

OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

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BILL BRADBURY
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

EXECUTIVE ORDER NO. 07-01

SEARCH AND RESCUE TASKFORCE

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

Oregonians enjoy a proud tradition of aiding those in need. Every year, countless search and rescue professionals and volunteers are called upon to assist persons in distress. These professionals and volunteers are dedicated to the cause of helping others in danger. Oregonians and visitors to our state owe a great debt of gratitude to those who engage in this humanitarian and sometimes life-threatening effort.

Under Oregon law, county sheriffs are vested with primary responsibility for search and rescue activities within their counties. In addition, the Oregon Office of Emergency Management provides resource assistance to counties when a search and rescue operation exceeds local capacity, coordinates the activities of various agencies involved in search and rescue, liaisons with the Oregon State Sheriffs' Association and other private and public agencies involved in search and rescue, and provides a program for air search and rescue. This framework—with local primary responsibility and state support—has served Oregon well for many years.

Several events over recent months warrant a close examination of Oregon's search and rescue system and infrastructure. It is incumbent upon us to ensure that Oregon's search and rescue system is constructed in a manner that allows for and encourages effective and speedy communication, coordination, and the pooling of all available and necessary resources.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Search and Rescue Task Force (the "Task Force") is established.
2. The Task Force is to consider whether changes to the laws, administrative rules and related policies of the State of Oregon are necessary to ensure proper coordination and communications between federal, state and local authorities in search and rescue operations.
3. In the course of its work, the Task Force is to review Oregon statutes, administrative rules and related policies pertaining to search and rescue operations. The Task Force is directed to compare the contemporary best practices of search and rescue with current Oregon statutes, rules and policies and make recommendations where change is needed. The Task Force may review and consider any after-action reports of specific search and rescue efforts that it deems relevant to its charge. The Task Force is encouraged to focus and place emphasis on communication, coordination, and the effective pooling of available resources.
4. The Task Force shall consist of 14-17 members to be appointed by the Governor. The Task Force membership shall include:
 - a. At least one representative of the Oregon State Police;
 - b. At least one representative of the Oregon Military Department;
 - c. The Oregon Office of Emergency Management Search and Rescue Coordinator;
 - d. The Director of the Oregon Office of Emergency Management;
 - e. The Director of the Oregon Department of Administrative Services;

- f. A representative of the Oregon State Sheriffs' Association;
- g. A representative of the Portland Police Bureau;
- h. A representative of the Civil Air Patrol;
- i. A representative of the United States Bureau of Land Management;
- j. A representative of the United States Forest Service;
- k. A certified search and rescue volunteer;
- l. A representative of the cellular phone industry;
- m. At least one member of the Oregon House of Representatives;
- n. At least one member of the Oregon State Senate; and
- o. At least one member of the general public.

5. The Governor's Senior Policy Advisor for Public Safety shall serve as an ex officio member of the Task Force and shall chair the Task Force.

6. The Oregon Office of Emergency Management shall provide staff support to the Task Force. The Department of Justice may be asked to provide legal advice to the Task Force if necessary. Other state agencies shall assist the Task Force upon request.

7. The Task Force shall submit a report with its findings and conclusions to the Governor by March 31, 2007. An extension of time may be requested if necessary. However, the report needs to be provided in adequate time to allow recommendations to be brought to the attention of the 2007 session of the Legislative Assembly if necessary.

8. Task Force member are not entitled to a per diem.

9. This Order expires on June 30, 2007.

Done at Salem, Oregon, this 19th day of January 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 07-02

OFFICE OF RURAL POLICY AND RURAL POLICY ADVISORY COMMITTEE

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

Oregon is a state of great economic and geographic diversity. While that diversity brings us strength, it also challenges us to meet the needs of all communities, both urban and rural. As our state economy improves, the rural economy lags behind, and is slower to change, because the natural resource base that has been the foundation of rural Oregon's economy has changed dramatically over the past two decades.

In the absence of applicable jurisdictional definitions of rural, such as the US Census Bureau's definitions of metro and non-metro coun-

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ties, "Rural Oregon" (as defined below) can be best understood by understanding the following geographic distinctions:

- Frontier Rural — a geographic area that is at least 75 miles by road from a community of less than 2,000 individuals. It is characterized by an absence of densely populated areas, small communities, individuals working in their communities, an economy dominated by natural resources and agricultural activities, and few paved streets or roads.
- Isolated Rural — a geographic area that is at least 100 miles by road from a community of 3,000 or more individuals. It is characterized by low population density (fewer than five people per square mile), an economy of natural resources and agricultural activity, large areas of land owned by the state or federal government and predominately unpaved streets.
- Rural — a geographic area that is at least 30 miles by road from an urban community (50,000 or more). It is characterized by some commercial business, two or fewer densely populated areas in a county, an economy changing from a natural resource base to more commercial interests and reasonable, but not immediate, access to health care.
- Urban Rural — a geographic area that is at least 10 miles by road from an urban community. It is characterized by many individuals commuting to an urban area to work or shop, an economy with few natural resource and agricultural activities, easy and immediate access to health care services and numerous paved streets and roads.

Rural Oregon communities are in need: unemployment in those communities is often many percentage points higher than the state average; Rural Oregon communities have significant threshold issues to overcome to compete with urban communities for economic and community development resources; the lack of an industrial base in most rural communities makes funding for education, health care, economic development and other social services more difficult to attain; and finally, Rural Oregon communities often lack administrative mechanisms and infrastructure to share information and to collectively construct solutions to its problems.

Oregon's drive to economic and social prosperity must include all areas of our state, including Rural Oregon. To that end, Executive Order 04-04 created the Office of Rural Policy within the Office of the Governor, created the Rural Policy Advisory Committee and established procedures for enhanced cooperation and communication between state agencies and Rural Oregon communities. That Executive Order expires on January 31, 2007. Important work has been done, but the needs remain. Therefore, the work begun under Executive Order 04-04 must continue.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Office of Rural Policy (the "Office"), which was created by Executive Order 04-04, is hereby continued. The Office shall be staffed by the Office of the Governor or the Department of Administrative Services and funded through the Department of Administrative Services to the extent such funds are so identified. On behalf of the Office and to the extent allowed by law, the Department of Administrative Services may accept funds from any lawful source, including the federal government, and may expend those funds in accordance with law to fulfill this Order.
2. The Office shall coordinate the formulation of rural policy for the state. Through research, promotion and coordination of activities throughout Oregon, the Office shall foster and represent the interests of Rural Oregon as described in this Order.

3. The Office shall serve as a clearinghouse for the collection and dissemination of information about issues that are of special interest to Rural Oregon. It shall serve as a liaison between elected officials in Rural Oregon, the Governor and the executive branch and the Legislative Assembly. In addition, the Office shall assist in educating members of the Legislative Assembly about issues of special interest to Rural Oregon and shall evaluate the effects of state policies on those areas in coordination with the agencies identified in paragraph 4 below, and report those effects to the Governor and Legislative Assembly.

4. The director of each of the following state agencies shall identify at least one individual from each agency as a Rural Policy Liaison responsible for working with the Office:

- a. Department of Fish and Wildlife;
- b. Department of Agriculture;
- c. Department of Forestry;
- d. Economic and Community Development Department;
- e. Department of Environmental Quality;
- f. Department of Land Conservation and Development;
- g. Department of Education;
- h. Department of Energy;
- i. Department of Human Services;
- j. Department of Water Resources;
- k. Department of Housing and Community Services;
- l. Oregon University System;
- m. Employment Department;
- n. Travel Oregon;
- o. Public Utility Commission;
- p. Department of Transportation; and
- q. Department of Administrative Services

The Rural Policy Liaisons shall coordinate relevant portions of their agencies' work with the Office and shall facilitate a dialogue between their agencies and Rural Oregon. Additional agencies of state government may, upon the request of the Governor, be required to appoint Rural Policy Liaisons.

5. All agencies of state government shall cooperate fully with the Office in the performance of its mandate. In particular, the Economic and Community Development Department shall work with the Office and rural communities to explore economic development opportunities throughout Rural Oregon.

6. The Office shall report to the Governor through the Governor's Natural Resources, Economic Development, and Intergovernmental Relations advisors at their request but shall report not less than quarterly.

7. Within ninety days of the date of this Order, the Office shall provide an updated report to the Governor. That report shall list the Rural Policy Liaisons named by the agencies listed above and shall detail the processes that will be used by the Office and the Rural Policy Liaisons and the deliverables to be completed to implement this Order as well as identify available funds from the Department

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of Administrative Services. The processes, implementation and deliverables to fulfill this Order shall be scoped to the available funds.

8. The Rural Policy Advisory Committee (the "Committee") is hereby created. The Committee shall work closely with the Office in the performance of the Office's mandate.

9. The Committee shall consist of fourteen members. The membership of the Committee shall include a geographic distribution of Frontier Rural, Isolated Rural, Rural and Urban Rural areas of Oregon. The members of the Committee must be residents of Rural Oregon. The members shall be appointed as follows:

a. ten members shall be appointed by the Governor;

b. the President of the Senate shall be asked to appoint one member of the Senate who is a member of the Democratic Party and one member of the Senate who is a member of the Republican Party, in consultation with that party's leadership; and

c. the Speaker of the House of Representatives shall be asked to appoint one member of the House of Representatives who is a member of the Republican Party and one member of the House of Representatives who is a member of the Democratic Party, in consultation with that party's leadership.

10. The chair of the Committee shall be selected by the Committee.

11. A quorum for Committee meetings shall consist of a majority of the appointed members. The Committee shall strive to operate by consensus; however, the Committee may approve measures and make recommendations based on a vote of a majority of the quorum present.

12. The members of the Committee shall not be entitled to the reimbursement of expenses by the Office of the Governor or to the per diem provided in ORS 292.495.

13. The Committee shall meet quarterly and develop an annual report on the needs of Rural Oregon. The report shall be coordinated with the relevant state agencies and with the Governor's Natural Resources and Intergovernmental Relations advisors. The report shall be submitted to the Governor and to the Legislative Assembly by December 31 of each calendar year.

14. This Order expires on January 31, 2009.

Done at Salem, Oregon, this 31st day of January 2007

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 07-03

COLLECTIVE BARGAINING WITH FAMILY CHILD CARE PROVIDERS

The availability of quality child care enables Oregon parents to work and contribute directly to Oregon's economy. Further, quality child care is a vital contributor to the healthy development of Oregon's young children. More than one-third of Oregon children are in paid child care during the most critical stage of their development, from

birth to age five. Numerous long-term studies have shown that high quality care during these formative years increases the likelihood of a child's success in school and later in life.

The quality of child care depends upon several factors, including the caregiver's training and the continuity in the relationship between the child and the caregiver. The State now requires all licensed family child care providers and staff, as well as license-exempt family child care providers receiving state subsidies, to have criminal background checks and to maintain health and safety standards. However, there remains a shortage of quality child care in many communities in Oregon, particularly for young children, infants and children with special needs.

In order to ensure the best outcomes for children and to build a strong system of childhood care and education in Oregon, the State must maintain a child care delivery system that encourages recruitment and retention of quality child care providers. Increased stability in the child care workforce will ensure parents' ability to select appropriate child care services for their children from a wide range of child care options. Improved recruitment, retention and stability will also benefit children by allowing them continuity with their caregiver.

The Oregon Employment Department, Child Care Division ("CCD"), is the executive agency authorized to administer and direct regulated child care services in Oregon, and the Department of Human Services ("DHS") administers state-subsidized care for eligible Oregon families through the Employment Related Day Care ("ERDC") and Temporary Assistance to Needy Families ("TANF") program. CCD, DHS, parents, children and family child care providers all will benefit from a process that allows for collective input from family child care providers on how the State can improve stability in the workforce and quality of care provided to children and families in Oregon.

In 2005, AFSCME Council 75 presented cards to the Employment Relations Board ("ERB") representing a request for representation by more than fifty percent of the eligible certified and registered family child care work force. After the cards were certified by ERB, Executive Order 05-10 directed CCD and DHS to meet and confer with AFSCME Council 75 on behalf of certified and registered family child care providers regarding issues of mutual concern.

In 2006, SEIU Local 503 presented cards to the Employment Relations Board ("ERB") representing a request for representation by more than fifty percent of the subsidized, license-exempt family child care work force. After the cards were certified by ERB, Executive Order 06-04 directed CCD and DHS to meet and confer with SEIU Local 503 on behalf of subsidized, license-exempt family child care providers regarding issues of mutual concern.

After issuance of Executive Orders 05-10 and 06-04, CCD, DHS, AFSCME Council 75 and SEIU Local 503 reached agreement on several important issues of mutual concern. The agreement with AFSCME Council 75 will expire on September 30, 2008; the agreement with SEIU Local 503 will expire on June 30 2009. In order to further build this positive relationship, the State, AFSCME Council 75 and SEIU Local 503 would like negotiations that occur after the expiration of the current agreements to occur in a collective bargaining framework. As stated in ORS 662.405, it is "the public policy of the State of Oregon that the best interests of the people of this state are served by fostering collective bargaining."

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. For the negotiation of future agreements and in connection with funding to be sought during the 2009-11 biennium, CCD and DHS shall engage in collective negotiations and attempt to reach an agreement with AFSCME Council 75 and SEIU Local 503, on

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behalf of their respective segments of the family child care provider population, concerning all terms and conditions of the relationship between the State and family child care providers that are within the State's control. Such terms and conditions shall include those that would be deemed to be mandatory subjects of bargaining under the Public Employee Collective Bargaining Act, ORS 243.650 et seq., as if that law applied, including but not limited to subsidy rates and the provision of health care coverage.

2. If collective negotiations fail to result in an agreement with either AFSCME Council 75 or SEIU Local 503 after a 150-calendar-day period of good faith negotiations, then CCD and DHS shall agree that either party to the negotiations may demand appointment of an arbitrator for binding arbitration, subject to the conditions set forth below. Either party to the negotiations may request from ERB a list of seven qualified, disinterested, unbiased persons to serve as a potential arbitrator so that that each party can alternatively strike three names from the list. The order of striking should be determined by lot. CCD and DHS shall agree that the arbitration process shall follow generally the procedures and timelines of ORS 243.746(3), (5) and (6) (except that the arbitrator's opinion and order shall not be filed with ERB) and require that the arbitrator's findings and opinion be based on the criteria of ORS 243.746(4). It is the State's intent that judicial review of the arbitrator's findings and opinion be available under the Uniform Arbitration Act, ORS 36.600 et seq., and that an arbitration award may be vacated by a court for the reasons contained in ORS 36.705.

3. To the extent that either DHS or CCD, or both, may not implement an agreement or an arbitrator's findings and opinion under this Executive Order without first undertaking rule-making under the Administrative Procedures Act, ORS chapter 183, then the state will not be obligated to implement such agreement or arbitrator's findings and opinion until the necessary rule-making is completed.

4. Any arbitrator's findings or opinion that has a budgetary impact upon CCD or DHS shall be subject to the affected agency obtaining an appropriation to fund those impacts unless and until the Legislative Assembly enacts legislation to apply ORS 243.742, ORS 243.752, or similar provisions, to family child care collective bargaining.

5. This Executive Order is not intended to create any contractual rights or obligations, although it is expected that negotiations will result in a written agreement between the parties. It is intended solely as executive direction to the State agencies identified herein. Nothing in this Executive Order is intended to give to family child care providers, or imply that family child care providers have, any right to engage in a strike or a collective cessation of the delivery of child care services. Nothing in this Executive Order is intended to authorize the execution of any fair-share agreements, unless and until the Legislative Assembly enacts legislation to allow for fair-share agreements, or to infringe upon the non-association rights of family child care providers. Nothing in this Executive Order is intended to provide AFSCME Council 75, SEIU Local 503 or any other individual or entity with third-party beneficiary rights.

6. The purpose of the ERDC program is to give low-income working parents financial access to quality child care of their choosing. Nothing in this Executive Order is intended to directly or indirectly limit parental choice, or cause financial loss to low-income working parents, including those not eligible for the subsidy.

7. Family child care providers are not employees or agents of the State. Nothing in this Executive Order is intended to alter the existing relationship between family child care providers and the State or in any way imply an employer-employee or principal-agent relationship.

8. This Executive Order is effective immediately.

Done at Salem, Oregon this 1st day of February, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

PROPOSED APPROVAL OF ENVIRONMENTAL CLEANUP

PROJECT LOCATION: South Waterfront Park and RiverPlace Parcel 1, Portland, Oregon. South Waterfront Park runs adjacent to the Willamette River between the Marquam Bridge to the south and the RiverPlace Esplanade on the north in downtown Portland. RiverPlace Parcel 1, also known as The Strand condominium towers, is immediately east of SW River Drive and west of South Waterfront Park.

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve the completion of remedial action at these two parcels of the South Waterfront Redevelopment Area.

HIGHLIGHTS: Fuel oil contamination is present in soil and groundwater beneath the site as a result of historic activities of the former Lincoln Steam Plant, which operated at the site until 1985. With DEQ oversight, the Portland Development Commission completed a remedial investigation in 1997 to characterize the extent of contamination and evaluate cleanup options. In 1998 DEQ issued a Record of Decision which describes DEQ's selected remedial action to address contaminated soil and groundwater. The selected remedy consisted of capping two contaminated soil Areas of Concern, stabilization of the Willamette River bank, groundwater monitoring, and institutional controls. South Waterfront Park was constructed between 1998 and 2000. The recent Parcel 1 development includes a sub-grade parking structure, which involved removal of soil across the entire property to an average depth of 10 feet. Soil excavated from the petroleum-contaminated Areas of Concern was transported off-site for disposal at DEQ approved locations. Asbestos containing materials were excavated and disposed of off-site at a permitted landfill. Subsurface methane gas was identified as a potential concern and has been addressed through air monitoring. Post-development groundwater monitoring has not detected elevated petroleum hydrocarbon contamination. An Easement and Equitable Servitude has been finalized for both the South Waterfront Park and RiverPlace Parcel 1 properties in order to ensure that site use restrictions, engineering controls, and maintenance and reporting requirements are implemented by current and future property owners.

To review project records, contact DEQ at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Questions about the project should be directed to the DEQ Project Manager, Tom Roick, at 503-229-5502 or email roick.tom@deq.state.or.us. Written comments should be sent to the project manager at DEQ's Northwest

Region office, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by March 31, 2007.

PROPOSED APPROVAL OF ENVIRONMENTAL CLEANUP

PROJECT LOCATION: Portland International Airport, Terminal Expansion South.

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve the completion of remedial action at the Port of Portland, Terminal Expansion South site.

HIGHLIGHTS: Portland International Airport, Terminal Expansion South (TES) included construction improvements to Concourse C and the surrounding aircraft apron and gate area. Jet fuel has been identified in the subsurface as a result of historic leaks and spills from the Concourse C fueling system, and heavy oil contaminated soil is believed to be associated with treated subgrade materials for a historic runway located in the area. Beginning in 1998, the Port of Portland completed investigation in the TES area under the DEQ Voluntary Cleanup Program. DEQ reviewed and approved remedial investigation and feasibility studies completed by the Port of Portland and to address contaminated soil subsequently selected remedies in a July 1998 Record of Decision for a stockpiled soil berm, a December 1999 Record of Decision for TES Phase I, and a June 2002 ROD for TES Phases II/III. As part of TES construction activities, the Port of Portland managed contaminated soil excavated from utility corridors through disposal at a permitted landfill, and upgraded the fuel delivery system. Residual contaminated soil beneath the TES area is capped by new or previously existing pavement. The Port of Portland recently completed an Airport Layout Plan which identifies the stockpiled soil berm and contaminated soil "Cap Management Area." The Airport Layout Plan will help the Port ensure that future site contractors and workers are informed of the presence of contaminated soil and that appropriate measures are implemented if soil is exposed in the future. DEQ is proposing to issue a no further action determination for the TES soil investigation and cleanup upon condition that the Port maintain the stockpiled soil berm, maintain the pavement cap, and implement the Airport Layout Plan provisions.

