010-0210	4-5-07	Amend	5-1-07
813-130-0120	1-11-07	Amend	2-1-07	820-010-0225	11-21-06	Amend	1-1-07
813-130-0120(T)	1-11-07	Repeal	2-1-07	820-010-0226	11-21-06	Adopt	1-1-07
813-130-0130	1-11-07	Amend	2-1-07	820-010-0227	11-21-06	Adopt	1-1-07
813-130-0130(T)	1-11-07	Repeal	2-1-07	820-010-0228	11-21-06	Adopt	1-1-07
813-130-0140	1-11-07	Adopt	2-1-07	820-010-0230	11-21-06	Amend	1-1-07
813-130-0140(T)	1-11-07	Repeal	2-1-07	820-010-0230	4-5-07	Amend	5-1-07
813-205-0000	1-11-07	Amend	2-1-07	820-010-0231	11-21-06	Adopt	1-1-07
813-205-0000(T)	1-11-07	Repeal	2-1-07	820-010-0231	4-5-07	Amend	5-1-07
813-205-0010	1-11-07	Amend	2-1-07	820-010-0255	11-21-06	Amend	1-1-07
813-205-0010(T)	1-11-07	Repeal	2-1-07	820-010-0300	11-21-06	Amend	1-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
820-010-0305	11-21-06	Amend	1-1-07	837-012-1300	12-1-06	Amend	1-1-07
820-010-0325	3-23-07	Amend(T)	5-1-07	837-012-1310	12-1-06	Amend	1-1-07
820-010-0400	11-21-06	Adopt	1-1-07	837-012-1320	12-1-06	Amend	1-1-07
820-010-0605	11-21-06	Amend	1-1-07	837-012-1330	12-1-06	Amend	1-1-07
820-010-0617	11-21-06	Amend	1-1-07	837-012-1340	12-1-06	Amend	1-1-07
820-010-0618	11-21-06	Repeal	1-1-07	837-012-1350	12-1-06	Amend	1-1-07
820-010-0620	12-5-06	Amend(T)	1-1-07	837-012-1360	12-1-06	Amend	1-1-07
820-010-0621	12-5-06	Adopt(T)	1-1-07	837-012-1370	12-1-06	Amend	1-1-07
820-010-0621	4-5-07	Adopt	5-1-07	837-012-1380	12-1-06	Amend	1-1-07
820-010-0622	11-21-06	Amend	1-1-07	837-012-1390	12-1-06	Amend	1-1-07
820-010-0635	11-21-06	Amend	1-1-07	837-012-1400	12-1-06	Amend	1-1-07
820-010-0635	4-5-07	Amend	5-1-07	837-012-1410	12-1-06	Amend	1-1-07
820-010-0720	4-5-07	Amend	5-1-07	837-012-1420	12-1-06	Amend	1-1-07
820-015-0005	11-21-06	Amend	1-1-07	837-020-0025	4-1-07	Amend	5-1-07
820-015-0010	11-21-06	Amend	1-1-07	837-020-0035	4-1-07	Amend	5-1-07
820-015-0026	11-21-06	Amend	1-1-07	837-020-0040	4-1-07	Amend	5-1-07
820-020-0005	11-21-06	Amend	1-1-07	837-020-0045	4-1-07	Amend	5-1-07
820-020-0010	11-21-06	Repeal	1-1-07	837-020-0050	4-1-07	Amend	5-1-07
820-020-0015	4-5-07	Amend	5-1-07	837-020-0055	4-1-07	Amend	5-1-07
820-020-0025	11-21-06	Amend	1-1-07	837-020-0060	4-1-07	Amend	5-1-07
820-020-0030	11-21-06	Amend	1-1-07	837-020-0065	4-1-07	Amend	5-1-07
820-020-0035	11-21-06	Amend	1-1-07	837-020-0070	4-1-07	Amend	5-1-07