To review project records, contact DEQ at 503-229-6729. Questions about the project should be directed to the DEQ Project Manager, Tom Roick, at 503-229-5502 or email roick.tom@deq.state.or.us. Written comments should be sent to the project manager at DEQ's Northwest Region office, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by March 31, 2007.

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 Architect Examiners
Chapter 806

Rule Caption: Board's Biennial Budget.
Date: 4-4-07 **Time:** 9 a.m. **Location:** OBAE Conference Rm.
205 Liberty St. NE, #A
Salem, OR 97301

Hearing Officer: Kim Arbuckle
Stat. Auth.: ORS 671.120, 671.125, 182.462
Stats. Implemented: ORS 182.462, 671.125
Proposed Amendments: 806-001-0003
Last Date for Comment: 4-4-07, 10 a.m.
Summary: This rule is amended to adopt the Oregon Board of Architect Examiners' 2007-2009 biennial budget, with an expenditure limit of \$660,000. A copy of the proposed budget and/or rule amendment is available on the Board's web site of www.orbae.com or by contacting the agency rules coordinator.

Rules Coordinator: Carol Halford
Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
Telephone: (503) 763-0662

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Board of Medical Examiners
Chapter 847

Rule Caption: Physician and physician assistant to honor life-sustaining treatment orders.
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 127.505 - 127.660, 677.265
Proposed Adoptions: 847-010-0110
Last Date for Comment: 3-28-07
Summary: 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
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2713

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

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.265
Proposed Amendments: 847-020-0180
Last Date for Comment: 3-28-07

Summary: 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
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2713

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

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

Proposed Amendments: 847-035-0030
Last Date for Comment: 3-28-07

Summary: 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
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2713

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Board of Nursing
Chapter 851

Rule Caption: Rules Established for State and Nationwide Criminal Records Checks, Fitness Determinations.

Date: 4-12-07 **Time:** 9 a.m. **Location:** Portland State Office Bldg.
Rm. 135
800 NE Oregon Street
Portland, OR 97232

Hearing Officer: Saundra Theis, Board President
Stat. Auth.: ORS 678.150, 678.153
Other Auth.: HB 2157, Sec. 2 (2005 Leg. Session)

Stats. Implemented: ORS 678.126, 678.153
Proposed Adoptions: 851-031-0007
Last Date for Comment: 4-10-07, 5 p.m.

Summary: This proposed rule covers the Board's authority to request the Oregon State Police to conduct a nationwide criminal records check, including fingerprint identification, through the FBI, on an applicant or licensee. House bill 2157, Section 2 (2005 Legislative Session) gave the Board such authority.

Rules Coordinator: KC Cotton

NOTICES OF PROPOSED RULEMAKING

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

Rule Caption: Advanced Practice Formulary Updated.

Date:	Time:	Location:
4-12-07	9 a.m.	Portland State Office Bldg. Rm. 135 800 NE Oregon Street Portland, OR 97232

Hearing Officer: Sandra Theis, Board President

Stat. Auth.: ORS 678.385, 678.390

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390

Proposed Amendments: 851-056-0012

Last Date for Comment: 4-10-07, 5 p.m.

Summary: 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 March and April 2007 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Rule Caption: Agency Fees Increased for RNs, LPNs, and Nursing Assistants and Rules Established to Implement Fingerprinting.

Date:	Time:	Location:
4-12-07	9 a.m.	Portland State Office Bldg. Rm. 135 800 NE Oregon Street Portland, OR 97232

Hearing Officer: Sandra Theis, Board President

Stat. Auth.: ORS 678.150, 678.410

Stats. Implemented: ORS 678.410

Proposed Adoptions: 851-002-0055

Proposed Amendments: 851-002-0010, 851-002-0040

Last Date for Comment: 4-10-07, 5 p.m.

Summary: These rules cover all agency fees for Registered Nurses, Licensed Practical Nurses, Nursing Assistants and fingerprinting.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Board of Optometry Chapter 852

Rule Caption: Board Budget for 2007–2009 biennium. Revision of CPR reporting requirements.

Date:	Time:	Location:
5-4-07	1 p.m.	1900 Hines St. Mezzanine Level Conf. Rm. Salem, OR 97302

Hearing Officer: Scott Walters, O.D.

Stat. Auth.: ORS 683, 182

Stats. Implemented: ORS 182.462(1)(2), 182.466, 683.040, 683.060, 683.070, 683.100, 683.120, 683.220, 683.270

Proposed Amendments: Rules in 852-005, 852-010, 852-050, 852-080

Last Date for Comment: 5-4-07

Summary: 852-005; 852-010; 852-050: Presents the Board's budget for 2007–2009 biennium with changes in fees. 852-080: Changes the reporting requirements for CPR certification.

Rules Coordinator: David W. Plunkett

Address: Board of Optometry, PO Box 13967, Salem, OR 97309-1967

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

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Amendment of Rules Regarding Procedure for Conducting Murder Review Hearings pursuant to the *Larsen* decision.

Stat. Auth.: ORS 144.025, 144.050, 144.120, 163.105, 163.115, 183.335, 183.341, 183.415, 183.440, 183.450, 183.470, 192.410–505

Other Auth.: *Larsen v. Board of Parole*, 206 Or App 353 (2006)

Stats. Implemented:

Proposed Adoptions: 255-032-0022, 255-032-0027, 255-032-0029, 255-032-0030, 255-032-0031, 255-032-0032

Proposed Amendments: 255-032-0025

Last Date for Comment: 3-21-07

Summary: The amendment of this rule is necessary in order to be consistent with the Oregon Court of Appeals ruling in *Larsen v. Board of Parole*, 206 Or App 353 (2006).

Rules Coordinator: Peggy Barber

Address: Board of Parole & Post-Prison Supervision, 2575 Center St. NE, Suite 100, Salem, OR 97301-4621

Telephone: (503) 945-0914

Commission for the Blind Chapter 585

Rule Caption: Confidentiality and Inadmissibility of Mediation Communications.

Stat. Auth.: ORS 36.224, 183.335(5), 183.502

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232

Proposed Adoptions: 585-001-0015

Last Date for Comment: 3-21-07

Summary: This rule addresses confidentiality and in admissibility of mediation communications in which the agency is a party or is mediating a dispute for which the agency has regulatory authority.

Rules Coordinator: Linda Mock

Address: Commission for the Blind, 535 SE 12th Ave., Portland, OR 97214

Telephone: (971) 673-1588

Department Administrative Services, Human Resource Services Division Chapter 105

Rule Caption: Expands required use of injured worker list when filling vacant positions to all State positions.

Date:	Time:	Location:
3-16-07	8–10 a.m.	155 Cottage St. NE Conference Rm. A Salem, OR

Hearing Officer: Mark Rasmussen

Stat. Auth.: ORS 184.340, 240.145, 240.250

Stats. Implemented: ORS 240.306, 659A.043, 659A.046, 659A.052

Proposed Amendments: 105-040-0020

Last Date for Comment: 3-20-07

Summary: “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. Clarified the term of eligibility in 1(a)(B)(ii) on the Injured Worker List to be until the employee is returned to a “suitable” position. 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. 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

NOTICES OF PROPOSED RULEMAKING

position. Removed "Note" about bypassing this list because it is no longer accurate. 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). Removed another "Note" on page 3 because it is no longer consistent with the "Applicability" statement.

Rules Coordinator: Cheryl Knottingham
Address: Department of Administrative Services, Human Resource Services Division, 155 Cottage St. NE, U90, Salem, OR 97301
Telephone: (503) 378-2627

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Rule Caption: Replace obsolete term due to HB 2251, remove abolished classifications and remove outdated procedures.

Date:	Time:	Location:
3-16-07	8-10 a.m.	155 Cottage St. NE Conference Rm. A Salem, OR

Hearing Officer: Mark Rasmussen
Stat. Auth.: ORS 184.340, 240.145, 240.250
Stats. Implemented: ORS 240.306, 659A.043, 659A.046, 659A.052
Proposed Amendments: 105-040-0060
Last Date for Comment: 3-20-07

Summary: 1) In Section (1), replaced "substantially disabled" with "disabled" as defined by ORS 174.107. With the passage of HB 2251 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 and 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).

Rules Coordinator: Cheryl Knottingham
Address: Department of Administrative Services, Human Resource Services Division, 155 Cottage St. NE, U90, Salem, OR 97301
Telephone: (503) 378-2627

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Rule Caption: Repealing because it is unnecessary to address this internal management topic in a public rule.

Date:	Time:	Location:
3-16-07	8-10 a.m.	155 Cottage St. NE Conference Rm. A Salem, OR

Hearing Officer: Mark Rasmussen
Stat. Auth.: ORS 184.340, 240.145(3), 240.250
Stats. Implemented: ORS 659A.052(1)(c), 659A.043, 659A.046
Proposed Repeals: 105-050-0020
Last Date for Comment: 3-20-07

Summary: 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
Address: Department of Administrative Services, Human Resource Services Division, 155 Cottage St. NE, U90, Salem, OR 97301
Telephone: (503) 378-2349, ext. 325

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Department of Community Colleges and Workforce Development Chapter 589

Rule Caption: Revises method for disbursing Community College Support Funds for Contracts Out-of-District.

Date:	Time:	Location:
3-26-07	9 a.m.-12 p.m.	Public Service Bldg. 255 Capitol Street NE 2nd Flr. 251A Salem, OR

Hearing Officer: Linda Hutchins
Stat. Auth.: ORS 326.051 & 341.626
Stats. Implemented:
Proposed Amendments: 589-002-0100
Last Date for Comment: 3-26-07, 5 p.m.
Summary: Authority for distribution of the Community College Support Fund (CCSF) is granted by OAR 589-002-0100. This rule amendment revises the method for disbursing CCSF monies for Contracted Out-of-District (COD) programs. This rule amendment ties the disbursement of CCSF monies to the number of Full-Time Equivalent (FTE) students served by Contracted Out-of-District programs in the prior year.

Rules Coordinator: Linda Hutchins
Address: 255 Capitol Street, Salem OR 97310
Telephone: (503) 378-8649, ext. 474

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

Rule Caption: Clarifies BCD contractor license requirement to maintain a CCB license.

Date:	Time:	Location:
3-20-07	9:30 a.m.	1535 Edgewater St. NW Salem, OR

Hearing Officer: Celina Patterson
Stat. Auth.: ORS 447.040, 455.110, 455.117, 479.730, 480.545, 670.310
Stats. Implemented: ORS 447.040, 455.110, 455.117, 479.730, 480.545, 670.310

Proposed Adoptions: 918-030-0015
Proposed Amendments: Rules in 918-225
Last Date for Comment: 3-23-07, 5 p.m.

Summary: This rule requires contractors licensed by the Building Codes Division (BCD) to possess and maintain a Construction Contractors Board (CCB) license in addition to the license issued by BCD. It authorizes the division or appropriate board to suspend, revoke or refuse to renew any contractor license if the licensee fails to maintain the required CCB license.

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: Reduces waiting period to retake supervising electrician exams from 90 days to 30 days.

Date:	Time:	Location:
3-20-07	10 a.m.	1535 Edgewater St. NW Salem, OR

Hearing Officer: Celina Patterson
Stat. Auth.: ORS 183.335
Stats. Implemented: ORS 183.335
Proposed Amendments: Rules in 918-030
Last Date for Comment: 3-23-07, 5 p.m.

Summary: This proposed rule reduces the exam retake waiting period from 90 to 30 days for licensing applicants who fail the general supervising or limited supervising electrician exams. This change aligns the exam retake period for these license types with all other licenses issued by BCD.

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

NOTICES OF PROPOSED RULEMAKING

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

Rule Caption: Propose to adopt clarifications, corrections of typographical errors and incorrect references in Agriculture/Respiratory Protection.

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

Stats. Implemented: ORS 654.001 - 654.295

Proposed Amendments: 437-004-1041

Last Date for Comment: 3-30-07

Summary: Oregon OSHA is correcting typographical errors and incorrect references, which will add clarity to the Respiratory Protection Standard in Division 4, Agriculture.

Please visit our web site www.oroSHA.org

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

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

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**Department of Corrections
Chapter 291**

Rule Caption: Inmate Selection and Removal Process for an Alternative Incarceration Program.

Stat. Auth.: ORS 179.040, 421.500 - 431.512, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.500 - 431.512, 423.020, 423.030, 423.075

Proposed Amendments: 294-062-0110 – 291-062-0150

Last Date for Comment: 4-16-07

Summary: These rule amendments are necessary to update inmate selection and clarify the removal process for alternative incarceration programs within DOC facilities

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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

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

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

Proposed Amendments: 291-104-0111, 291-104-0116, 291-104-0125, 291-104-0130, 291-104-0135

Proposed Repeals: 291-104-0010, 291-104-0015, 291-104-0025, 291-104-0030, 291-104-0033, 291-104-0035

Proposed Renumberings: 291-104-0005 to 291-104-0106

Last Date for Comment: 4-16-07

Summary: These changes are necessary to fully implement the department's new classification system for assigning inmates with the appropriate custody classification level. The transition period from the previous classification system to the new system took several months. All inmates have been classified under the new classification system, so the previous classification system is no longer needed. Additional changes are necessary to provide clarification for scoring the custody classification guide and to reflect operational changes within the agency.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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.

Date:
3-27-07

Time:
9 a.m.

Location:
Department of Energy
625 Marion St NE
Salem, OR

Hearing Officer: Ken Niles

Stat. Auth.: ORS 469.470, 469.992

Other Auth.: OAR 345-001-0000

Stats. Implemented: ORS 469.300 - 469.619, 469.992

Proposed Adoptions: 345-050-0038, 345-076-0050

Proposed Amendments: 345-001-0000, 345-001-0005, 345-001-0010, 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, 345-015-0014, 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, 345-024-0010, 345-024-0015, 345-024-0030, 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, 345-029-0005, 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, 345-092-0012, 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

Proposed Repeals: 345-001-0040, 345-001-0090, 345-024-0650, 345-026-0100, 345-026-0200, 345-027-0095, 345-075-0010, 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

Last Date for Comment: 3-27-07, close of hearing

Summary: In this rulemaking, the Energy Facility Siting Council (Council) will review all rules in OAR Chapter 345. The Council will streamline 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. Amendments to accomplish these purposes would affect the rules listed above and may affect other rules in OAR Chapter 345.

NOTICES OF PROPOSED RULEMAKING

The proposed amendments are available online for public review at www.oregon.gov/ENERGY/SITING/announce.shtml

A public hearing will be held March 27, 2007, at 9:00 AM. The deadline for submission of written comments is the close of the hearing as determined by the hearing officer. In addition, the Council will accept oral public comments, but no further written comments, at a later Council meeting when the Council takes final action on the proposed amendments.

Except for the proposed updating of the monetary offset rate for carbon dioxide emissions in OAR 345-024-0580, which is addressed further in the Statement of Need and Fiscal Impact, the proposed amendments in OAR Chapter 345 are not expected to significantly increase the costs to applicants for site certificates or other costs associated with these rules.

Rules Coordinator: John G. White

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

Telephone: (503) 378-3194

Department of Environmental Quality Chapter 340

Rule Caption: The Department of Environmental Quality proposes to increase Oregon Title V Operating Permit fees by approximately 3.2 percent.

Date:	Time:	Location:
3-20-07	6 p.m.	Multnomah Co. Central Library 801 SW Tenth Ave. Meeting Rm. Portland, OR 97205

Hearing Officer: Sarah Armitage, DEQ staff

Stat. Auth.: ORS 468.065, 468A.040

Stats. Implemented: ORS 468A.315

Proposed Amendments: 340-220-0030, 340-220-0040, 340-220-0050

Last Date for Comment: 3-30-07, 5 p.m.

Summary: The proposed rule amendment would increase Title V Operating Permit fees by the change in the 2006 Consumer Price Index, approximately 3.2 percent. This increase would affect the Annual Base Fee, Emission Fee, and Specific Activity Fees.

If approved by the Environmental Quality Commission, the fee increase will be reflected in invoices issued July 2007.

To submit comments or request additional information, please contact Andrea Curtis at one of the following: Department of Environmental Quality (DEQ), 811 SW Sixth Ave., Portland, OR 97204; 503-299-6866; toll free in Oregon at 800-452-4011; email: curtis.andrea@deq.state.or.us; or fax: 503-229-5675.

Rules Coordinator: Larry McAllister

Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204

Telephone: (503) 229-6412

Department of Fish and Wildlife Chapter 635

Rule Caption: Amendments to the Fern Ridge, Jewell Meadows and Wenaha Wildlife Area management plans.

Date:	Time:	Location:
4-13-07	8 a.m.	3406 Cherry Ave. N Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.992

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.992

Proposed Amendments: Rules in 635-008

Last Date for Comment: 4-13-07

Summary: Amendments to the Fern Ridge, Jewell Meadows and Wenaha Wildlife Area management plans, amendments will guide management activities for the next 10 years.

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

Department of Human Services, Division of Medical Assistance Programs Chapter 410

Rule Caption: Displaced Homemaker rules; unfunded program.

Date:	Time:	Location:
3-20-07	10:30 a.m.	DHS Bldg., Rm. 137C Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.900 - 411.910

Proposed Repeals: 410-020-0000 - 410-020-0050

Last Date for Comment: 3-28-07, 5 p.m.

Summary: The Department will repeal OARs 410-020-0000 through 410-020-0050 to remove obsolete rules. These rules have been in place for an extended amount of time beyond the actual funding of the program. Since the program is no longer funded, there is no more need for the rules.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Rule Caption: January 2007 — FCHP Non-contracted Hospital reimbursement rates.

Date:	Time:	Location:
3-20-07	10:30 a.m.	DHS Bldg., Rm. 137C Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-120-1295

Last Date for Comment: 3-28-07

Summary: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to clients. Having temporarily amended OAR 410-120-1295, effective January 1, 2007, DMAP will permanently amend the rule to reference the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered January 1, 2007 through December 31, 2007. This document is necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and is referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients. The statute is based upon the budget period that coordinates with the managed care and DMAP contracts. The effective date of the contracts coincides with the effective date of the reimbursement rate documents. This is the Notice to permanently amend the rule.

Rules Coordinator: Darlene Nelson

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

Telephone: (503) 945-6927

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Childhood Diabetes Database.

Date:	Time:	Location:
3-22-07	10 a.m.	Oregon Square Bldg. 827 NE Oregon St. Suite 250, Rm. EOE 827A Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 444.300

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 444.300 - 444.330
Proposed Adoptions: 333-010-0600 – 333-010-0660
Last Date for Comment: 3-23-07, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to establish a uniform, statewide database for the collection of information on type 1 and type 2 diabetes occurring in children in Oregon. The purpose of the database shall be to collect and serve as a repository for data about the prevalence and incidence of diabetes occurring in the pediatric population and to make data available for scientific and medical research and for assistance in making decisions about the allocation of public resources.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

Rule Caption: Family Planning Expansion Project.

Date:	Time:	Location:
3-28-07	9 a.m.	Portland State Office Bldg. 800 Oregon St. NE, Rm. 140 Portland, OR 97232

Hearing Officer: Staff
Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Proposed Amendments: Rules in 333-004
Last Date for Comment: 3-30-07, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to permanently amend rules related to the Family Planning Expansion Project (333-004) to comply with the new federal Family Planning Expansion Project waiver. Amendments will: delete all references to the prospective payment system (PPS) rate charged for each client encounter by a clinic certified by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) as a federally qualified health center or rural health center; remove all references that would permit a provider to bill or be paid at a PPS rate; clarify what constitutes a billable service to the Family Planning Expansion Project; and correct Department terminology, formatting and punctuation.

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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 Services.

Date:	Time:	Location:
3-22-07	10 a.m.	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: 411-027-0000
Proposed Repeals: 411-027-0000(T)
Last Date for Comment: 3-22-07, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to amend the rule related to payment limitations in community-based care 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. In addition, amendments are being proposed to reflect correct SPD terminology and to correct formatting and punctuation. SPD is also proposing to repeal the temporary rule that became effective on October 23, 2006.

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

Rule Caption: Clarifies criminal history re-check requirements, limited enrollment, job descriptions, imminent danger and fraud overpayment recovery.

Date:	Time:	Location:
3-28-07	10 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137A Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 409.050, 410.070, 410.090
Stats. Implemented: ORS 410.010, 410.020, 410.070
Proposed Amendments: 411-031-0020, 411-031-0040
Proposed Repeals: 411-031-0020(T), 411-031-0040(T)
Last Date for Comment: 3-30-07, 5 p.m.

Summary: The Oregon Department of Human Services, Seniors and People with Disabilities Division is proposing to adopt the temporary rule amendments that became effective on October 23, 2006 related to Homecare Workers Enrolled in the Client-Employed Provider Program. The temporary rules expire April 20, 2007.

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

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

Rule Caption: Update language, required signage and prorate license valid date to align with standard licensing year.

Stat. Auth.:	ORS 476.030, 480.310 - 480.385
Stats. Implemented:	ORS 480.310 - 480.385
Proposed Amendments:	837-020-0025, 837-020-0035, 837-020-0040, 837-020-0045, 837-020-0050, 837-020-0055, 837-020-0060, 837-020-0065, 837-020-0070, 837-020-0075, 837-020-0080, 837-020-0085, 837-020-0105, 837-020-0115, 837-020-0120, 837-020-0125

Last Date for Comment: 3-30-07
Summary: To update language, required signage and prorate license valid date to align with standard licensing year of October 1 to September 30.

Rules Coordinator: Pat Carroll
Address: Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305
Telephone: (503) 373-1540, ext. 276

Landscape Architect Board Chapter 804

Rule Caption: Organize information regarding Examination Qualifications, Examination Procedures, and Qualifications for Registration.

Stat. Auth.:	ORS 183, 671
Stats. Implemented:	ORS 671.335, 671.345, 671.365
Proposed Adoptions:	804-022-0005
Proposed Amendments:	804-010-0000, 804-010-0010, 804-020-0005, 804-020-0030, 804-020-0045
Proposed Repeals:	804-020-0065
Proposed Ren. & Amends:	804-010-0005 to 804-010-0020, 804-020-0055 to 804-022-0000, 804-010-0025 to 804-022-0010, 804-020-0064 to 804-022-0015, 804-020-0065 to 804-022-0015, 804-020-0020 to 804-020-0001, 804-020-0000 to 804-020-0003

Last Date for Comment: 3-30-07
Summary: The Board recognizes that the rules do not clearly define information regarding the examination qualifications and examination procedures from the registration qualifications. The new division 22 is dedicated to providing information about qualifications for

NOTICES OF PROPOSED RULEMAKING

registration. Most of this information is currently presented in division 10 and division 20.

Numerous amendments in divisions 10 & 20 will clarify the requirements for acceptance to the examination and clarify the Board's responsibility with regard to examination administration.

In division 20, it is now clarified that an applicant for examination must provide verification of one year of experience under a Registered Landscape Architect before being approved into the LARE Section C and E.

Rules Coordinator: Susanna R. Knight

Address: Landscape Architect Board, 1193 Royvonne Ave SE, # 19, Salem, OR 97302

Telephone: (503) 589-0093

Oregon Department of Education Chapter 581

Rule Caption: Requires that school districts make instructional materials available for visually impaired students.

Date:	Time:	Location:
3-21-07	1-3 p.m.	Public Services Bldg. Rm. 251A Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 337.050

Proposed Adoptions: 581-011-0052

Proposed Amendments: 581-011-0050, 581-022-1640

Last Date for Comment: 3-21-07

Summary: 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 December 2006 must provide these materials. The proposed rule and the proposed amendments will implement this federal requirement.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

Rule Caption: Requirements for registration of interscholastic activity organizations and establishing interscholastic districts or leagues.

Date:	Time:	Location:
3-21-07	1-3 p.m.	Public Services Bldg. Rm 251A Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.430

Proposed Adoptions: 581-021-0032

Proposed Amendments: 581-021-0034

Last Date for Comment: 3-21-07

Summary: 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 would specify criteria that must be considered in making activity district decisions.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

Rule Caption: Clarifies requirements for filing complaints with agency regarding actions of local school districts.

Date:	Time:	Location:
3-21-07	1-3 p.m.	Public Services Bldg. Rm. 251A Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 327.103

Proposed Amendments: 581-022-1940

Last Date for Comment: 3-21-07

Summary: The proposed amendments would clarify the requirements, processes and timelines for filing a complaint with the Department of Education regarding the actions of a local school district.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

Rule Caption: Clarifies existing requirements and establishes new requirements for public and private alternative programs and schools.

Date:	Time:	Location:
3-21-07	1-3 p.m.	Public Services Bldg. Rm. 251A Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 327.125, 336.625, 336.645

Proposed Adoptions: 581-021-0073

Proposed Amendments: 581-021-0072, 581-022-1350

Last Date for Comment: 3-21-07

Summary: 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

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

Telephone: (503) 947-5746

Oregon Health Licensing Agency Chapter 331

Rule Caption: Establishment of safety and infection control standards for the practice of Respiratory Therapy.

Stat. Auth.: ORS 688.830

Other Auth.: ORS 676.615

Stats. Implemented: ORS 688.830

Proposed Amendments: 331-715-0030

Last Date for Comment: 3-23-07

Summary: New rules address safety and infection control requirements for respiratory therapists, specifically during the fitting one-use masks for C-PAP machines or any single use equipment used in the practice of respiratory care. The provisions establish criteria for basic infection control standards, set requirements for disinfecting equipment, and require compliance with the Centers for Disease Control and Prevention Standard Precautions.

Rules Coordinator: Patricia C. Allbritton

Address: Oregon Health Licensing Agency, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287

Telephone: (503) 378-8667, ext. 4322

Rule Caption: Establish mobile facility license criteria; amend requirement for student to teacher ratio; revise CDC standard precautions requirements.

Stat. Auth.: ORS 676.615, 690.360, 690.380, 690.410, 690.415

Other Auth.: ORS 676.605, 676.607

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 676.605, 676.615, 690.380

Proposed Adoptions: 331-565-0085

Proposed Amendments: 331-505-0010, 331-550-0000, 331-555-0010, 331-565-0030, 331-565-0060, 331-575-0040

Last Date for Comment: 3-23-07

Summary: Amend definition for “completed procedure” to clarify requirement that procedures must be performed on a “live” human being.

Amend definition for “direct supervision” to enable the Oregon Department of Education, Private Career Schools, to waive the one-to-one student/teacher ratio based on specific circumstances and in consultation with the Oregon Health Licensing Agency.

A new rule for licensing a “mobile facility” recognizes the diversity of venues where tattooing services are provided. The proposed rules are in response to requests receive from licensees and small business owners to establish licensing of “mobile facilities” to remove regulatory barriers to the way some small businesses practice. The proposed rules set specific application and reporting requirements for mobile facilities, and require adherence to all licensing, safety, infection control standards to ensure appropriate consumer protection is not diminished. Licensing mobile facilities shifts licensure from holding multiple temporary facility permits to one mobile facility license issued for one year. Renewal of the mobile facility license is conditional.

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

Rules Coordinator: Patricia C. Allbritton

Address: Oregon Health Licensing Agency, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287

Telephone: (503) 378-8667, ext 4322

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Oregon Patient Safety Commission Chapter 325

Rule Caption: Establishes hospital reporting program by converting temporary rules to permanent rules, without change.

Stat. Auth.: Chapter 686, Oregon Laws 2003 (Sections 4, 6, 9)

Other Auth.: ORS 182.456 - 182.472

Stats. Implemented: ORS 442.820 - 442.835

Proposed Adoptions: 325-010-0000, 325-010-0001, 325-010-0005, 325-010-0010, 325-010-0015, 325-010-0020, 325-010-0025, 325-010-0030, 325-010-0035, 325-010-0040, 325-010-0045, 325-010-0050, 325-010-0055, 325-010-0060.

Last Date for Comment: 3-23-07, 5 p.m.

Summary: These rules (chapter 325, division 10) create the basis for implementing a voluntary and confidential reporting program for serious adverse events that occur in hospitals. Responsibility for establishing such a reporting program was given to the Commission by the Legislature as part of the Commission’s mission to reduce the number of adverse events in Oregon and to encourage a culture of patient safety. The Commission is using information from the reporting program to identify patterns, to develop and share best practices, and to encourage specific quality improvement efforts.

Because of a filing error, the original permanent rules — established in February, 2006 — were replaced by temporary rules to ensure continuity of the reporting program. Now the Commission is re-establishing the permanent rules. Throughout this process, the rules have not changed (except for effective dates).

Documents Relied Upon, and where they are available: Biennial Budget — Oregon Patient Safety Commission; Oregon’s Acute Care Hospitals, Capacity, Utilization and Financial Trends, 1995–2003, Office for Health Policy and Research.

Rules Coordinator: James C. Dameron

Address: 1020 SW Taylor Street, Suite 375, Portland OR 97205

Telephone: (503) 224-9226

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Update rule and provide for consistent administration of withdrawals in PERS programs.

Date:
3-27-07

Time:
2 p.m.

Location:
Boardroom, PERS Headquarters
11410 SW 68th Parkway
Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 286.265, OL 2003 Ch. 276 § 2

Proposed Amendments: 459-010-0055

Last Date for Comment: 4-6-07

Summary: Consistent and parallel administration of withdrawals in all PERS programs is operationally efficient and more predictable and understandable for staff, employers, and members. To the extent permitted by the implemented statutes, withdrawal rules should reflect this parallelism. The proposed modifications to this rule would align the provisions regarding reemployment of a former member prior to the time required to establish a bona fide separation with the provisions of the OPSRP withdrawal draft rules, OAR 459-075-0020 and 459-080-0020.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

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Oregon State Marine Board Chapter 250

Rule Caption: Amend speed limit for safe boat operation of Plat I Reservoir in Douglas County.

Date:
4-11-07

Time:
7–9 p.m.

Location:
Dept. of Fish & Wildlife
Southwest Region
4192 N. Umpqua Hwy.
Roseburg, OR 97470

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110, 830.175, 830.185

Proposed Amendments: 250-020-0102

Last Date for Comment: 4-11-07

Summary: OSMB is proposing to amend the regulation by changing the speed limit for safe operation of boats on Plat I in Douglas County. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: June LeTarte

Address: Oregon State Marine Board, PO Box 14145, Salem, OR 97309-5065

Telephone: (503) 378-2617

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Rule Caption: Amend boating deadline for safe boat operations below Willamette Falls.

Date:
4-4-07

Time:
7–9 p.m.

Location:
Clackamas Co. Public Safety
Training Center
12700 SE 82nd Ave.
Clackamas, OR 97015

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110, 830.175

Proposed Amendments: 250-020-0032

Last Date for Comment: 4-4-07

Summary: OSMB is proposing to amend the regulation by changing the boating deadline for safe operation of boats below the Willamette Falls. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: June LeTarte

NOTICES OF PROPOSED RULEMAKING

Address: Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065
Telephone: (503) 378-2617

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**Oregon Student Assistance Commission,
Office of Degree Authorization
Chapter 583**

Rule Caption: Establishes hearing process and standards for complaints brought against accredited institutions.

Date:	Time:	Location:
4-20-07	9:30 a.m.	OR Dept. of Revenue 1600 Valley River Dr. Suite 310 Eugene, OR 97401

Hearing Officer: Bridget Burns

Stat. Auth.: ORS 348.606(2)

Stats. Implemented: ORS 348.606(2)

Proposed Adoptions: Rules in 583-060

Last Date for Comment: 4-19-07, 12 p.m.

Summary: Establishes a hearing process and standards for decision by the Commission when a complaint is brought under ORS 348.606(2). Such complaints relate to whether an Oregon-based school is in violation of its regional accreditation standards.

Rules Coordinator: Peggy D. Cooksey

Address: Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr., Suite 100, Eugene, OR 97401

Telephone: (541) 687-7443

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**Oregon University System,
Eastern Oregon University
Chapter 579**

Rule Caption: Amend special student and course fees.

Stat. Auth.: ORS 351.070

Other Auth.: ORS 351.070

Stats. Implemented:

Proposed Adoptions: 579-020-0006

Last Date for Comment: 3-21-07

Summary: Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.

Rules Coordinator: Lara Moore

Address: Oregon University System, Eastern Oregon University, One University Blvd., La Grande, OR 97850

Telephone: (541) 962-3368

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**Oregon University System,
University of Oregon
Chapter 571**

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

Date:	Time:	Location:
3-23-07	10 a.m.	Metolius/Owyhee Rms., EMU University of Oregon Eugene, OR

Hearing Officer: Laura Hubbard

Stat. Auth.: ORS 351.070, 351, 352

Stats. Implemented: ORS 351.070

Proposed Amendments: 571-060-0005

Last Date for Comment: 3-26-07, 12 p.m.

Summary: The University administration has determined that the adoption of the amendments to the fee list will be necessary in order

to provide the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, and penalties.

Rules Coordinator: Deb Eldredge

Address: Oregon University System, University of Oregon, Office of the President, 1226 University of Oregon, Eugene, OR 97403

Telephone: (541) 346-3082

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**Parks and Recreation Department
Chapter 736**

Rule Caption: As a part of the integration of the Oregon State Fair (OSF) into OPRD the rules for the OSF need to be updated, made consistent with existing rules, and integrated into the existing rules for OPRD.

Date:	Time:	Location:
3-30-07	2 p.m.	Oregon State Fairgrounds Floral Bldg. Salem, OR

Hearing Officer: Connie Bradley

Stat. Auth.: ORS 565

Stats. Implemented: ORS 565

Proposed Adoptions: 736-201-0000 – 736-201-0500

Proposed Repeals: All of OAR 622

Last Date for Comment: 4-13-07

Summary: As a part of the integration of the Oregon State Fair (OSF) into Oregon Parks and Recreation Department (OPRD), Administrative Rules for the OSF need to be updated, made consistent with existing rules, and integrated into the existing rules for OPRD. The Oregon State Fair's current Administrative Rules — chapter 622, will be replaced and incorporated into Oregon Parks and Recreation Department's Administrative Rule — chapter 736.

Rules Coordinator: Pamela Berger

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

Telephone: (503) 986-0719

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**Racing Commission
Chapter 462**

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

Date:	Time:	Location:
3-15-07	10:30 a.m.	Rm. 140 800 NE Oregon St. Portland, OR

Hearing Officer: Todd Thorne, Vice Chair

Stat. Auth.: ORS 462.270(3)

Other Auth.: ORS 462.725

Stats. Implemented: ORS 462.725

Proposed Adoptions: 462-220-0090

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

Last Date for Comment: 3-15-07, close of Hearing

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

Rules Coordinator: Carol N. Morgan

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

Telephone: (971) 673-0208

ADMINISTRATIVE RULES

Appraiser Certification and Licensure Board Chapter 161

Rule Caption: Amend rules relating to licensing and registration, supervising appraiser requirements, advertising and general house-keeping.

Adm. Order No.: ACLB 1-2007

Filed with Sec. of State: 2-9-2007

Certified to be Effective: 2-9-07

Notice Publication Date: 12-1-06

Rules Amended: 161-003-0020, 161-010-0020, 161-010-0025, 161-010-0080, 161-010-0085, 161-015-0010, 161-015-0030, 161-020-0110, 161-025-0025, 161-025-0030, 161-025-0040, 161-050-0000, 161-050-0040

Subject: Permanent changes to Oregon Administrative Rules chapter 161, division 3 regarding fees; division 10 regarding licensure, certification and endorsement requirements; division 15 regarding application and examination process; division 20 regarding educational courses, requirements and providers, division 25 regarding scope of practice and procedures; and division 50 regarding temporary non-resident registration and changes in application/renewal information.

Rules Coordinator: Karen Turnbow—(503) 485-2555

161-003-0020

Fees

The Board shall charge and collect the following fees:

- (1) Examination Fee — \$125;
- (2) Application Fee — \$75;
- (3) Fee for Certificate or License Issued (two years) — \$450;
- (4) Fee for Certificate of License Renewed (two years) — \$400;
- (5) Fee for Duplicate Certificate/License — \$10;
- (6) Fee for Inactive Certificate or License (two years) — \$100;
- (7) Fee for Renewal of Inactive Certificate or License (two years) — \$100;
- (8) Fee for Reactivation of Inactive Certificate or License — \$60;
- (9) Fee for Late License/Certificate Renewal (in addition to renewal fee) — \$50;
- (10) Fee for Temporary Registration — \$100;
- (11) Annual Federal Registry Fee (set by the ASC of the FFIEC) — Actual Fee;
- (12) Appraiser Assistant Registration — \$75;
- (13) Appraiser Assistant Registration Renewal — \$75;
- (14) FBI Criminal Background Check — Actual Fee;
- (15) Fee for a certified copy of a certificate-of-good-standing — \$20;
- (16) Application Fee for Qualifying Education Course — \$100;
- (17) Application Fee for Continuing Education Course — \$50.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-001-0020; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2007, f. & cert. ef. 2-9-07

161-010-0020

Qualifying Appraiser Experience for Certification and Licensure

- (1) Areas of acceptable appraisal experience, as described in OAR 161-010-0025, may include but are not limited to the following:
 - (a) Fee Appraisal prepared by a state licensed or certified appraiser in conformance with USPAP;
 - (b) Staff Appraisal prepared in conformance with USPAP;
 - (c) Review Appraisal prepared in conformance with USPAP;
 - (d) Real Property Appraisal Consulting prepared in conformance with USPAP;
 - (e) Highest and Best Use Analysis prepared in conformance with USPAP;
 - (f) Assistance in preparation of appraisals as a registered appraiser assistant performing tasks as provided in OAR 161-025-0030;
 - (g) Technical or administrative appraisal review performed by employees of State or Federal regulatory agencies responsible for verifying compliance with Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.
- (2) All experience must have been obtained after January 30, 1989.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2007, f. & cert. ef. 2-9-07

161-010-0025

Requirements for Acceptable Appraisal Experience

As a prerequisite to taking the applicable appraisal examination, the applicant shall present evidence of satisfactory completion of acceptable appraisal experience. An hour of experience is defined as verifiable time spent performing tasks in accordance with acceptable appraisal experience, as defined in OAR 161-010-0020, and does not include travel time. Each hour of experience is equivalent to one (1) "point" for purposes of OAR 161-010-0025(5). Education cannot be substituted for experience. Acceptable appraisal experience must meet the following criteria.

(1) Review appraisals shall be awarded experience credit when the appraiser performs review(s) in accordance with USPAP.

(2) An appraiser who signs a real property appraisal report prepared by another, even under the label of "review appraiser", must accept full responsibility for the contents of the report. This will appropriately be considered as appraisal experience.

(3) Experience credit obtained under OAR 161-010-0020(1)(g) shall be verified by an affidavit from the applicant's immediate supervisor or agency administrator.

(4) Maximum allowable experience points. [Table not included. See ED. NOTE.]

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 4-1999, f. 11-8-99, cert. ef. 1-1-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2007, f. & cert. ef. 2-9-07

161-010-0080

Appraiser Assistant Registration — Application and Renewal Requirements

(1) A person desiring to participate in an appraiser training program must register with the Board and work under the direct supervision of one or more licensees who are in good standing with the Board, and have been licensed or certified with the Board for a minimum of 24 months. Experience gained prior to registration will be not accepted.