820-020-0045	11-21-06	Amend	1-1-07	837-020-0075	4-1-07	Amend	5-1-07
820-040-0040	11-21-06	Amend	1-1-07	837-020-0080	4-1-07	Amend	5-1-07
836-020-0770	2-12-07	Amend	3-1-07	837-020-0085	4-1-07	Amend	5-1-07
836-031-0800	2-12-07	Adopt	3-1-07	837-020-0105	4-1-07	Amend	5-1-07
836-031-0805	2-12-07	Adopt	3-1-07	837-020-0115	4-1-07	Amend	5-1-07
836-031-0810	2-12-07	Adopt	3-1-07	837-020-0120	4-1-07	Amend	5-1-07
836-031-0815	2-12-07	Adopt	3-1-07	837-020-0125	4-1-07	Amend	5-1-07
836-043-0110	1-17-07	Amend	3-1-07	837-040-0001	4-1-07	Amend	1-1-07
836-071-0146	1-1-08	Adopt	4-1-07	837-040-0010	4-1-07	Amend	1-1-07
836-071-0180	1-1-08	Amend	4-1-07	837-040-0020	4-1-07	Amend	1-1-07
836-071-0215	1-1-08	Amend	4-1-07	837-040-0140	4-1-07	Amend	1-1-07
836-071-0220	1-1-08	Amend	4-1-07	839-005-0010	2-2-07	Amend	3-1-07
836-071-0242	1-1-08	Amend	4-1-07	839-005-0030	1-3-07	Amend	2-1-07
836-071-0250	1-1-08	Amend	4-1-07	839-006-0205	2-1-07	Amend	3-1-07
837-012-0305	1-1-07	Amend	2-1-07	839-006-0206	2-1-07	Amend	3-1-07
837-012-0310	1-1-07	Amend	2-1-07	839-009-0250	1-17-07	Amend	3-1-07
837-012-0315	1-1-07	Amend	2-1-07	839-009-0280	1-3-07	Amend	2-1-07
837-012-0320	1-1-07	Amend	2-1-07	839-020-0004	11-27-06	Amend(T)	1-1-07
837-012-0325	1-1-07	Amend	2-1-07	839-020-0004	5-15-07	Amend	6-1-07
837-012-0330	1-1-07	Amend	2-1-07	839-025-0020	1-23-07	Amend	3-1-07
837-012-0340	1-1-07	Amend	2-1-07	839-025-0700	1-31-07	Amend	3-1-07
837-012-0350	1-1-07	Amend	2-1-07	839-025-0700	11-20-06	Amend	1-1-07
837-012-0360	1-1-07	Amend	2-1-07	839-025-0700	12-8-06	Amend	1-1-07
837-012-0370	1-1-07	Amend	2-1-07	839-025-0700	1-1-07	Amend	2-1-07
837-012-1200	12-1-06	Amend	1-1-07	839-025-0700	3-5-07	Amend	4-1-07
837-012-1210	12-1-06	Amend	1-1-07	839-025-0700	3-30-07	Amend	5-1-07
837-012-1220	12-1-06	Amend	1-1-07	839-025-0700	4-1-07	Amend	5-1-07
837-012-1230	12-1-06	Amend	1-1-07	839-025-0700	4-2-07	Amend	5-1-07
837-012-1240	12-1-06	Amend	1-1-07	839-025-0700	4-30-07	Amend	6-1-07
837-012-1250	12-1-06	Amend	1-1-07	839-025-0750	1-1-07	Amend	2-1-07
837-012-1260	12-1-06	Amend	1-1-07	839-050-0140	12-6-06	Amend	1-1-07
837-012-1270	12-1-06	Amend	1-1-07	845-001-0007	4-1-07	Amend	5-1-07
837-012-1280	12-1-06	Amend	1-1-07	845-005-0326	3-1-07	Amend	4-1-07
837-012-1290	12-1-06	Amend	1-1-07	845-005-0415	5-14-07	Amend(T)	6-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