(2) Prior to registering with the Board, an Appraiser Assistant applicant must:

(a) Complete 75-hours of qualifying education in the following categories and successfully pass the applicable final examinations:

(A) 15-hour Appraisal Foundation's National USPAP course, or its equivalent, within two (2) years preceding the date of application; and

(B) 60-hours of other qualifying education as set forth in OAR 161-020-0110 within five (5) years preceding the date of application. The five-year requirement does not apply to licensees that register as an Appraiser Assistant to upgrade their license or certificate; and

(b) Make arrangements with one or more licensees who agree to directly supervise their real estate appraisal activities;

(c) Effective January 1, 2007, in addition to completing 75-hours of qualifying education as outlined in paragraph (2)(a) above, the applicant must attend a four hour Board approved Supervising Appraiser/Appraiser Assistant Training Course and successfully pass the final exam.

(3) The applicant must submit an Appraiser Assistant Registration Application that meets the requirements of OAR 161-015-0010(1) through (5) and includes a non-refundable application fee as described on the application form.

(4) An applicant must be at least 18 years of age.

(5) An applicant must be a citizen of the United States or have the legal authority to work in the United States.

(6) The Appraiser Assistant Registration must be renewed on an annual basis. The renewal application must be submitted on the prescribed form and include the following:

(a) Verification of successful completion of the Appraisal Foundation's National USPAP Update course or its equivalent, if applicable (required on first renewal and every other year thereafter);

(b) For applicants who have been registered two years or more, verification of successful completion of no less than fourteen hours of qualifying or continuing education. The fourteen education hours may include the USPAP Update course and must be obtained after the date their last registration was issued.

ADMINISTRATIVE RULES

(7) During the period beginning on the day following the expiration date of the registration, and ending on the date of the renewal of the registration, an Appraiser Assistant will not receive experience credit for any experience accrued during the lapse in registration. If the Appraiser Assistant fails to renew the registration within one year from the expiration date, the registration is terminated and a new application must be submitted pursuant to ORS 161-010-0080.

(8) Appraiser Assistants on active duty with the United States Armed Forces at the time of renewal may, upon written request to the Board, be provided a military deferral allowing for their otherwise complete application, including fee and evidence of continuing education, to be considered timely if received by the Board within 180 days of release from active duty.

(9) An applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the Board.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07

161-010-0085

Pre-Requisite Experience and Education for Supervising Appraiser Endorsement

(1) Licensee must be actively licensed or certified with the Board for a minimum of 24 months, be in good standing, and not be otherwise prohibited from supervising appraiser assistants.

(2) Any licensee wishing to supervise a new or different appraiser assistant must apply for and obtain a Supervising Appraiser Endorsement. In order to obtain a Supervising Appraiser Endorsement, the applicant must:

(a) Attend a Board approved Supervising Appraiser/Appraiser Assistant Training Course and successfully pass the final exam prior to making application. A prior Supervising Appraiser/Appraiser Assistant Training Course and exam completed for purposes of registering as an appraiser assistant will not count towards obtaining a Supervising Appraiser Endorsement;

(b) Submit a completed Supervising Appraiser Endorsement application that includes the following:

(A) Non-refundable application fee as described on the application form; and

(B) Supervising Appraiser/Appraiser Assistant Training Course completion certificate.

(c) Upon application approval, the Board will issue the applicant a Supervising Appraiser Endorsement that authorizes the applicant to act as a Supervising Appraiser pursuant to OAR 161-025-0025. The endorsement is valid from the date of issuance;

(d) Any applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the Board.

(3) A Supervising Appraiser Endorsement may be suspended or revoked if the Board determines that the applicant has failed to directly supervise an Appraiser Assistant as required by OAR 161-025-0025.

(4) The Board may conduct assessments of the licensee's appraisal work product as part of the Supervising Appraiser Endorsement application process and after the Supervising Appraiser Endorsement is issued.

Stat. Auth.: OAR 183.355(1)(a), 674.305(7) & 674.310(2)

Stats. Implemented: ORS 674.305(7) & 674.310(2)

Hist.: ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07

161-015-0010

Form of Application

All appraiser and appraiser assistant applications must be submitted as prescribed in OAR 161-010-0080 or 161-015-0000.

(1) Where space does not permit an applicant to present her or his complete record of experience or education on the application forms, the applicant may duplicate the forms or attach appropriate addendum. All questions must be answered. All forms must be signed and dated.

(2) An application shall be accompanied by a current, recognizable passport style photograph of the applicant.

(3) Withholding information, misrepresentation, or submission of untrue or false statements as part of the application are deemed to demonstrate untrustworthiness and are cause for a civil penalty under ORS 674.850 and either denial of an application or subsequent disciplinary action.

(4) The application must include the applicant's Social Security number for identification purposes as authorized by ORS 25.785 and will remain on file with the Board. Failure to provide a Social Security Number is grounds to deny an application.

(5) An application and the application fee shall be valid for six (6) months from receipt by the Board. After six (6) months, the applicant must submit a new application with the appropriate fee.

(6) An applicant for license/certificate shall have 6 months from the date of written notification of application approval to successfully pass the examination or the application shall be denied.

[ED NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 2-2000, f. & cert. ef. 10-23-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 1-2007, f. & cert. ef. 2-9-07

161-015-0030

Submission of License or Certificate Application

(1) Each application must be accompanied by a non-refundable application fee.

(2) An application that is not properly completed, does not contain all the required information, or is not accompanied by the required fee will be deferred. An application will also be considered incomplete if the check for payment of the required fees is dishonored.

(3) The application will be reviewed to determine whether the applicant has sufficient education and experience and is otherwise qualified to sit for the examination.

(4) Upon application approval, the applicant is notified that they are approved to sit for the examination. Upon successful completion of the examination, the Board will notify the appraiser and within one year of the notification, the applicant must submit the ACLB Certificate or License Request form with the appropriate licensing/certification and national registry fees, requesting that their license/certificate be issued. The Administrator issues the certificate or license to the applicant. The appraiser's name is submitted to the FFIEC Appraisal Subcommittee for inclusion on the Federal Registry.

(5) Upon issuance of a license or certificate, consistent with the scope of practice as provided in OAR 161-025-0000, 161-025-0005 and 161-025-0010, the appraiser is authorized to conduct real estate appraisal activity between the date of the issuance of the license or certificate, and the renewal date of the license or certificate, unless sooner revoked or suspended. No more than one license or certificate shall be issued and outstanding to, or in favor of, any appraiser at one time.

(6) An applicant who is not a resident of the State of Oregon must submit with the application, an irrevocable consent to service form appointing the Administrator of the Board as agent for service of process as provided in these rules, if, in an action against the applicant in a court of this state arising out of the applicant's activities as a licensed or certified appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(7) An applicant must be a citizen of the United States or have the legal authority to work in the United States.

(8) An applicant who has been licensed or certified in other states must have successfully passed an examination approved by the AQB or they will be required to take the approved Board examination. The examination must be at a level consistent with the appraiser category applied for in the State of Oregon. The examination results must be sent directly from the testing service to the Board office.

(9) Applicants for licensure or certification must have a license history submitted directly to the Board office from each state in which he or she has ever been licensed or certified or the Board may obtain a National Registry Appraiser License History report. Applicants must be in good standing in all states in which they are licensed or certified or the application will be denied.

(10) An applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the board.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 2-1999, f. & cert. ef. 4-20-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2007, f. & cert. ef. 2-9-07

ADMINISTRATIVE RULES

161-020-0110

Qualifying Education Course Content Guidelines

(I) General Guidelines:

(a) The course must be a real estate appraisal course that involves a minimum of fifteen classroom hours of instruction (including examination time) on acceptable topics;

(b) The course must generally be broad in scope and must cover various principles, concepts, standards, practices and/or methods that are applicable generally to the performance of a wide range of appraisal assignments that will commonly be encountered by licensed or certified appraisers. The course must be intended to provide the student with a broad-based foundation of knowledge and skills in real estate appraising;

(c) Coverage in a course of additional specific topics not listed as typical specific topics under the categories of acceptable courses will not exclude that course from consideration provided that:

(A) The principal focus of the course is not on such additional topics;

(B) The additional topics covered are appropriate (consistent with course learning objectives); and

(C) The course contains not less than fifteen classroom hours of instruction on acceptable topics. However, the course must still be consistent with the parameters described in these rules.

(d) The section titled "Unacceptable Courses" in these rules describes specifically the categories of courses that are not acceptable as qualifying education under these rules;

(e) Courses will be evaluated based on their content without regard to the course title;

(f) The following factors shall be used to convert university, college, junior college and community college course credits into classroom hours:

(A) One (1) semester credit equals fifteen (15) classroom hours

(B) One (1) quarter credit equals ten (10) classroom hours.

(2) Qualifying Education Requirements for Licensing and/or Certification:

(a) Only courses approved by the Administrator will be credited toward the education requirements. Approved courses have been assigned to curricula as follows:

(A) Basic Appraisal Principles and Practices;

(B) Applied Residential Appraisal Case Studies;

(C) Income Property Appraisal Principles and Methodology;

(D) Advanced Residential Form and Narrative Report Writing

(E) Applied Income Property Appraisal or Income Property Appraisal Case Studies;

(F) The Appraisal Foundation's National USPAP Course or its equivalent;

(G) Elective courses;

(H) Basic Appraisal Principles;

(I) Basic Appraisal Procedures;

(J) Residential Market Analysis and Highest and Best Use;

(K) Residential Appraiser Site Valuation and Cost Approach;

(L) Residential Sales Comparison and Income Approaches;

(M) Residential Report Writing and Case Studies;

(N) Statistics, Modeling and Finance;

(O) Advanced Residential Applications and Case Studies;

(P) General Appraiser Market Analysis and Highest and Best Use;

(Q) General Appraiser Sales Comparison Approach;

(R) General Appraiser Site Valuation and Cost Approach;

(S) General Appraiser Income Approach;

(T) General Appraiser Report Writing and Case Studies.

(b) For state licensed appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in these rules:

(A) Course(s) on Basic Appraisal Principles and Practices (30 hours in not less than 15 hour increments);

(B) Course(s) on Applied Residential Appraisal or Residential Appraisal Case Studies (30 hours in not less than 15 hour increments);

(C) Course(s) on Income Property Appraisal Principles and Methodology (30 hours in not less than 15 hour increments);

(D) The Appraisal Foundation's National USPAP Course or its equivalent.

(E) For all applications filed on or after January 1, 2008, courses in the following categories and credit hours must be completed, with the successful passage of an examination, as specified in these rules:

(i) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(ii) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(iii) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(iv) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(v) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(vi) Course(s) on Residential Report Writing and Case Studies (15 hours)

(vii) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(F) For applications received prior to January 1, 2008, courses noted in paragraph (E)(i) through (vi) above may be substituted for the courses required in paragraphs (A) through (C) above, provided that the applicant does not duplicate courses or types of courses, and successfully completes not less than 105 classroom hours of courses.

(c) For state certified residential appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in these rules:

(A) Course(s) on Basic Appraisal Principles and Practices (30 hours in not less than 15 hour increments);

(B) Course(s) on Applied Residential Appraisal or Residential Appraisal Case Studies (30 hours in not less than 15 hour increments);

(C) Course on Advanced Residential Form and Narrative Report Writing (15 hours);

(D) Course on Income Property Appraisal Principles and Methodology (30 hours in not less than 15 hour increments);

(E) The Appraisal Foundation's National USPAP Course or its equivalent.

(F) For applications filed on or after January 1, 2008, courses in the following categories and credit hours must be completed, with the successful passage of an examination, as specified in these rules:

(i) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

(ii) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(iii) Course(s) on Residential Market Analysis and Highest and Best Use (15 hours);

(iv) Course(s) on Residential Appraiser Site Valuation and Cost Approach (15 hours);

(v) Course(s) on Residential Sales Comparison and Income Approaches (30 hours in no less than 15 hour increments);

(vi) Course(s) on Residential Report Writing and Case Studies (15 hours);

(vii) Course(s) on Statistics, Modeling and Finance (15 hours);

(viii) Course(s) on Advanced Residential Applications and Case Studies (15 hours);

(ix) Electives (20 hours);

(x) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(G) For applications received prior to January 1, 2008, courses noted in paragraph (F)(i) through (ix) above may be substituted for the courses required in paragraphs (A) through (D) above, provided that the applicant does not duplicate courses or types of courses, and successfully completes not less than 120 classroom hours of courses.

(d) For state certified general appraisers, courses in the following categories and credit hours must be completed with the successful passage of an examination, as specified in these rules:

(A) Course(s) on Basic Appraisal Principles and Practices (30 hours in not less than 15 hour increments);

(B) Course(s) on Applied Residential Appraisal or Residential Appraisal Case Studies (30 hours in not less than 15 hour increments);

(C) Course(s) on Income Property Appraisal Principles and Methodology (30 hours in not less than 15 hour increments);

(D) Course(s) on Applied Income Property Appraisal or Income Property Appraisal Case Studies (30 hours in not less than 15 hour increments);

(E) Course(s) eligible for approval as elective courses (45 hours in not less than 15 hour increments);

(F) The Appraisal Foundation's National USPAP Course or its equivalent;

(G) For all applications filed on or after January 1, 2008, courses in the following categories and credit hours must be completed, with the successful passage of an examination, as specified in these rules:

(i) Course(s) on Basic Appraisal Principles (30 hours in not less than 15 hour increments);

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(ii) Course(s) on Basic Appraisal Procedures (30 hours in not less than 15 hour increments);

(iii) Course(s) on General Appraiser Market Analysis and Highest and Best Use (30 hours in not less than 15 hour increments);

(iv) Course(s) on Statistics, Modeling and Finance (15 hours);

(v) Course(s) on General Appraiser Sales Comparison Approach (30 hours in not less than 15 hour increments);

(vi) Course(s) on General Appraiser Site Valuation and Cost Approach (30 hours in not less than 15 hour increments);

(vii) Course(s) on General Appraiser Income Approach (60 hours in not less than 15 hour increments);

(viii) Course(s) on General Appraiser Report Writing and Case Studies (30 hours in not less than 15 hour increments);

(ix) Electives (30 hours in not less than 15 hour increments);

(x) The Appraisal Foundation's National USPAP Course or its equivalent (15 hours).

(H) For applications received prior to January 1, 2008, courses noted in paragraph (G)(i) through (ix) above may be substituted for the courses required in paragraphs (A) through (E) above, provided that the applicant does not duplicate courses or types of courses, and successfully completes not less than 180 classroom hours of courses.

(3) Acceptable Courses. Listed below are the categories of courses that are acceptable under these rules:

(a) Courses on Basic Real Estate Appraisal Principles and Practices:

(A) A course(s) in this category must be broad in scope and focus on basic real estate appraisal concepts, principles, and methods that are applicable generally to the appraisal of most types of real estate. Basic Real Estate Appraisal Principles and Practices courses would substantially include the following specific topics:

(i) Basic Concepts of Value (types of value, forces & factors influencing value and economic principles of value);

(ii) Legal Considerations in Real Estate Appraisal;

(iii) Characteristics and Analysis of Real Estate Markets;

(iv) Money/Capital Markets and Real Estate Financing;

(v) The Valuation Process;

(vi) Neighborhood/Area Analysis;

(vii) Collecting Property Data and Property Description;

(viii) Basic Building Construction, Design and Function;

(ix) Basic Statistical Concepts Used in Appraising;

(x) Highest and Best Use Analysis;

(xi) Sales Comparison Approach;

(xii) Site Valuation;

(xiii) Cost Approach;

(xiv) Income Approach;

(xv) Reconciliation;

(xvi) Valuation of Partial Interests.

(B) This category also includes basic real estate appraisal principles and practices courses which are oriented toward the appraisal of residential 1-4 unit properties. Courses that fall within this category may have a variety of titles. Although courses will be judged based on their content rather than their title, listed below are a few examples of course titles that acceptable courses might carry:

(i) Introduction to Real Estate Appraisal;

(ii) Fundamentals of Real Estate Appraisal;

(iii) Real Estate Appraisal Principles;

(iv) Residential Real Estate Appraisal Principles;

(v) Introduction to Residential Appraising;

(vi) Real Estate Appraisal Practices;

(vii) Basic Valuation Procedures;

(viii) Residential Appraisal Practices.

(b) Courses on Applied Residential Appraisal or Residential Appraisal Case Studies: A course(s) in this category will focus on the application of various basic real estate appraisal principles and methodology associated with the valuation process to practical problems encountered in appraising various types of residential 1-4 unit properties. Applied Residential Appraisal or Residential Appraisal Case Studies courses would substantially include the following specific topics:

(A) Practice Problems Related to Appraising Various Residential 1-4 Unit Properties (Problems might relate to data collection, market analysis, highest and best use analysis, site valuation, cash equivalency, paired sales analysis, estimating building costs and depreciation, gross rent multiplier analysis, reconciliation, etc.);

(B) Case Studies of Appraisals of Various Residential 1-4 Unit Properties;

(C) URAR Form Preparation;

(D) Preparation of Narrative Residential Appraisal Report.

(c) Courses on Advanced Residential Form and Narrative Report Writing: A course(s) in this category is a communication course focusing on residential appraisal reports. The emphasis must be on how to successfully communicate the support data in the report and not on "how to fill out a report form". Advanced Residential Form and Narrative Report writing course would substantially include the following specific topics:

(A) Preparation and presentation of the URAR form, ERC Form, etc.;

(B) Preparation and presentation of narrative comments to form reports;

(C) Preparation and presentation of the Small Residential Income-Producing Report Form;

(D) Narrative writing assignments and critiques, including writing style and grammar;

(E) Case Studies of appraisals using the forms and narrative format;

(F) Lectures on editing, proofreading and checking the final draft.

(d) Courses on Income Properties Appraisal Principles and Methodology:

(A) This category includes courses that are broad in scope and that focus on real estate appraisal concepts, principles and methodology that are applicable generally to the appraisal of most types of income property. Income Properties Appraisal Principles and Methodology course would substantially include the following specific topics:

(i) The Valuation Process (review from perspective of appraising income properties);

(ii) Market Analysis (from perspective of appraising income properties);

(iii) Basic Income Property Valuation Concepts (market value and investment value, types of income, rates of return, capitalization concept);

(iv) Compound Interest and Discount Factors (concepts and applications);

(v) Estimating Gross Income, Expenses and Net Operating Income;

(vi) Operating Statement Ratios and Analysis;

(vii) Using Income Multipliers;

(viii) Direct Capitalization;

(I) Using Overall Capitalization Rate Extracted from Market;

(II) Using Overall Capitalization Rate Derived by Band of Investment Method.

(ix) Using Residual Techniques;

(x) Discounted Cash Flow Analysis (yield capitalization considerations);

(xi) Forecasting Cash Flows and Reversion (including lease considerations);

(xii) Valuation with Basic DCF Formula Using Overall Yield;

(xiii) Discount Rate;

(xiv) Valuation Using Various Yield Capitalization Formulas;

(xv) Mortgage and Equity Interests (concepts and effect of valuation);

(xvi) Investment Measures for the Equity Investor;

(xvii) Valuation Using Equity Capitalization Rate;

(xviii) Mortgage-Equity Analysis Using Ellwood Formula and Akerson Method;

(xix) DCF Analysis Using Equity Yield Rate;

(xx) Deriving Yield Rates by Extraction and Buildup Method;

(xxi) Site Valuation;

(xxii) Sales Comparison Approach (applied to income property appraising);

(xxiii) Cost Approach (applied to income property appraising);

(xxiv) Reconciliation.

(B) In addition to "introductory-level" income property appraisal courses which focus on the general subject areas of "Basic Income Capitalization Concepts" and "Direct Capitalization", this category also includes "advanced" or "second-level" income property appraisal courses which have an introductory-level income property appraisal course as a prerequisite and which focus on the general subject area of "Yield Capitalization (discounted cash flow analysis) Concepts and Methodology". Courses that fall within this category have a variety of titles. Although courses will be judged based on their content rather than their title, listed below are a few examples of course titles that acceptable courses might carry:

(i) Introduction to Income Property Appraising;

(ii) Principles of Income Property Appraisal;

(iii) Appraising Income Property;

(iv) Basic Income Capitalization Theory and Techniques;

(v) Advanced Income Capitalization Theory and Techniques.

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(e) Courses on Applied Income Property Appraisal or Income Property Appraisal Case Studies:

(A) This category includes courses that focus on the application of various general real estate appraisal principles and methodology, particularly income capitalization concepts and methods, to practical problems encountered in appraising various types of income properties. Applied Income Property Appraisal or Income Property Appraisal Case Studies courses would substantially include the following specific topics:

(i) Practice Problems Related to Appraising Various Income Properties (problems might relate to market analysis, cash flow forecasting, collecting/analyzing data, subdivision development analysis, extracting/deriving yield rates, applying various discounted cash flow analysis techniques, highest and best use analysis, etc.);

(ii) Case Studies of Appraisals of Various Income Properties;

(iii) Preparation of Narrative Income Property Appraisal Report;

(iv) UCIAR Form Preparation.

(B) Courses which cover report preparation but which emphasize instruction on application of income property appraisal principles and methodology, or which include one or more comprehensive case studies of income property appraisals, are also acceptable under this category. Courses that focus only on the mechanical aspects of report preparation are not acceptable.

(f) Courses on the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraisal Foundation's National USPAP Course or its equivalent are the only acceptable courses for this category.

(g) Courses eligible for approval as elective courses for Qualifying Education. These courses are considered more appropriate for Continuing Education than for Qualifying Education under these rules, but can qualify as elective if they are at least 15 hours in duration and an exam is required. Courses must focus primarily on advanced concepts/methods, a specialized aspect of real estate appraising, or appraising one specific type of property. Examples of course topics may include, but are not limited to the following:

- (A) Real Estate Investment Analysis;
- (B) Feasibility Analysis;
- (C) Condemnation Appraising/Right of Way Appraising;
- (D) Review Appraising;
- (E) Mass Appraisal;
- (F) Subdivision Analysis;
- (G) Litigation/Testifying as Expert Witness;
- (H) Appraising Condominiums;
- (I) Appraising Manufactured Housing;
- (J) Appraising Multi-Family Housing;
- (K) Appraising Office Buildings;
- (L) Appraising Farms;
- (M) Appraising Land;
- (N) Appraising Machinery and Equipment.

(h) Courses on Basic Appraisal Principles (30 hours). A course(s) in this category must be broad in scope and focus on basic real estate appraisal concepts, principles, and methods that are applicable generally to the appraisal of most types of real estate. Basic Appraisal Principles courses would substantially include the following specific topics:

- (A) Real Property Concepts and Characteristics:
 - (i) Basic Real Property Concepts;
 - (ii) Real Property Characteristics;
 - (iii) Legal Description.
- (B) Legal Consideration:
 - (i) Forms of Ownership;
 - (ii) Public and Private Controls;
 - (iii) Real Estate Contracts;
 - (iv) Leases.
- (C) Influences on Real Estate Values:
 - (i) Governmental;
 - (ii) Economic;
 - (iii) Social;
 - (iv) Environmental, Geographic and Physical.
- (D) Types of Value:
 - (i) Market Value;
 - (ii) Other Value Types.
- (E) Economic Principles:
 - (i) Classical Economic Principles;
 - (ii) Application and Illustrations of the Economic Principles.
- (F) Overview of Real Estate Markets and Analysis:
 - (i) Market Fundamentals, Characteristics, and Definitions;
 - (ii) Supply Side Analysis;

(iii) Demand Analysis;

(iv) Use of Market Analysis.

(G) Ethics and How They Apply in Appraisal Theory and Practice.

(i) Courses on Basic Appraisal Procedures (30 hours). A course(s) in this category must be broad in scope and focus on basic real estate appraisal procedures that are applicable generally to the appraisal of most types of real estate. Basic Appraisal Procedures courses would substantially include the following specific topics:

(A) Overview of Approaches to Value;

(B) Valuation Procedures:

(i) Defining the Problem;

(ii) Collecting and Selecting Data;

(iii) Analyzing;

(iv) Reconciling and Final Value Opinion;

(v) Communicating the Appraisal.

(C) Property Description:

(i) Geographic Characteristics of the Land/Site;

(ii) Geologic Characteristics of the Land/Site;

(iii) Location and Neighborhood Characteristics;

(iv) Land/Site Considerations for Highest and Best Use;

(v) Improvements — Architectural Styles and Types of Construction.

(D) Residential Applications

(j) The 15-Hour National USPAP Course, or its equivalent (15 hours).

(k) Courses on Residential Market Analysis and Highest and Best Use (15 hours). Residential Market Analysis and Highest and Best Use courses would substantially include the following specific topics:

(A) Residential Markets and Analysis:

(i) Market Fundamentals, Characteristics and Definitions;

(ii) Supply Side Analysis;

(iii) Demand Analysis;

(iv) Use of Market Analysis.

(B) Highest and Best Use:

(i) Test Constraints;

(ii) Application of Highest and Best Use;

(iii) Special Considerations;

(iv) Market Analysis;

(v) Case Studies.

(l) Courses on Residential Appraiser Site Valuation and Cost Approach (15 hours) that would substantially include the following specific topics:

(A) Site Valuation:

(i) Methods;

(ii) Case Studies.

(B) Cost Approach:

(i) Concepts and Definitions;

(ii) Replacement/Reproduction Cost New;

(iii) Accrued Depreciation;

(iv) Methods of Estimating Accrued Depreciation;

(v) Case Studies.

(m) Courses on Residential Sales Comparison and Income Approaches (30 hours) that would substantially include the following specific topics:

(A) Valuation Principles & Procedures — Sales Comparison Approach;

(B) Valuation Principles & Procedures — Income Approach;

(C) Finance and Cash Equivalency;

(D) Financial Calculator Introduction;

(E) Identification, Derivation and Measurement of Adjustments;

(F) Gross Rent Multipliers;

(G) Partial Interests;

(H) Reconciliation;

(I) Case Studies and Applications.

(n) Courses on Residential Report Writing and Case Studies (15 hours) that would substantially include the following specific topics:

(A) Writing and Reasoning Skills;

(B) Common Writing Problems;

(C) Form Reports;

(D) Report Options and USPAP Compliance;

(E) Case Studies.

(o) Courses on Statistics, Modeling and Finance (15 hours) that would include the following specific topics:

(A) Statistics;

(B) Valuation Models (AVM's and Mass Appraisal);

(C) Real Estate Finance.

ADMINISTRATIVE RULES

(p) Courses on Advanced Residential Applications and Case Studies (15 hours) that would substantially include the following specific topics:

- (A) Complex Property, Ownership and Market Conditions;
- (B) Deriving and Supporting Adjustments;
- (C) Residential Market Analysis;
- (D) Advanced Case Studies.

(q) Courses on General Appraiser Market Analysis and Highest and Best Use (30 hours) that would substantially include the following specific topics:

- (A) Real Estate Markets and Analysis:
 - (i) Market Fundamentals, Characteristics and Definitions;
 - (ii) Supply Side Analysis;
 - (iii) Demand Analysis;
 - (iv) Use of Market Analysis.
- (B) Highest and Best Use
 - (i) Test Constraints;
 - (ii) Application of Highest and Best Use;
 - (iii) Special Considerations;
 - (iv) Market Analysis;
 - (v) Case Studies.

(r) Courses on General Appraiser Sales Comparison Approach (30 hours) that would substantially include the following specific topics:

- (A) Value Principles;
- (B) Procedures;
- (C) Identification and Measurement of Adjustments;
- (D) Reconciliation;
- (E) Case Studies.

(s) Courses on General Appraiser Site Valuation and Cost Approach (30 hours) that would substantially include the following specific topics:

- (A) Site Valuation:
 - (i) Methods;
 - (ii) Case Studies.
- (B) Cost Approach:
 - (i) Concepts and Definitions;
 - (ii) Replacement/Reproduction Cost New;
 - (iii) Accrued Depreciation;
 - (iv) Methods of Estimating Accrued Depreciation;
 - (v) Case Studies.

(t) Courses on General Appraiser Income Approach (60 hours) that would substantially include the following specific topics:

- (A) Overview;
- (B) Compound Interest;
- (C) Lease Analysis;
- (D) Income Analysis;
- (E) Vacancy and Collection Loss;
- (F) Estimating Operating Expenses and Reserves;
- (G) Reconstructed Income and Expense Statement;
- (H) Stabilized Net Operating Income Estimate;
- (I) Direct Capitalization;
- (J) Discounted Cash Flow;
- (K) Yield Capitalization;
- (L) Partial Interests;
- (M) Case Studies.

(u) Courses on General Appraiser Report Writing and Case Studies (30 hours) that would substantially include the following specific topics:

- (A) Writing and Reasoning Skills;
- (B) Common Writing Problems;
- (C) Report Options and USPAP Compliance;
- (D) Case Studies.

(4) Courses not eligible for approval as Qualifying Education. These types of courses are considered more appropriate for Continuing Education than for Qualifying Education under these rules. Courses which focus all or a vast majority of their instruction on only one comparatively narrow aspect of real estate appraising and which examine that one aspect in depth. These types of courses focus on the following topics:

- (a) Estimating Building Costs;
- (b) Estimating Accrued Depreciation;
- (c) Cash Equivalency;
- (d) Ellwood Mortgage-Equity Analysis;
- (e) Use of Financial Calculators in Appraising;
- (f) Valuation of Partial Interests.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ALCB 2-1994(Temp), f. & cert. ef. 5-2-94; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-

99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07

161-025-0025

Supervising Appraiser (SA)

(1) A State Licensed Appraiser may have no more than one registered appraiser assistant at a time.

(2) The supervising appraiser must directly supervise the registered appraiser assistant in each assignment to ensure that the results of each assignment comply with USPAP and all applicable appraisal laws and rules. To do so, the supervising appraiser must:

(a) ensure that the appraiser assistant gains sufficient knowledge, skills and abilities that will enable them to do all of the following:

(A) Define the appraisal problem:

- (i) Identify and locate the real estate;
- (ii) Identify the property rights to be valued;
- (iii) Identify the use of the appraisal;
- (iv) Define value(s) to be estimated;
- (v) Establish date(s) of value estimate(s);
- (vi) Identify and describe the scope of the appraisal; and
- (vii) Identify and describe limiting conditions or limitations.

(B) Conduct preliminary analysis, select and collect applicable data:

(i) Identify general data (regional, city and neighborhood) — social, economic, governmental and environmental factors;

(ii) Identify specific data (subject and comparables) — site and improvement, cost and depreciation, income/expense and capitalization rate, history of ownership and use of property; and

(iii) Identify competitive supply and demand (the subject market) — inventory of competitive properties, sales and listings, vacancies and offerings, absorption rates, demand studies.

(C) Conduct an analysis of the subject property which includes:

(i) Site/improvements;

(ii) Size;

(iii) Costs;

(iv) Elements of comparison; and

(v) Units of comparison.

(D) Conduct highest and best use analysis (specified in terms of use, time and market participants).

(i) Land as if vacant and available; and

(ii) Property as improved (existing or proposed).

(E) Estimate land value, including on-site improvements.

(F) Estimate value of the property using each of the three approaches to value — cost, sales comparison and income capitalization.

(G) Reconcile each value indication and reconcile the final value estimate.

(H) Report estimate(s) of value(s) as defined.

(b) Review each appraisal report the appraiser assistant prepares to ensure accuracy and reliability;

(c) Ensure that the appraisal report includes proper disclosure regarding the inspection of the subject and the comparable sales as required by OAR 161-025-0060(3).

(d) Make a clear and prominent disclosure of real estate appraisal assistance in each appraisal report by identifying each individual category of experience that the appraiser assistant provided as outlined in OAR 161-025-0025(2)(a)(A through H); and

(e) Accept responsibility for the appraisal report by signing and certifying that the report has been prepared in compliance with USPAP;

(f) Ensure that the appraiser assistant will be granted experience credit by doing the following:

(A) Verifying that the appraiser assistant is currently registered with the Board. Experience gained prior to registration or after a registration has lapsed will not be credited toward the experience hours required to become licensed/certified;

(B) Verifying that all appraisal experience is properly documented on the Appraiser Assistant Experience Log on an ongoing basis:

(i) Make entries when each assignment is completed to ensure that the log is complete and accurate.

(ii) Maintain a separate experience log for each supervising appraiser.

(C) Reviewing documentation on a monthly basis — reviewing the log, approve all entries or edit as required, sign the log, have the appraiser assistant sign the log, and have the appraiser assistant maintain the ongoing log for any future application;

(D) Allowing the appraiser assistant to obtain copies of any appraisal reports on which they provided assistance.

ADMINISTRATIVE RULES

(3) Any licensee who has been disciplined by the Board for violation(s) of ORS Chapter 674 and/or OAR chapter 161 pursuant to a final order of the Board issued after June 1, 2004, may not supervise appraiser assistants as provided by the following presumptive guidelines unless substantial and compelling reasons exist to depart from these guidelines as determined by the Administrator or the Board:

(a) First Board Action: No restriction unless the first board action results in suspension or revocation or the final order in the action otherwise restricts the licensee's eligibility to act as a supervising appraiser;

(b) Second Board Action: Restricted from acting as a supervising appraiser for 24 months immediately following the date of the final order except as otherwise provided in the order;

(c) Third Board Action or any Board action resulting in suspension or revocation: Permanently restricted from acting as a supervising appraiser immediately following the date of the final order except as otherwise provided in the order.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07

161-025-0030

Appraiser Assistant

The appraiser assistant must register with the Board in order to receive experience credit towards obtaining a real estate appraiser license or certificate.

(1) An appraiser assistant must work under the direct supervision of an Oregon licensee.

(2) The appraiser assistant, before performing an assignment for a supervising appraiser, must have the knowledge and experience to complete the assignment competently.

(3) All appraisal work completed by an appraiser assistant shall be prepared in compliance with USPAP and these administrative rules.

(4) An appraiser assistant may assist in the preparation of any and all components of the appraisal.

(5) An appraiser assistant must not sign, co-sign or issue an appraisal report.

(6) Any appraiser assistant who has provided professional assistance to a supervising appraiser who is signing and issuing the appraisal report must be identified in the report and the extent of the assistance provided must be disclosed in the report as described in OAR 161-025-0025(2)(d).

(7) When inspecting a property, the appraiser assistant must not misrepresent their status and at all times clearly identify themselves as a registered appraiser assistant.

(8) The scope of practice for the appraiser assistant is the appraisal of those properties which the supervising appraiser is permitted to appraise.

(9) An appraiser assistant will only be granted experience credit if they have demonstrated that they have provided substantial professional real estate appraisal assistance in all categories of experience as outlined in OAR 161-025-0025(4)(a)(A through H).

(10) The appraiser assistant is entitled to obtain copies of any appraisal reports on which they provided professional real estate appraisal assistance.

(11) The appraiser assistant may have more than one supervising appraiser, each of whom must sign the Appraiser Assistant Registration Application. If the appraiser assistant subsequently adds or changes a supervising appraiser, the appraiser assistant must submit a Change or Adding Supervising Appraiser form, signed by the new supervising appraiser(s). Any experience gained with a new supervising appraiser prior to confirmation from the Board that the registration has been amended to include the new supervising appraiser(s) will not count as experience credit towards obtaining a real estate appraiser license or certificate.

(12) Appraiser Assistance Logs must be prepared and maintained as described in OAR 161-025-0025(2)(f)(B) and (C). Separate appraisal logs must be maintained for each supervising appraiser.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 3-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2007, f. & cert. ef. 2-9-07

161-025-0040

Advertising Practices

A licensee advertising through any media may be identified as a state certified general appraiser, state certified residential appraiser or state licensed appraiser by listing the appropriate designated licensed or certified

status and the appraiser's license or certificate number. No advertising may be misleading in characterizing the category of licensure or certification possessed by a licensee. A registered appraiser assistant shall not represent, nor advertise in any manner or through any media, which may mislead the public into believing that they are a licensee or that they are authorized to perform the functions of a licensee, and at all times clearly identify themselves as a registered appraiser assistant. For purposes of this section, "media" includes, but is not limited to, newspapers, magazines, business cards, and directories, including all listings in telephone directories.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2007, f. & cert. ef. 2-9-07

161-050-0000

Temporary Non-Resident Registration of Out-of-State Appraisers

(1) The Board will recognize temporarily the certificate or license of an appraiser issued by another state if:

(a) The appraiser's business is of a temporary nature; and

(b) The appraiser registers with the Board.

(2) Any out-of-state appraiser desiring to conduct real estate appraisal activity within the State of Oregon, must submit an application for temporary registration on a form prescribed by the Board. The application must include:

(a) The required registration fee, and

(b) An irrevocable consent to service form appointing the Board Administrator as agent for service of process as provided in these rules, if, in an action against the applicant in a court of this state arising out of the applicant's activities as a licensed or certified appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(3) The applicant must also request a license history from the applicant's resident state indicating applicant is currently in good standing. This verification must be submitted directly to the Board office by the applicant's resident state licensing authority. Alternatively, the Board may obtain a National Registry Appraiser License History Report.

(4) The non-resident registration is only valid for a single appraisal assignment within the state.

(5) A single appraisal assignment may include one or more properties under one contract for a single client.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 3-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2007, f. & cert. ef. 2-9-07

161-050-0040

Changes in Application/Renewal Information

Every licensee, registered appraiser assistant or applicant must notify the Board, in writing or by e-mail, of a change in any of the following information within ten business days of the change:

(1) Name;

(2) Business or Employer physical and mailing address;

(3) Home physical and mailing address;

(4) Work telephone;

(5) Home telephone;

(6) Facsimile;

(7) Social Security Number; or

(8) E-mail address.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 4-2005, f. & cert. ef. 11-2-05

Board of Examiners for Speech-Language Pathology and Audiology Chapter 335

Rule Caption: Clarifies professional development requirements, defines use of delinquent fee, and standardizes recordkeeping rules throughout.

Adm. Order No.: SPA 1-2007

Filed with Sec. of State: 2-1-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 1-1-07

ADMINISTRATIVE RULES

Rules Amended: 335-010-0060, 335-010-0070, 335-060-0005, 335-070-0020, 335-070-0030, 335-070-0040, 335-070-0050, 335-070-0055, 335-095-0050, 335-095-0060

Subject: Professional development requirements in division 70 had not been reviewed extensively since implementation in 1998. Revisions attempt to better communicate the Board's desire for professional development that directly relates to the practice of speech-language pathology and audiology but at the same time recognizes the various work settings.

In the past the only means for the Board to assess a penalty for late response to audits and non-compliance with the professional development requirement was to go through the formal disciplinary process usually resulting in a permanent disciplinary action on the licensee's record. The revision to the delinquent fee definition allows the Board and the licensee to avoid this and pay a small fee.

Recordkeeping requirements will be more practical and consistent throughout with the revisions in these rules.

Rules Coordinator: Brenda Felber—(971) 673-0220

335-010-0060

Persons Responsible for Documentation

(1) A licensed speech-language pathology or audiology professional must sign each clinical document or clinical entry with their name and professional title. An electronic record must have an electronic signature. Stamped identification accompanied by an initial or signature is acceptable.

(2) The documentor must be:

(a) The licensed speech-language or audiology professional who directly renders the assessment, care, or treatment; or

(b) In supervision of non-licensed personnel, the speech-language or audiology professional who supervises the assessment, care, or treatment rendered by non-licensed personnel, shall co-sign for those services with their name and professional titles;

(c) In supervision of SLP assistants, refer to OAR 335-095-0050.

(3) The documentation may not be delegated except in emergency situations.

Stat. Auth.: ORS 681.420(5) & 681.460

Stat. Implemented: ORS 681.420

Hist.: SPA 2-2004, f. & cert. ef. 5-26-04; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

335-010-0070

General Requirements for Record Keeping and Documentation

(1) Record keeping must conform and adhere to Federal, state, and local laws and regulations.