845-006-0345	4-1-07	Amend	5-1-07	851-002-0010	7-1-07	Amend	6-1-07
845-006-0482	4-1-07	Amend	5-1-07	851-002-0020	11-29-06	Amend	1-1-07
845-015-0199	1-1-07	Repeal	3-1-07	851-002-0035	11-29-06	Amend	1-1-07
845-016-0005	9-1-07	Amend	4-1-07	851-002-0055	7-1-07	Adopt	6-1-07
845-016-0010	9-1-07	Amend	4-1-07	851-031-0010	11-29-06	Amend	1-1-07
845-016-0015	9-1-07	Amend	4-1-07	851-050-0002	3-13-07	Amend	4-1-07
845-016-0016	9-1-07	Adopt	4-1-07	851-054-0040	3-13-07	Amend	4-1-07
845-016-0020	9-1-07	Amend	4-1-07	851-056-0012	3-13-07	Amend	4-1-07
845-016-0030	9-1-07	Amend	4-1-07	851-056-0012	5-2-07	Amend	6-1-07
845-016-0035	9-1-07	Amend	4-1-07	851-062-0016	11-29-06	Amend	1-1-07
845-016-0036	9-1-07	Adopt	4-1-07	855-001-0005	12-19-06	Amend	2-1-07
845-016-0045	9-1-07	Amend	4-1-07	855-006-0005	12-19-06	Amend	2-1-07
845-016-0075	9-1-07	Amend	4-1-07	855-021-0016	12-19-06	Adopt	2-1-07
847-005-0005	1-24-07	Amend	3-1-07	855-050-0070	1-1-07	Amend(T)	2-1-07
847-008-0015	1-24-07	Amend	3-1-07	855-060-0001	12-19-06	Amend	2-1-07
847-008-0022	1-24-07	Amend	3-1-07	855-065-0001	12-19-06	Amend	2-1-07
847-008-0023	1-24-07	Amend	3-1-07	855-065-0005	12-19-06	Amend	2-1-07
847-008-0037	1-24-07	Adopt	3-1-07	855-065-0006	12-19-06	Adopt	2-1-07
847-010-0063	1-24-07	Amend	3-1-07	855-065-0007	12-19-06	Amend	2-1-07
847-010-0073	1-24-07	Amend	3-1-07	855-065-0009	12-19-06	Amend	2-1-07
847-010-0110	4-26-07	Adopt	6-1-07	855-065-0010	12-19-06	Amend	2-1-07
847-020-0110	1-24-07	Amend	3-1-07	855-065-0012	12-19-06	Adopt	2-1-07
847-020-0140	1-24-07	Amend	3-1-07	855-065-0013	12-19-06	Adopt	2-1-07
847-020-0155	1-24-07	Adopt	3-1-07	855-070-0005	12-19-06	Amend	2-1-07
847-020-0180	4-26-07	Amend	6-1-07	855-080-0028	12-19-06	Amend	2-1-07
847-023-0010	2-6-07	Adopt(T)	3-1-07	855-110-0005	12-19-06	Amend	2-1-07
847-023-0015	2-6-07	Adopt(T)	3-1-07	856-010-0010	1-26-07	Amend	3-1-07
847-025-0050	1-24-07	Amend	3-1-07	856-010-0011	1-26-07	Amend	3-1-07
847-028-0030	1-24-07	Amend	3-1-07	856-010-0012	1-26-07	Amend	3-1-07
847-035-0030	1-24-07	Amend	3-1-07	856-010-0015	1-26-07	Amend	3-1-07
847-035-0030	4-26-07	Amend	6-1-07	860-011-0080	4-18-07	Amend	6-1-07
847-070-0016	4-26-07	Amend	6-1-07	860-011-0090	4-18-07	Adopt	6-1-07
847-070-0038	4-26-07	Amend	6-1-07	860-011-0100	4-18-07	Adopt	6-1-07
847-080-0001	1-24-07	Amend	3-1-07	860-011-0110	4-18-07	Adopt	6-1-07
847-080-0002	1-24-07	Amend	3-1-07	860-016-0020	12-15-06	Amend	1-1-07
848-001-0000	4-1-07	Amend	4-1-07	860-016-0021	12-15-06	Amend	1-1-07
848-001-0010	4-1-07	Amend	4-1-07	860-016-0025	12-15-06	Amend	1-1-07
848-010-0015	4-1-07	Amend	4-1-07	860-016-0030	12-15-06	Amend	1-1-07
848-010-0033	4-1-07	Amend	4-1-07	860-022-0070	1-23-07	Amend	3-1-07
848-010-0035	4-1-07	Amend	4-1-07	860-024-0010	5-14-07	Amend	6-1-07
848-015-0010	4-1-07	Amend	4-1-07	860-024-0016	5-14-07	Amend	6-1-07
848-015-0020	4-1-07	Amend	4-1-07	860-028-0020	4-16-07	Amend	6-1-07
848-020-0000	4-1-07	Amend	4-1-07	860-028-0050	4-16-07	Adopt	6-1-07
848-040-0100	4-1-07	Amend	4-1-07	860-028-0060	4-16-07	Adopt	6-1-07
848-040-0110	4-1-07	Amend	4-1-07	860-028-0070	4-16-07	Adopt	6-1-07
848-040-0117	4-1-07	Amend	4-1-07	860-028-0080	4-16-07	Adopt	6-1-07
848-040-0125	4-1-07	Amend	4-1-07	860-028-0100	4-16-07	Adopt	6-1-07
848-040-0130	4-1-07	Amend	4-1-07	860-028-0110	4-16-07	Amend	6-1-07
848-040-0135	4-1-07	Amend	4-1-07	860-028-0115	4-16-07	Adopt	6-1-07
848-040-0140	4-1-07	Amend	4-1-07	860-028-0120	4-16-07	Amend	6-1-07
848-040-0145	4-1-07	Amend	4-1-07	860-028-0130	4-16-07	Amend	6-1-07
848-040-0150	4-1-07	Amend	4-1-07	860-028-0140	4-16-07	Amend	6-1-07
848-040-0155	4-1-07	Amend	4-1-07	860-028-0150	4-16-07	Amend	6-1-07
848-040-0160	4-1-07	Amend	4-1-07	860-028-0170	4-16-07	Amend	6-1-07
850-060-0225	12-11-06	Amend	1-1-07	860-028-0180	4-16-07	Amend	6-1-07
850-060-0226	12-11-06	Amend	1-1-07	860-028-0190	4-16-07	Amend	6-1-07

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
860-028-0230	4-16-07	Amend	6-1-07	918-098-1070	1-1-07	Repeal	2-1-07
860-028-0310	4-16-07	Amend	6-1-07	918-098-1075	1-1-07	Repeal	2-1-07
860-038-0480	5-15-07	Amend	6-1-07	918-098-1085	1-1-07	Repeal	2-1-07
863-001-0005	1-1-07	Amend	2-1-07	918-098-1200	1-1-07	Repeal	2-1-07
863-015-0020	3-21-07	Amend(T)	5-1-07	918-098-1205	1-1-07	Repeal	2-1-07
863-015-0030	3-21-07	Amend(T)	5-1-07	918-098-1220	1-1-07	Repeal	2-1-07
863-015-0050	3-21-07	Amend(T)	5-1-07	918-098-1305	1-1-07	Amend	2-1-07
863-015-0064	3-21-07	Adopt(T)	5-1-07	918-098-1310	1-1-07	Amend	2-1-07
863-015-0065	3-21-07	Amend(T)	5-1-07	918-098-1315	1-1-07	Amend	2-1-07
863-015-0125	1-1-07	Amend(T)	2-1-07	918-098-1320	1-1-07	Amend	2-1-07
863-025-0005	3-12-07	Amend	4-1-07	918-098-1325	1-1-07	Amend	2-1-07