(2) Records must record history taken; procedures performed and tests administered; results obtained; conclusions and recommendations made. Documentation may be in the form of a "SOAP" (Subjective Objective Assessment Plan) note, or equivalent.

(3) Records and documentation must:

(a) Be accurate, complete, and legible;

(b) Be printed, typed or written in ink;

(c) Include the documentor's name and professional titles;

(d) Stamped identification must be accompanied by initial or signature written in ink.

(4) Corrections to entries must be recorded by:

(a) Crossing out the entry with a single line which does not obliterate the original entry, or amending the electronic record in a way that preserves the original entry; and

(b) Dating and initialing the correction.

(5) Documentation of clinical activities may be supplemented by the use of flowsheets or checklists, however, these do not substitute for or replace detailed documentation of assessments and interventions.

Stat. Auth.: ORS 681.420(5) & 681.460

Stat. Implemented: ORS 681.420

Hist.: SPA 2-2004, f. & cert. ef. 5-26-04; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-07, f. & cert. ef. 2-1-07

335-060-0005

Definitions

(1) An Inactive License or Certificate may be obtained by those otherwise qualified individuals who are not employed in the field of speech-language pathology or audiology, not residing in Oregon, or are retired from the profession.

(2) A Conditional License is a license certificate issued by the Board to applicants meeting the requirements as stated in ORS 681.260(2). The license provides for the licensee to work under supervision while complet-

ing the required nine months of supervised post-educational professional experience and/or until the licensee successfully passes the required examination.

(3) Effective January 1, 2006, a delinquent fee may be charged for each or all of the following, as applicable:

(a) Renewal applications postmarked after January 30th of even-numbered years;

(b) Failure to complete all required hours of professional development prior to January 30th of even-numbered years;

(c) Renewal applications postmarked by January 30th of even-numbered years which are incomplete or otherwise unable to be processed;

(d) Conditional license renewals or conditional license upgrade applications postmarked after the expiration date of the conditional license;

(e) Requests for special approval of professional development received 30 days or more after the activity is completed;

(f) Failure to respond to audit by the prescribed deadline;

(g) Audit responses postmarked by the deadline which are incomplete or otherwise unable to be processed.

Stat. Auth.: ORS 681.340, 681.360, 681.420 & 681.460

Stats. Implemented: ORS 681.460

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2002(Temp), f. 11-8-02, cert. ef. 12-1-02 thru 5-1-03; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

335-070-0020

Professional Development Hours Defined

(1) Professional development is defined as participation in courses, classes, workshops and other activities for the purpose of developing and updating professional skills directly related to the performance and practice of speech-language pathology and audiology:

(a) Activities accepted for professional development include but are not limited to:

(A) Activities on the clinical practice of speech-language pathology and audiology;

(B) teacher-oriented content that is not related to the profession but enhances ability to serve students;

(C) Business and management activities to enhance practice management;

(D) Courses involving professional ethics, diversity issues, reimbursement issues;

(E) Foreign language study when the language is needed for direct clinical practice;

(F) Supervising clinical fellows, practicum students, publishing articles, making presentations and teaching classes when they are not part of the licensee's regular job responsibilities.

(b) Activities not accepted include but are not limited to:

(A) Attending meetings, including association, business, committee, board meetings;

(B) Serving on committees and volunteer activities;

(C) Work experiences when they are part of the licensee's regular job description including supervising clinical fellows, publishing articles, making presentations and teaching classes.

(2) Credit for professional development shall be calculated on an hourly basis. One professional development hour (PDH) is defined as sixty (60) minutes or one (1) clock hour of attendance/participation in an approved professional development activity unless otherwise stated. For example, one hour may be considered equivalent to .1 CEU; therefore 1.0 ASHA CEU = 10 PDHs.

(3) Licensees shall complete the required professional development hours within the two year period prior to license renewal, that is, 24 months prior to January 30 of each even numbered year. Approved professional development hours completed in excess of the requirement shall not be carried over to the subsequent renewal period.

(4) At least fifty percent (50%) of the required professional development hours must be directly related to the clinical practice of speech pathology and audiology.

(5) Not more than fifty percent (50%) of the required professional development hours may be accrued in a single course or activity.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

335-070-0030

Activities Acceptable without Special Board Approval

Professional development hours may be accrued from, but are not limited to, the following sources:

ADMINISTRATIVE RULES

(1) Attendance or participation in educational programs where continuing education credit is approved by the American Speech-Language Hearing Association (ASHA) or the American Academy of Audiology (AAA).

(2) Attendance or participation in educational programs where continuing education credit is given by the Oregon Speech-Language and Hearing Association (OSHA) and other state chapters of the American Speech-Language Hearing Association (ASHA); the Oregon Academy of Audiology (OAA) and other state chapters of the American Academy of Audiology.

(3) Continuing education units (CEUs) earned through ASHA.

(4) Attendance at educational programs where continuing education credit is given and approved by the Health Licensing Agency Hearing Aid Specialist Licensing Program.

(5) Academic course work taken for credit with a minimum grade of "C", from an educational institution accredited by an appropriate state or regional body or approved by the Board. The courses must relate to the clinical practice of speech-language pathology or audiology. One academic semester hour shall be equivalent to fifteen (15) clock hours for professional development credit. One academic quarter hour shall be equivalent to ten (10) clock hours for professional development credit. There is a limit on the number of hours reportable for a single course; see 335-070-0020(5).

(6) Self-assessment home study courses accompanied by examination and sponsored by a Board-recognized professional organization in audiology or speech-language pathology.

(7) Speech-language pathology or audiology programs (in-services, seminars, workshops) offered by public school districts, education service districts, and hospitals for employees. Programs must **directly** relate to the performance and practice of speech-language pathology or audiology **for the purpose of developing and updating professional skills**.

(8) CPR classes for a maximum of two (2) hours credit during the two-year licensing period.

(9) A universal health precautions class for a maximum of one (1) hour credit during the two-year licensing period.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

335-070-0040

Procedures for Special Board Approval of Professional Development Offerings

Approval of professional development activities not specified above may be requested from the Board by an institution, organization, agency or individual licensee. Such requests may be submitted before or after the professional development activity takes place. A request made later than 30 days after a professional development offering takes place is considered to be late. If a requestor wishes to have a late request for special Board approval considered, the requestor needs to pay the delinquent fee. No late requests for special Board approval will be considered between November 1st of odd-numbered years and January 30 of even-numbered years. All requests must be submitted on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors and the number of professional development hours offered. An activity shall qualify for approval if the board determines that the activity:

(1) Is an organized program of learning; and

(2) Pertains to subject matter which integrally relates to the practice of speech-language pathology and/or audiology; and

(3) Contributes to the professional competency of the licensee; and

(4) Is conducted by individuals who have education, training or experience acceptable to the Board.

(5) Credit for the hours of a single presentation will be acceptable if the presenter submits the request for approval within the required timeframe and meets criteria (1) through (4) above.

(6) Credit will not be given for attending or participating in a particular activity more than once in a licensing period.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-07, f. & cert. ef. 2-1-07

335-070-0050

Responsibilities and Reporting Requirements of Licensees

The ultimate responsibility for professional development activities rests with the individual. This responsibility involves identification of each licensee's own development needs, taking the initiative in seeking continu-

ing professional development activities to meet these needs, and seeking ways to integrate new knowledge, skills and attitudes. Each licensee has specific responsibility to:

(1) Select approved activities by which to earn professional development hours;

(2) Obtain from the Board approval for professional development activities not accredited by the Board;

(3) Maintain records of professional development hours. Each licensee shall maintain, for a period of four (4) years, all documentation verifying successful completion of professional development hours.

(4) Submit for license renewal a completed Board-prescribed application form, a completed professional development summary sheet, and the license renewal fee. During each license renewal period, up to fifteen (15%) of all licensees shall be required by the Board to furnish documentation of the completion of the appropriate number of professional development hours for a period not to exceed the current renewal period and the two years immediately preceding. Licensees reinstating or reactivating their licenses at any time shall be required by the Board to furnish documentation of the completion of the appropriate number of professional development hours for the 24 months immediately preceding the month in which they are reinstating/reactivating. Verification of professional development hours is not otherwise to be reported to the Board.

(5) Document attendance and participation in a professional development activity in the form of, but not limited to, official documents such as transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsors. The type of documentation required varies depending on the specific activity submitted to the Board for approval; and

(6) Fully comply with the provisions of this regulation. Failure to comply shall constitute unprofessional conduct and may result in the (1) refusal to renew, (2) suspension, or disciplinary action including suspension, (3) revocation of the license, and/or (4) a civil penalty.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

335-070-0055

Active Licensees

Required professional development for renewal of an active license is:

(1) Speech-Language Pathology and Audiology: Forty (40) clock hours of documented and approved professional development;

(2) Dual licenses: Forty (40) clock hours of documented and approved professional development in audiology and forty (40) clock hours of documented and approved professional development in speech-language pathology. A maximum of twenty (20) hours may be applied to both licenses if the topic is applicable to both types of licenses. A CPR or universal health precaution class may be only counted once;

(3) Speech-Language Pathology Assistants: Twenty (20) clock hours of documented and approved professional development;

(4) Licensees shall complete the required professional development hours within the two year period prior to license renewal, that is, 24 months prior to Jan. 30 of each even numbered year.

Stat. Auth.: ORS 681

Stats. Implemented:

Hist.: SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

335-095-0050

Supervision Guidelines for the Speech-Language Pathology Assistant

(1) All supervision of services provided by a speech-language pathology assistant must be performed by a speech-language pathologist licensed under ORS Chapter 681.

(2) The amount and type of supervision required will be based on the skills and experience of the speech-language pathology assistant, the needs of the patients/clients served, the service setting, the tasks assigned, and other factors:

(a) A minimum of 30% (20% direct) of all the time an assistant is providing services for the first 90 days of employment shall be supervised;

(b) Subsequent to the first 90 days of employment, a minimum of 20% (10% direct) of all the time an assistant is providing services shall be supervised;

(c) The supervising speech-language pathologist must be able to be reached at all times. A temporary supervisor may be designated as necessary;

(d) The caseload of the supervising clinician must allow for administration, including assistant supervision, evaluation of students and meeting

ADMINISTRATIVE RULES

times. (All students assigned to an assistant are considered part of the case-load of the supervising clinician.)

(3) The supervising SLP must co-initial each clinical entry and co-sign each page of records.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.360, 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

335-095-0060

Scope of Duties for the Speech-Language Pathology Assistant

(1) A speech-language pathology assistant may conduct the following tasks under supervision of the licensed Speech-Language Pathologist:

(a) Conduct speech and language screenings without interpretation, utilizing screening protocols specified by the supervising speech-language pathologist;

(b) Provide direct treatment assistance, excluding dysphasia (as opposed to feeding for nutritional purposes), to patients/clients identified by the supervising SLP by following written treatment plans or protocols developed by the supervising SLP;

(c) Document patient/client progress, without interpretation of findings, toward meeting established objectives as stated in the treatment plan, and report this information to the supervising speech-language pathologist;

(d) Assist the speech-language pathologist in collecting and tallying of data for assessment purposes, without interpretation;

(e) Act as second-language interpreters during assessments;

(f) Assist the speech-language pathologist with informal documentation during an intervention session (collecting and tallying data as directed by the speech-language pathologist), prepare materials, and assist with other clerical duties as specified by the supervising speech-language pathologist;

(g) Schedule activities and prepare charts, records, graphs, or other displays of data;

(h) Perform checks and maintenance of equipment;

(i) Participate with the speech-language pathologist in research projects, in-service training, and public relations programs;

(j) Initial each clinical entry and sign each page of records.

(2) The speech-language pathology assistant may not perform the following tasks:

(a) May not conduct swallowing screening, assessment, and intervention protocols, including modified barium swallow studies;

(b) May not administer standardized or non-standardized diagnostic tests, formal or informal evaluations, or interpret test results.

(c) May not participate in parent conferences, case conferences, or any interdisciplinary team without the presence of the supervising speech-language pathologist;

(d) May not write, develop, or modify a patient/client's treatment plan in any way;

(e) May not provide intervention for patients/clients without following the treatment plan prepared by the supervising speech-language pathologist;

(f) May not sign any formal documents (e.g. treatment plans, reimbursement forms, or reports);

(g) May not select patients/clients for services;

(h) May not discharge patients/clients from services;

(i) May not disclose clinical or confidential information either orally or in writing to anyone not designated by the speech-language pathologist;

(j) May not make referral for additional service;

(k) May not communicate with the patient/client, family, or others regarding any aspect of the patient/client status or service without the specific consent of the supervising speech-language pathologist;

(l) May not represent him/herself as a speech-language pathologist;

(m) May not write a formal screening, diagnostic, progress and/or discharge report.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07

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Rule Caption: Allows audiologists to design one statement to hearing aid purchasers that conforms to all rules.

Adm. Order No.: SPA 2-2007

Filed with Sec. of State: 2-9-2007

Certified to be Effective: 2-9-07

Notice Publication Date: 1-1-07

Rules Amended: 335-001-0000, 335-001-0005, 335-005-0030

Subject: The rule in division 5 is modified so that requirements for Audiology licensees under this chapter do not conflict with requirements for licensees also licensed under ORS 694 as a hearing aid specialist.

Revisions to division 1 corrects the title of the Oregon Hearing Society and adopts the Attorney General's Model Rules, OAR chapter 137, division one and division four.

Rules Coordinator: Brenda Felber—(971) 673-0220

335-001-0000

Notice of Proposed Rule

In addition to such other rulemaking requirements established by law, the Board will also furnish notice of its intended rulemaking to:

(1) Oregon Speech Language Hearing Association;

(2) Oregon State Department of Education;

(3) Oregon Medical Association;

(4) Oregon Hearing Society;

(5) Oregon Academy of Otolaryngology;

(6) Oregon Academy of Speech Pathology and Audiology;

(7) Oregon Academy of Audiology;

(8) Oregon Advisory Council on Hearing Aids;

(9) Those persons on the Agency mailing list.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.335

Hist.: SPA 2, f. & ef. 7-29-76; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 5-2006, f. & cert. ef. 11-3-06; SPA 2-2007, f. & cert. ef. 2-9-07

335-001-0005

Model Rules of Procedure

The Board adopts the Attorney General's Model Rules, OAR chapter 137, division one and division four.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Examiners for Speech Pathology and Audiology.]

Stat. Auth.: ORS 681.420(5)

Stats. Implemented: ORS 183.341

Hist.: SPA 2, f. & ef. 7-29-76; SPA 1-1980, f. & ef. 9-2-80; SPA 1-1986, f. & ef. 9-9-86; SPA 1-1996, f. & cert. ef. 6-7-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 5-2006, f. & cert. ef. 11-3-06; SPA 2-2007, f. & cert. ef. 2-9-07

335-005-0030

Statement to Prospective Hearing Aid Consumer; Contents; Copy Retained

(1) Prior to consummation of the sale of a hearing aid, the audiologist shall provide to the consumer a written statement that shall include but not be limited to all of the following:

(a) The name and address of the prospective hearing aid user;

(b) The date of the sale;

(c) The make, model, and serial number of the hearing aid or aids sold;

(d) A statement on the condition of the hearing aid: new, reconditioned, or used. A used hearing aid is a hearing aid that has been worn for any period of time, excepting hearing aids worn as part of hearing aid evaluations. A reconditioned hearing aid is a used hearing aid that has been rebuilt or is a hearing aid that consists of both old and new parts;

(e) The terms of any guarantee or expressed warranty with respect to the hearing aid or hearing aids;

(f) Statement of right to rescind the sale, length of trial period (minimum 30 days), procedure for extending trial period, procedure for rescinding sale, and the date by which the hearing aid(s) need to be returned to rescind the sale;

(g) The business address of the audiologist;

(h) The name, license number and signature of the audiologist selling the hearing aids;

(i) The procedure for filing a complaint which includes the address and telephone number of the Board and the internet address for the location of complaint forms on the Board's website;

(j) A statement acknowledging that the consumer has read and understands the information contained in the sales agreement, signed by the consumer and dated.

(2) A duplicate copy of the statement required under subsection (1) of this section is a clinical record and as such must be kept for seven years by the audiologist selling the hearing aid.

Stat. Auth.: ORS 681.420(5), 681.460

Stat. Implemented: ORS 681.420

Hist.: SPA 1-2006, f. & cert. ef. 5-8-06; SPA 5-2006, f. & cert. ef. 11-3-06; SPA 2-2007, f. & cert. ef. 2-9-07

ADMINISTRATIVE RULES

Board of Medical Examiners Chapter 847

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

Adm. Order No.: BME 1-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 847-005-0005

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

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

847-005-0005

Fees

- (1) Fees to be effective upon adoption:
 - (a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$375
 - (b) MD/DO Registration: Active, Active — Military/Public Health, and Active — Teleradiology, Inactive, Locum Tenens, and Telemedicine — \$219/year**
 - (c) MD/DO Emeritus Registration — \$50/year
 - (d) Limited License, Institutional Practice, Public Health, SPEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special — \$185
 - (e) Acupuncture Initial License Application — \$245
 - (f) Acupuncture Registration: Active, Inactive, and Locum Tenens — \$140/year**
 - (g) Acupuncture Limited License, Special, Visiting Professor, Postgraduate — \$75
 - (h) Physician Assistant Initial License Application — \$245
 - (i) Physician Assistant Registration: Active, Inactive, and Locum Tenens — \$165/year**
 - (j) Physician Assistant Limited License, Special, Postgraduate — \$75.
 - (k) Podiatrist Initial Application — \$340
 - (l) Podiatrist Registration: Active, Inactive, and Locum Tenens — \$219/year**
 - (m) Podiatrist Emeritus Registration — \$50/year
 - (n) Podiatrist Limited License, Special, Postgraduate — \$185
 - (o) Miscellaneous: All Fines and Late Fees:
 - (A) MD/DO Registration Renewal Late Fee — \$150
 - (B) Acupuncture Registration Renewal Late Fee — \$75
 - (C) Physician Assistant Registration Renewal Late Fee — \$75
 - (D) Podiatrist Registration Renewal Late Fee — \$150
 - (p) Dispensing MD/DO/DPM Failure to Register — \$150
 - (q) Oral Specialty or Competency Examination (\$1,000 deposit required) — Actual costs
 - (r) Affidavit Processing Fee for Reactivation — \$50
 - (s) Licensee Information Requests:
 - (A) Verification of Licensure-Individual Requests (1-4 Licenses) — \$10 per license.
 - (B) Verification of Licensure-Multiple (5 or more) — \$7.50 per license.
 - (C) Verification of MD/DO License Renewal — \$150 biennially.
 - (D) Malpractice Report — Individual Requests — \$10 per license.
 - (E) Malpractice Report — Multiple (monthly report) — \$15 per report.
 - (F) Disciplinary - Individual Requests — \$10 per license
 - (G) Disciplinary Report - Multiple (quarterly report) — \$15 per report.
 - (t) Base Service Charge for Copying — \$5 + .20/page.
 - (u) Record Search Fee (+ copy charges see section (z) of this rule):
 - (A) Clerical — \$20 per hour*
 - (B) Administrative — \$40 per hour*
 - (C) Executive — \$50 per hour*
 - (D) Medical — \$75 per hour*
 - (v) Data Order:
 - (A) Standard Data License Order — \$150 each.