863-025-0010	3-12-07	Amend	4-1-07	918-098-1330	1-1-07	Amend	2-1-07
863-025-0015	3-12-07	Amend	4-1-07	918-098-1400	1-1-07	Repeal	2-1-07
863-025-0020	3-12-07	Amend	4-1-07	918-098-1440	1-1-07	Amend	2-1-07
863-025-0025	3-12-07	Amend	4-1-07	918-098-1450	1-1-07	Amend	2-1-07
863-025-0030	3-12-07	Amend	4-1-07	918-098-1620	1-1-07	Amend	2-1-07
863-025-0035	3-12-07	Amend	4-1-07	918-098-1630	1-1-07	Amend	2-1-07
863-025-0040	3-12-07	Amend	4-1-07	918-225-0230	12-29-06	Repeal	2-1-07
863-025-0045	3-12-07	Amend	4-1-07	918-225-0430	1-1-07	Amend	2-1-07
863-025-0050	3-12-07	Amend	4-1-07	918-225-0435	1-1-07	Adopt	2-1-07
863-025-0055	3-12-07	Amend	4-1-07	918-225-0570	1-1-07	Amend	2-1-07
863-025-0060	3-12-07	Amend	4-1-07	918-225-0700	4-1-07	Amend	5-1-07
863-025-0065	3-12-07	Amend	4-1-07	918-251-0070	12-29-06	Repeal	2-1-07
863-025-0070	3-12-07	Amend	4-1-07	918-251-0090	4-1-07	Amend	5-1-07
863-025-0080	3-12-07	Adopt	4-1-07	918-261-0034	1-1-07	Adopt	2-1-07
918-030-0015	4-1-07	Adopt	5-1-07	918-261-0040	4-1-07	Amend	5-1-07
918-030-0060	4-1-07	Amend	5-1-07	918-281-0020	1-1-07	Amend	2-1-07
918-040-0000	12-29-06	Adopt	2-1-07	918-395-0400	1-1-07	Amend	2-1-07
918-040-0020	12-29-06	Adopt	2-1-07	918-400-0260	12-29-06	Repeal	2-1-07
918-040-0030	12-29-06	Adopt	2-1-07	918-400-0455	1-1-07	Amend	2-1-07
918-040-0040	12-29-06	Adopt	2-1-07	918-400-0458	1-1-07	Adopt	2-1-07
918-050-0100	7-1-07	Amend	6-1-07	918-440-0010	4-1-07	Amend	3-1-07
918-050-0110	7-1-07	Amend	6-1-07	918-460-0010	4-1-07	Amend	3-1-07
918-098-1000	1-1-07	Amend	2-1-07	918-460-0015	4-1-07	Amend	3-1-07
918-098-1005	1-1-07	Amend	2-1-07	918-480-0010	4-1-07	Amend	3-1-07
918-098-1010	1-1-07	Amend	2-1-07	918-690-0400	12-29-06	Repeal	2-1-07
918-098-1020	1-1-07	Am. & Ren.	2-1-07	951-003-0005	11-17-06	Amend	1-1-07
918-098-1025	1-1-07	Amend	2-1-07	951-004-0000	11-17-06	Adopt	1-1-07
918-098-1030	1-1-07	Amend	2-1-07	951-004-0001	11-17-06	Adopt	1-1-07
918-098-1040	1-1-07	Repeal	2-1-07	951-004-0002	11-17-06	Adopt	1-1-07
918-098-1042	1-1-07	Repeal	2-1-07	951-004-0003	11-17-06	Adopt	1-1-07
918-098-1045	1-1-07	Repeal	2-1-07	951-004-0004	11-17-06	Adopt	1-1-07
918-098-1050	1-1-07	Repeal	2-1-07	951-005-0000	11-16-06	Adopt	1-1-07
918-098-1055	1-1-07	Repeal	2-1-07	951-005-0001	11-16-06	Adopt	1-1-07
918-098-1060	1-1-07	Repeal	2-1-07	951-005-0002	11-16-06	Adopt	1-1-07
918-098-1065	1-1-07	Repeal	2-1-07				