- (B) Custom Data License Order — \$150.00 + \$40.00 per hour Administrative time.
- (C) Address Label Disk — \$100 each.
- (D) Active and Locum Tenens MD/DO list — \$75 each.
- (E) DPM, PA, or AC list — \$10 each.
- (F) Quarterly new MD/DO, DPM, PA, or AC list (1) Fees to be effective upon adoption:
 - (a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$375
 - (b) MD/DO Registration: Active, Active — Military/Public Health, and Active — Teleradiology, Inactive, Locum Tenens, and Telemedicine — \$219/year**
 - (c) MD/DO Emeritus Registration — \$50/year.
 - (d) Limited License, Institutional Practice, Public Health, SPEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate, Special — \$185
 - (e) Acupuncture Initial License Application — \$245
 - (f) Acupuncture Registration: Active, Inactive, and Locum Tenens — \$140/year**
 - (g) Acupuncture Limited License, Special, Visiting Professor, Postgraduate — \$75
 - (h) Physician Assistant Initial License Application — \$245
 - (i) Physician Assistant Registration: Active, Inactive, and Locum Tenens — \$165/year**
 - (j) Physician Assistant Limited License, Special, Postgraduate — \$75
 - (k) Podiatrist Initial Application — \$340
 - (l) Podiatrist Registration: Active, Inactive, and Locum Tenens — \$219/year**
 - (m) Podiatrist Emeritus Registration — \$50/year
 - (n) Podiatrist Limited License, Special, Postgraduate — \$185
 - (o) Miscellaneous: All Fines and Late Fees:
 - (A) MD/DO Registration Renewal Late Fee — \$150
 - (B) Acupuncture Registration Renewal Late Fee — \$75
 - (C) Physician Assistant Registration Renewal Late Fee — \$75
 - (D) Podiatrist Registration Renewal Late Fee — \$150
 - (p) Dispensing MD/DO/DPM Failure to Register — \$150
 - (q) Oral Specialty or Competency Examination (\$1,000 deposit required) — Actual costs.
 - (r) Affidavit Processing Fee for Reactivation — \$50
 - (s) Licensee Information Requests:
 - (A) Verification of Licensure-Individual Requests (1-4 Licenses) — \$10 per license.
 - (B) Verification of Licensure-Multiple (5 or more) — \$7.50 per license.
 - (C) Verification of MD/DO License Renewal — \$150 biennially.
 - (D) Malpractice Report - Individual Requests — \$10 per license.
 - (E) Malpractice Report - Multiple (monthly report) — \$15 per report.
 - (F) Disciplinary — Individual Requests — \$10 per license.
 - (G) Disciplinary Report - Multiple (quarterly report) — \$15 per report.
 - (t) Base Service Charge for Copying — \$5 + .20/page.
 - (u) Record Search Fee (+ copy charges see section (z) of this rule):
 - (A) Clerical — \$20 per hour*
 - (B) Administrative — \$40 per hour*
 - (C) Executive — \$50 per hour*
 - (D) Medical — \$75 per hour*
 - (v) Data Order:
 - (A) Standard Data License Order — \$150 each
 - (B) Custom Data License Order — \$150.00 + \$40.00 per hour Administrative time.
 - (C) Address Label Disk — \$100 each.
 - (D) Active and Locum Tenens MD/DO list — \$75 each.
 - (E) DPM, PA, or AC list — \$10 each.
 - (F) Quarterly new MD/DO, DPM, PA, or AC list — \$10 each.

(2) All Board fees and fines are non-refundable, and non-transferable. — \$10 each.

(2) All Board fees and fines are non-refundable, and non-transferable.

*Plus photocopying charge above, if applicable.

**Collected biennially except where noted in the Administrative Rules. All active registration fees include annual assessments of \$33.00 for the Diversion Program for Health Professionals and all active MD/DO registration fees include \$10.00 for the Oregon Health and Sciences University Library, and are collected biennially.

Stat. Auth.: ORS 677.265 (1)
Stats. Implemented: ORS 677.265
Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & cert. ef. 8-5-88; ME 14-1988, f. & cert. ef. 10-20-88; ME 1-1989, f. & cert. ef. 1-25-89; ME 5-1989 (Temp), f. & cert. ef. 2-

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16-89; ME 6-1989, f. & cert. ef. 4-27-89; ME 9-1989(Temp), f. & cert. ef. 8-1-89; ME 17-1989, f. & cert. ef. 10-20-89; ME 4-1990, f. & cert. ef. 4-25-90; ME 9-1990, f. & cert. ef. 8-2-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 11-1991(Temp), f. & cert. ef. 10-21-91; ME 6-1992, f. & cert. ef. 5-26-92; ME 1-1993, f. & cert. ef. 1-29-93; ME 13-1993, f. & cert. ef. 11-1-93; ME 14-1993(Temp), f. & cert. ef. 11-1-93; ME 1-1994, f. & cert. ef. 1-24-94; ME 6-1995, f. & cert. ef. 7-28-95; ME 7-1996, f. & cert. ef. 10-29-96; ME 3-1997, f. & cert. ef. 11-3-97; BME 7-1998, f. & cert. ef. 7-22-98; BME 7-1999, f. & cert. ef. 4-22-99; BME 10-1999, f. & cert. ef. 8-3-99; BME 14-1999, f. & cert. ef. 10-28-99; BME 4-2000, f. & cert. ef. 2-22-00; BME 6-2001(Temp), f. & cert. ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & cert. ef. 10-30-01; BME 8-2003, f. & cert. ef. 4-24-03; BME 16-2003, f. & cert. ef. 10-23-03; BME 17-2004, f. & cert. ef. 9-9-04; BME 6-2005, f. & cert. ef. 7-20-05; BME 15-2006, f. & cert. ef. 7-25-06; BME 1-2007, f. & cert. ef. 1-24-07

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

Adm. Order No.: BME 2-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Adopted: 847-008-0037

Rules Amended: 847-008-0015, 847-008-0022, 847-008-0023

Subject: The adopted rule change defines Administrative Medicine and adds an Active - Administrative Medicine status for physician licensees; clarifies exceptions to unlimited Active registration status, specifies that licensees granted Active - Military/Public Health, Active - Teleradiology and Active - Telemonitoring statuses must register and pay a biennial active registration fee.

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

847-008-0015

Active Registration

(1) Each licensee of the Board who practices within the State of Oregon shall register and pay a biennial active registration fee prior to the last day of the registration period, except where:

(a) The licensee is in a qualified training program and elects to register on an annual basis.

(b) The licensee practices on an intermittent, locum-tenens basis, as defined in OAR 847-008-0020.

(c) The licensee is in the Military or Public Health Service where the licensee's official state of residence is Oregon as documented by a defense Finance and Accounting Service Military Leave and Earnings Statement, an Oregon voter registration card, or an Oregon driver license, then licensee may maintain an active status by request and by paying the active fee. Practice must be limited to the military or public health service. Licensees granted Active — Military/Public Health status must register and pay a biennial active registration fee. Licensee must file an Affidavit of Reactivation before beginning active practice in Oregon.

(d) The licensee practices teleradiology as defined in OAR 847-008-0022, telemonitoring as defined in OAR 847-008-0023, or telemedicine as defined in OAR 847-025.

(2) Each licensee of the Board whose practice address of record with the Board is within 100 miles of the border of the State of Oregon and who intends to practice within Oregon shall qualify for active registration status. Such licensee shall submit a statement to the Board attesting to practice in Oregon.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.228

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 5-1991, f. & cert. ef. 7-24-91; BME 2-2004, f. & cert. ef. 1-27-04; BME 14-2004, f. & cert. ef. 7-13-04; BME 7-2006, f. & cert. ef. 5-8-06; BME 2-2007, f. & cert. ef. 1-24-07

847-008-0022

Teleradiology Registration

(1) Teleradiology is the electronic transmission of radiological images from one location to another for the purposes of interpretation and/or consultation.

(2) A physician whose specialty is radiology or diagnostic radiology who practices in a location outside of Oregon and receives radiological images via teleradiology from an Oregon location for interpretation or consultation and who communicates his/her radiological findings back to the ordering physician is practicing teleradiology for Oregon. A physician practicing teleradiology for Oregon is not required to be licensed in Oregon. The Board, however, offers a license with Active — Teleradiology registration status for those physicians who require such for administrative reasons.

(3) Physicians granted Active — Teleradiology status must register and pay a biennial active registration fee. The physician with Active —

Teleradiology status desiring to have Active status to practice in Oregon must file an Affidavit of Reactivation.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: BME 14-2004, f. & cert. ef. 7-13-04; BME 2-2007, f. & cert. ef. 1-24-07

847-008-0023

Telemonitoring Registration

(1) Telemonitoring is the intraoperative monitoring of data collected during surgery and electronically transmitted to a physician who practices in a location outside of Oregon via a telemedicine link for the purpose of allowing the monitoring physician to notify the operating team of changes that may have a serious effect on the outcome and/or survival of the patient. The monitoring physician is in communication with the operation team through a technician in the operating room.

(2) The facility where the surgery is to be performed must be a licensed hospital or ambulatory surgical center licensed by the Department of Human Services, must grant medical staff membership and/or clinical privileges to the monitoring physician, and must request the Board of Medical Examiners grant Active- Telemonitoring status to the monitoring physician to perform intraoperative telemonitoring on patients during surgery.

(3) Physicians granted Active — Telemonitoring status must register and pay a biennial active registration fee. The physician with Active — Teleradiology status desiring to have Active status to practice in Oregon must file an Affidavit of Reactivation.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172, 677.175

Hist.: BME 1-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06; BME 8-2006, f. & cert. ef. 5-8-06; BME 2-2007, f. & cert. ef. 1-24-07

847-008-0037

Administrative Medicine

(1) A physician who proposes to practice Administrative Medicine within the State shall apply for and obtain a license.

(2) A physician with an Administrative Medicine license may not examine, care for or treat patients. A physician with an Administrative Medicine license may advise organizations, both public and private, on healthcare matters; authorize and deny financial payments for care; organize and direct research programs; review care provided for quality; and other similar duties that do not require direct patient care.

(3) Physicians granted Active — Administrative Medicine status must register and pay a biennial active registration fee.

(4) The licensee with Active — Administrative Medicine status desiring to have Active status to practice in Oregon must file an Affidavit of Reactivation.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172, 677.175

Hist.: BME 2-2007, f. & cert. ef. 1-24-07

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

Adm. Order No.: BME 3-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 847-010-0063, 847-010-0073

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

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

847-010-0063

Limited License, Medical Faculty

(1) A physician qualifying under OAR 847-020-0140(1) may be granted a Limited License, Medical Faculty after applying to and being approved by the Board at a quarterly Board meeting. This will be deemed to be a valid license to the extent that such practice is incident to and a necessary part of the applicant's duties as approved by the Board in connection with such faculty position.

(2) A Limited License, Medical Faculty is valid for one year after issuance as frequently as needed for a total period not to exceed four years.

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(3) Having completed four years of practice under a Limited License, Medical Faculty and successfully passed USMLE Steps 1, 2 and 3, or having previously passed the FLEX, the National Board of Medical Examiners examination or the National Board of Osteopathic Medical Examiners examination, or a combination of all three, per OAR 847-020-0170(1), the applicant is eligible for licensure regardless of any other requirements of this Chapter.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.132
Hist.: ME 21-1987, f. & ef. 10-29-87; ME 11-1988, f. & cert. ef. 8-5-88; ME 4-1993, f. & cert. ef. 4-22-93; BME 5-2001, f. & cert. ef. 4-23-01; BME 2-2002, f. & cert. ef. 1-28-02; BME 5-2004, f. & cert. ef. 4-22-04; BME 3-2007, f. & cert. ef. 1-24-07

847-010-0073

Reporting Incompetent or Impaired Physicians to the Board

(1) ORS 677.415 requires health care facilities and Board licensees to report to the Board of Medical Examiners any official action, incident or event taken against or involving a Board licensee, based on a finding of medical incompetence, unprofessional conduct, or licensee impairment, within ten working days of their occurrence. For the purposes of the statute, the terms medical incompetence, unprofessional conduct, and impaired licensee have the following meanings:

(a) Medical incompetence: A licensee who is medically incompetent is one who is unable to practice medicine with reasonable skill or safety due to lack of knowledge, ability, or impairment. Evidence of medical incompetence shall include:

(A) Gross or repeated acts of negligence involving patient care.

(B) Failure to achieve a passing score or satisfactory rating on a competency examination or program of evaluation when the examination or evaluation is ordered or directed by a health care facility.

(C) Failure to complete a course or program of remedial education when ordered or directed to do so by a health care facility.

(b) Unprofessional conduct: Unprofessional conduct includes the behavior described in ORS 677.188 (4) and is conduct which is unbecoming to a person licensed by the Board of Medical Examiners or detrimental to the best interest of the public and includes:

(A) Any conduct or practice contrary to recognized standards of ethics of the medical, podiatric or acupuncture professions or any conduct which does or might constitute a danger to the public, to include a violation of patient boundaries.

(B) Willful performance of any surgical or medical treatment which is contrary to acceptable medical standards.

(C) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic studies, administration of unnecessary treatment, employment of outmoded, unproved, or unscientific treatments, except as allowed in ORS 677.190 (1)(b), failing to obtain consultations when failing to do so is not consistent with the standard of care, or otherwise utilizing medical service for diagnosis or treatment which is or may be considered unnecessary or inappropriate.

(D) Committing fraud in the performance of, or the billing for, medical procedures.

(E) Sexual misconduct: Licensee sexual misconduct is behavior that exploits the licensee-patient relationship in a sexual way. The behavior is non-diagnostic and non-therapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes but is not limited to:

(I) Sexual violation: Licensee-patient sex, whether or not initiated by the patient, and engaging in any conduct with a patient that is sexual or may be reasonable interpreted as sexual, including but not limited to:

(i) Sexual intercourse

(ii) Genital to genital contact

(iii) Oral to genital contact

(iv) Oral to anal contact

(v) Genital to anal contact

(vi) Kissing in a romantic or sexual manner

(vii) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent

(viii) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present

(ix) Offering to provide practice-related services, such as medications, in exchange for sexual favors

(II) Sexual impropriety: Behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient

(c) Licensee Impairment: A licensee who is impaired is a licensee who is unable to practice medicine with reasonable skill or safety due to factors which include, but are not limited to:

(A) The use or abuse of alcohol, drugs, or other substances which impair ability.

(B) Mental or emotional illness.

(C) Physical deterioration or long term illness or injury which adversely affects cognition, motor, or perceptive skills.

(2) For the purposes of the reporting requirements of this rule and ORS 677.415, licensees shall be considered to be impaired if they refuse to undergo an evaluation for mental or physical competence or chemical impairment, or if they resign their privileges to avoid such an evaluation, when the evaluation is ordered or directed by a health care facility or by this Board.

(3) A report made by a healthcare facility, organization or individual to the Board of Medical Examiners under ORS 677.415 shall include the following information:

(a) The name and title of the person making the report;

(b) Where an "official action, incident or event," including a voluntary resignation, or voluntary limitation of staff privileges at an institution while under investigation has been taken against a licensee, a statement describing the action and the name, job title and location of the licensee being reported;

(c) A description of the basis for the action, including voluntary resignation or voluntary limitation of staff privileges at an institution while under investigation, not to include information pursuant to ORS 41.675; and

(d) To facilitate the Board investigation, a complete list of patients and the medical record numbers which were reviewed and are relevant to the action.

(4) In addition to the subject matter of a report required under section (3) of this rule, a licensee shall include in his/her written report a summary of the licensee's understanding of the complaint giving rise to the reporting requirement.

(5) All required reports shall be made in writing.

(6) Any person who reports or provides information to the board under ORS 677.205 and 677.410 to 677.425 and who provides information in good faith shall not be subject to an action for civil damages as a result thereof.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.415

Hist.: BME 5-2004, f. & cert. ef. 4-22-04; BME 9-2006, f. & cert. ef. 5-8-06; BME 3-2007, f. & cert. ef. 1-24-07

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Rule Caption: Obtain and use criminal history information; remove filing deadline and LLMF renewal limit for physicians.

Adm. Order No.: BME 4-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 10-1-06, 12-1-06

Rules Adopted: 847-020-0155

Rules Amended: 847-020-0110, 847-020-0140

Subject: The rule adoption is required, per HB 2157, Section 2, in order for the Board to request the Oregon State Police conduct a criminal records check, including fingerprint identification, through the FBI, on an applicant or licensee. The adopted rule amendments remove reference to a 60-day application filing deadline for physicians and remove the limit on the number of times the Limited License Medical Faculty (LLMF) may be renewed but maintain that a physician may not practice under an LLMF for more than four years total.

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

847-020-0110

Application for Licensure

(1) When applying for licensure by reciprocity or endorsement, the applicant shall submit to the Board the completed application, fees, documents and letters.

(2) A person applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period shall file a new application, documents, letters and pay a full filing fee as if filing for the first time. If the personal interview is canceled and rescheduled within the 12 consecutive months, an update of the application will be required.

Stat. Auth.: ORS 677.265

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Stats. Implemented: ORS 677.100
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 4-2007, f. & cert. ef. 1-24-07

847-020-0140

Limited License, Medical Faculty, and Limited License, Visiting Professor

(1)(a) Any physician who does not qualify for a medical license under any of the provisions of this chapter and who is offered by the Dean of an approved medical school in this state a full-time faculty position may, after application to and approval by the Board at a quarterly meeting of the Board, be granted a Limited License, Medical Faculty to engage in the practice of medicine only to the extent that such practice is incident to and a necessary part of the applicant's duties as approved by the Board in connection with such faculty position.

(b) To qualify for a Limited License, Medical Faculty an applicant shall meet all the following requirements:

(A) Furnish documentary evidence satisfactory to the Board that the applicant is a United States citizen or is legally admitted to the United States.

(B) Furnish documentary evidence satisfactory to the Board that the applicant has been licensed to practice medicine and surgery for not less than four years in another state or country whose requirements for licensure are satisfactory to the Board, or has been engaged in the practice of medicine in the United States for at least four years in approved hospitals, or has completed a combination of such licensure and training.

(C) The dean of the medical school shall certify in writing to the Board that the applicant has been appointed to a full-time faculty position; that a position is available; and that because the applicant has unique expertise in a specific field of medicine, the medical school considers the applicant to be a valuable member of the faculty.

(D) The head of the department in which the applicant is to be appointed shall certify in writing to the Board that the applicant will be under the direction of the head of the department and will not be permitted to practice medicine unless as a necessary part of the applicant's duties as approved by the Board in subsection (a) of this section.

(E) The applicant may be required to take and pass an examination by the Board.

(c) A Limited License, Medical Faculty is valid for one year after issuance as frequently as needed for a total period not to exceed four years, during which time the applicant must pass USMLE Steps 1, 2 and 3, or have previously passed the FLEX, or National Board of Medical Examiners Examination or a combination of all three per OAR 847-020-0170(1). Having completed four years of practice under a Limited License, Medical Faculty and successfully passed either the FLEX examination, the National Board of Medical Examiners Examination, or USMLE Steps 1, 2 and 3, the applicant is eligible for licensure regardless of any other requirements of this Chapter.

(2)(a) Any physician who does not qualify for a medical license under any of the provisions of this Chapter and who is offered a teaching fellowship at an approved medical school or affiliated teaching institution in this state may, after application to and approval by the Board, be granted a Limited License, Visiting Professor for two years to practice medicine only to the extent that such practice is incident to and a necessary part of the duties as approved by the Board in connection with such faculty position.

(b) To qualify for a Limited License, Visiting Professor, an applicant shall furnish documentary evidence satisfactory to the Board of graduation from a school of medicine, and a curriculum vitae;

(c) The head of the department in which the applicant is to be appointed 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 medicine unless as a necessary part of the applicant's duties as approved by the Board in subsection (a) of this section.

(d) The Limited License, Visiting Professor shall be granted for a period of one year, and upon written request, may be renewed for one additional year. The two years must be consecutive, and any unused portion of time can not be requested at a later date.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.132
Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 2-2002, f. & cert. ef. 1-28-02; BME 5-2002, f. & cert. ef. 4-23-02; BME 3-2006, f. & cert. ef. 2-8-06; BME 4-2007, f. & cert. ef. 1-24-07

847-020-0155

State and Nationwide Criminal Records Checks, Fitness Determinations

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees in order to determine if they have a history

of criminal behavior such that they are not fit to be granted or renewed a license that is issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require fingerprints of all applicants for a medical (MD/DO), podiatric (DPM), physician assistant (PA), and acupuncturist (LAc) license, licensees renewing their license and licensees under investigation to determine the fitness of an applicant or licensee. These fingerprints will be provided on prescribed forms made available by the Board. Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the Board; the Board will submit fingerprints to the Oregon Department of State Police to conduct a Criminal History Check and a National Criminal History Check. Any original fingerprint cards will subsequently be destroyed by the Oregon Department of State Police.

(4) The Board determines whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit the licensee's license may not be renewed. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(6) All requested background checks include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) In order to conduct the Oregon and National Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary, such as but not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under HB 2157 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175(1).

(9) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(10) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 670.280. The Board may also consider any arrests and court records that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(11) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.414-470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or

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reporting agency and not through the contested case process pursuant to ORS 183.

(12) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265(9)
Hist. BME 20-2006(Temp), f. & cert. ef. 9-14-06 thru 3-12-07; BME 4-2007, f. & cert. ef. 1-24-07

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

Adm. Order No.: BME 5-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 847-025-0050

Subject: The adopted rule amendment removes reference to the 60-day application filing deadline for a license to practice medicine across state lines.

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

847-025-0050

Application

(1)(a) When applying for a license to practice medicine across state lines, the physician shall submit to the Board the completed application, fees, documents, letters, and any other information required by the Board for physician (MD/DO) licensure as stated in OAR 847, Division 020.

(b) A description of the applicant's intended practice of medicine across state lines in the state of Oregon.

(2) A physician applying for a license to practice medicine across state lines who has not completed the licensure process within a 12 month consecutive period shall file a new application, documents, letters and pay a full filing fee as if filing for the first time.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.139, 677.265
Hist.: BME 10-2000, f. & cert. ef. 7-27-00; BME 2-2002, f. & cert. ef. 1-28-02; BME 5-2007, f. & cert. ef. 1-24-07

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

Adm. Order No.: BME 6-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 847-028-0030

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

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

847-028-0030

Application

(1) When applying for a license to volunteer medical services at a camp operated by a nonprofit organization, the physician shall submit to the Board the completed application, fees, documents, letters, and any other information required by the Board for physician (MD/DO) licensure as stated in OAR 847, Division 020.

(2) A physician applying for a license to volunteer medical services at a camp operated by a nonprofit organization who has not completed the process within a 12 month consecutive period shall file a new application, documents, letters and pay a full filing fee as if filing for the first time.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.265
Hist.: BME 3-2002, f. & cert. ef. 1-28-02; BME 6-2007, f. & cert. ef. 1-24-07

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

Adm. Order No.: BME 7-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 847-035-0030

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

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

847-035-0030

Scope of Practice

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

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

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

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

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

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

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

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

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

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

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and
(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

(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;

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- (b) Ventilate with a non-invasive positive pressure delivery device;
- (c) Insert a cuffed pharyngeal airway device in the practice of airway maintenance. A cuffed pharyngeal airway device is:
 - (A) A single lumen airway device designed for blind insertion into the esophagus providing airway protection where the cuffed tube prevents gastric contents from entering the pharyngeal space; or
 - (B) A multi-lumen airway device designed to function either as the single lumen device when placed in the esophagus, or by insertion into the trachea where the distal cuff creates an endotracheal seal around the ventilatory tube preventing aspiration of gastric contents.
- (d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;
- (f) Provide care for suspected medical emergencies, including:
 - (A) Obtaining a capillary blood specimen for blood glucose monitoring;
 - (B) Administer epinephrine by subcutaneous injection or automatic injection device for anaphylaxis;
 - (C) Administer activated charcoal for poisonings; and
 - (D) Administer aspirin for suspected myocardial infarction.
- (g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;
 - (h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;
 - (i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;
 - (j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;
 - (k) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient; and
 - (l) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer atropine sulfate and pralidoxime chloride from a Section-approved pre-loaded auto-injector device, and perform endotracheal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline.
 - (m) In the event of a release of chemical agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride, using protocols approved by the Section and adopted by the supervising physician, if:
 - (A) The supervising physician provides the EMT-Basic with a direct, verbal order through radio or telephone contact, or
 - (B) The EMT-Basic is under the direction of an EMT-Paramedic who is on the scene.
- (10) An Oregon-certified EMT-Intermediate may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to the following:
 - (a) Perform all procedures that an Oregon-certified EMT-Basic can perform;
 - (b) Initiate and maintain peripheral intravenous (I.V.) lines;
 - (c) Initiate and maintain an intraosseous infusion;
 - (d) Initiate saline or similar locks;
 - (e) Draw peripheral blood specimens;
 - (f) Administer the following medications under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician:
 - (A) Physiologic isotonic crystalloid solution.
 - (B) Vasoconstrictors:
 - (i) Epinephrine
 - (ii) Vasopressin;
 - (C) Antiarrhythmics:
 - (i) Atropine sulfate,
 - (ii) Lidocaine,
 - (iii) Amiodarone;
 - (D) Antidotes:
 - (i) Naloxone hydrochloride;
 - (E) Antihypoglycemics:
 - (i) Hypertonic glucose,
 - (ii) Glucagon;
 - (F) Vasodilators:
 - (i) Nitroglycerine;
 - (G) Nebulized bronchodilators:
 - (i) Albuterol,
 - (ii) Ipratropium bromide;
 - (H) Analgesics:
 - (i) Morphine,
 - (ii) Nalbuphine Hydrochloride,
 - (iii) Ketorolac tromethamine;
 - (I) Antihistamine:
 - (i) Diphenhydramine;
 - (J) Diuretic:
 - (i) Furosemide;
 - (g) 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 thoracentesis for tension pneumothorax in a pre-hospital setting;
 - (h) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;
 - (i) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and
 - (j) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.
 - (12) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:
 - (a) Designing the supervising physician and agent application;
 - (b) Approving a supervising physician or agent; and
 - (c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.
 - (d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.
 - (13) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245

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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

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

Adm. Order No.: BME 8-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 847-080-0001, 847-080-0002

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

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

847-080-0001

Definitions

(1) “Ankle” means the tibial plafond and its posterolateral border or posterior malleolus, the medial malleolus, the distal fibula or lateral malleolus, and the talus.

(2) “Board” means the Board of Medical Examiners of the State of Oregon.

(3) “Podiatric physician and surgeon” means a podiatric physician and surgeon whose practice is limited to treating ailments of the human foot, ankle, and tendons directly attached to and governing the function of the foot and ankle.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.805

Hist.: ME 6-1986, f. & ef. 4-23-86; BME 11-2000, f. & cert. ef. 7-27-00; BME 8-2007, f. & cert. ef. 1-24-07

847-080-0002

Application for Licensure

(1) When applying for licensure the applicant shall submit to the Board the completed application, fees (as per OAR 847-005-0005), documents and letters.

(2) A person applying for licensure under these rules who has not completed the licensure process within a 12 month consecutive period shall file a new application, documents, letters and pay a full filing fee as if filing for the first time. If the personal interview is canceled and rescheduled within the 12 consecutive months, an update of the application will be required.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100

Hist.: ME 6-1986, f. & ef. 4-23-86; ME 3-1990, f. & cert. ef. 1-29-90; BME 8-2007, f. & cert. ef. 1-24-07

Rule Caption: Streamline the application for out-of-state physicians applying for Emeritus status.

Adm. Order No.: BME 9-2007(Temp)

Filed with Sec. of State: 2-6-2007

Certified to be Effective: 2-6-07 thru 8-3-07

Notice Publication Date:

Rules Adopted: 847-023-0010, 847-023-0015

Subject: Temporary adoption of rules establishes licensure requirements in division 023 — Rules for Licensure of Volunteer Emeritus Physicians, to streamline the application process for out-of-state physician applicants for Emeritus status.

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

847-023-0010

Documents and Forms to be Submitted for Licensure

The documents submitted must be no larger than 8 1/2” x 11”. All documents and photographs will be retained by the Board as a permanent

part of the application file. If original documents are larger than 8 1/2” x 11”, the copies must be reduced to the correct size with all wording and signatures clearly shown. The application form and photographs must be originals and all other documents must be legible copies. The following documents are required for a physician applying for an Oregon license, with emeritus registration:

(1) Application Form: Completed formal application form provided by the Board. Each and every question must be answered with dates, showing month and year. The application fee is waived for physicians applying for an Oregon license, with emeritus registration.

(2) Birth Certificate: A copy of birth certificate for proof of name and birth date.

(3) Medical school Diploma: A copy of a diploma showing graduation from an approved school of medicine or a foreign school of medicine. Foreign medical graduates must have graduated after meeting the attendance requirements specified in OAR 847-020-0130 (1)(b).

(4) Fifth Pathway Certificate. A copy of fifth Pathway Certificate if such program has been completed.

(5) American Specialty Board Certification or Recertification. A copy of the certification or recertification certificate issued by the American Board Specialty Board in the applicant’s specialty, if applicable

(6) Photograph: A close-up, finished, original photograph (passport quality), no smaller than 2” x 2” and no larger than 2 1/2” x 3”, front view, head and shoulders (not profile), with features distinct, taken within 90 days preceding the filing of the application with the applicant’s signature in ink and date taken on the photograph side.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.120, 677.265

Hist.: BME 9-2007(Temp), f. & cert. ef. 2-6-07 thru 8-3-07

847-023-0015

Letters and Official Grade Certifications to be Submitted for Licensure with Emeritus Registration

(1) The applicant for licensure with emeritus registration must either request official letters to be sent directly to the Board from the following sources or a certified copy from another state medical board where the applicant is licensed:

(a) The Dean of the Medical/Osteopathic School to complete the Verification of Medical Education form, which includes: degree issued, date of degree, dates of attendance, dates and reason of any leaves of absence or repeated years, and dates, name and location of medical school if a transfer student, and submit directly to the Board. Graduates of U.S. medical schools must have graduated from a school per OAR 847-020-020 and graduates of a foreign medical school must have graduated from a school per OAR 847-020-0130.

(b) A copy of the Dean’s Letter of Recommendation which shall include a statement concerning the applicant’s moral and ethical character and overall performance as a medical student.

(c) The Program Director, Chairman or other official of the Fifth Pathway Hospital, if such applies: A currently dated original letter from the hospital in which such training was served, shall include an evaluation of overall performance and specific beginning and ending dates of training. A certified copy from the state medical board is acceptable.

(d) The Director of Medical Education, Chairman or other official of the internship, residency and fellowship hospitals in U.S. and foreign countries, in which the postgraduate training was served, which shall include an evaluation of overall performance and specific beginning and ending dates of training.

(2) The applicant for licensure with emeritus registration must request official letters to be sent directly to the Board from the following sources:

(a) The Director or other official for practice and employment in hospitals, clinics, etc. in the U.S. and foreign countries: A currently dated original letter (a copy is not acceptable), from the hospital/clinic which shall include an evaluation of overall performance and specific beginning and ending dates of practice and employment, for the past five (5) years only. If the applicant has not practiced for more than two years, employment verifications will be required for the past ten (10) years. For physicians who have been or are in solo practice without hospital privileges at the time of solo practice, provide three reference letters from physicians in the local medical community who are familiar with the applicant’s practice and who have known the applicant for more than six months.

(b) The Executive Secretary of the State Board in the United States or Canada where the applicant has been licensed and is currently practicing or most recently practiced. The currently dated original letter (a copy is not acceptable) from the board shall show license number, date issued and status.

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(c) Official Grade Certifications: An official grade certification is required from the National Board of Medical Examiners (NBME), National Board of Osteopathic Medical Examiners (NBOME), Federation Licensing Examination (FLEX), or the Federation of State Medical Boards for the United States Medical Licensing Examination (USMLE).

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.120, 677.265
Hist.: BME 9-2007(Temp), f. & cert. ef. 2-6-07 thru 8-3-07

Board of Parole and Post-Prison Supervision Chapter 255

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

Adm. Order No.: PAR 1-2007

Filed with Sec. of State: 2-1-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 12-1-06

Rules Amended: 255-070-0003

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

Rules Coordinator: Peggy Barber—(503) 945-0914

255-070-0003

Offender Return to County of Residence

(1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the first six months in the county where the offender resided at the time of the offense that resulted in the imprisonment.

(2)(a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:

(A) An Oregon driver's license, regardless of its validity;

(B) The Department of Revenue;

(C) The Department of State Police, Bureau of Criminal Identification;

(D) The Department of Human Resources; or

(E) The Department of Corrections.

(b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.

(c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

(d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.

(3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

(a) The offender provided proof of a job with no set ending date in a county other than the established county of residence;

(b) The offender poses a significant danger to the victim;

(c) The victim or victim's family poses a significant danger to the offender residing in the county of residence.

(d) The offender has a spouse or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;

(e) The Board requires that the offender participate in a treatment program which is not available in the county of residence;

(f) The offender desires release to another state or another state has a detainer; or

(g) Other good cause.

Stat. Auth.: ORS 144.270(5)

Stats. Implemented:

Hist.: PAR 4-1989, f. & ef. 11-1-89; PAR 6-1991, f. & cert. ef. 10-15-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 5-1999(Temp), f. & cert. ef. 9-15-99 thru 3-12-00; PAR 10-1999, f. & cert. ef. 11-15-99; PAR 1-2007, f. & cert. ef. 2-1-07

Rule Caption: Amendment of Rules Regarding Procedure for Conducting Murder Review Hearings pursuant to the *Larsen* decision.

Adm. Order No.: PAR 2-2007(Temp)

Filed with Sec. of State: 2-1-2007

Certified to be Effective: 2-1-07 thru 7-30-07

Notice Publication Date:

Rules Adopted: 255-032-0022, 255-032-0027, 255-032-0029, 255-032-0030, 255-032-0031, 255-032-0032

Rules Amended: 255-032-0025

Subject: The amendment of this rule is necessary in order to be consistent with the Oregon Court of Appeals ruling in *Larsen v. Board of Parole*, 206 Or App 353 (2006).

Rules Coordinator: Peggy Barber—(503) 945-0914

255-032-0022

Murder Review Hearings Notice

The Board's contested case notice issued pursuant to ORS 183.415 must include:

(1) A statement that the sole issue to be considered shall be whether or not the inmate is likely to be rehabilitated within a reasonable period of time, and that the inmate shall have the burden of proof, by a preponderance of the evidence;

(2) A statement of the inmate's right to be represented by counsel; and if the inmate is without sufficient funds, counsel will be appointed by the Board at Board expense;

(3) A statement that the Board has authority and jurisdiction to hold a hearing on the issue pursuant to ORS 163.105(2) or 163.115(5); and

(4) A statement of rights of the inmate at the hearing.

Stat. Auth.: ORS 183.415, 163.105(2), 163.115(5)

Stats. Implemented:

Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07

255-032-0025

Manner of Review Hearing

(1) The Board shall conduct the proceeding in the manner prescribed for a contested case hearing under ORS Chapter 183 except that:

(a) The inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(b) If the inmate is without sufficient funds to employ an attorney, the inmate shall have the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 per hour and \$1000 per case. The attorney shall send the Board a billing within 90 days of the hearing.

(2) During hearings of the Board, the chairperson or designated board member shall preside. The presiding member shall designate the order of presentation and questioning. The presiding member shall also determine the scope of questioning and may set time limits and cut off irrelevant questions and irrelevant or unresponsive answers.

(3) At the commencement of the hearing, the presiding board member shall explain the issues involved in the hearing and that the inmate shall have the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time.

(4) Testimony at the hearing shall be taken upon oath or affirmation of the witness from whom it is received. The presiding board member shall administer oaths or affirmations to witnesses.

(5) The initial testimony of each witness shall not exceed three minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.

(6) The record in a Murder Review Hearing must include:

(a) Evidence received or considered;

(b) Stipulations;

(c) Questions and offers of proof, objections and rulings thereon;

(d) Proposed findings and exceptions; and

(e) Any proposed, intermediate, or final order prepared by the Board.

(7) If upon hearing all the evidence, the full Board, upon a unanimous vote of all members, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition.

(8) When an inmate has a consecutive sentence for a crime other than Aggravated Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentence(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the Aggravated Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415

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Stats. Implemented:
Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 3-2001, f. & cert. ef. 2-6-01; PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07

255-032-0027

Inmate's Right to Review Record; Exceptions

Except as provided in OAR 255-015-0010, all exhibits to be considered by the Board shall be disclosed to the inmate's attorney or the inmate, if proceeding pro se, within a reasonable period of time before the hearing:

- (1) Exhibits not available prior to the hearing shall be made available to the inmate's attorney or to the inmate, if not represented, at the hearing.
- (2) All material relevant and pertinent to issues before the Board shall be made a part of the record.
- (3) Any material not made part of the record shall be separated and a statement to that effect shall be placed in the record. The board shall follow the criteria for denial or disclosure of records set out in OAR 255-015-0010.

Stat. Auth.: ORS 183.335, 192.410 – 192.505, 144.025(3) & 144.050
Stats. Implemented:
Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07

255-032-0029

Subpoenas for a Murder Review Hearing

(1) Inmates must make their own arrangements for calling and presenting witnesses. However, upon the request of an inmate, and upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas requiring the attendance and testimony of witnesses.

(2) Witnesses are not required to appear in person, but may participate via teleconference.

(3) Witnesses appearing pursuant to subpoena, other than inmates, state officers, or employees of the Board, must receive fees and mileage payable by the Board as prescribed by law for witnesses in ORS 44.415(2), provided the Board certifies that the witness's testimony was relevant and material to the hearing.

Stat. Auth.: ORS 44.415, 183.440
Stats. Implemented:
Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07

255-032-0030

Evidence in a Murder Review Hearing

(1) Irrelevant, immaterial, or unduly repetitious evidence will be excluded, and privileges afforded by Oregon law shall be recognized by the presiding member. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs will be admissible. All offered evidence, not objected to, will be received by the presiding member subject to the presiding member's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(2) In determining whether the evidence is material, relevant or reliable, the Board shall consider the following:

- (a) The age and source of the documents;
- (b) The ability of the witness to have observed and had personal knowledge of the incidents;
- (c) The credibility of the witness and whether the witness has bias or interest in the matter.

(3) The inmate, the inmate's attorney, or the Board, may object to any evidence. Objections to evidence being introduced by the Board or the inmate may be made and will be noted in the record. The presiding board member must accept an offer of proof for excluded evidence. The offer of proof must contain sufficient detail to allow the Board or a court to determine whether the evidence was properly excluded. The presiding member shall have discretion to decide whether the offer of proof is to be oral or written and at what stage of the proceeding it will be made. The presiding member may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer. The Board may decide the following:

- (a) To sustain the objection and deny the admission and consideration of the evidence on the grounds that it is not material, relevant or reliable; or
- (b) To overrule the objection and admit the evidence and in considering the weight given to that evidence, consider the reason for the objection.
- (4) The Board will consider all available relevant evidence for purposes of determining the inmate's likelihood of rehabilitation within a reasonable period of time.

(5) The Board and the inmate will have the right of cross-examination of each witness that testifies, and will have the right to submit rebuttal evidence.

Stat. Auth.: ORS 163.105, 163.115, 183.450
Stats. Implemented:
Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07

255-032-0031

Final Orders in Murder Review Hearings

(1) Final orders in Murder Review hearings must be in writing, and if adverse to the inmate include the following:

(a) Findings of fact — a concise statement of those matters that are either agreed as fact or that, when disputed, are determined by the Board to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based; and

(b) Conclusion(s) of law — applications of the controlling law to the facts found and the legal results of the application.

(2) If the Board finds that the inmate has proven by a preponderance of the evidence that the inmate is likely to be rehabilitated within a reasonable period of time, then it is not necessary that the final order include findings of fact or conclusions of law.

(3) The Board may also issue its decision orally on the record at the hearing.

Stat. Auth.: ORS 163.105, 163.115, 183.470
Stats. Implemented:
Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07

255-032-0032

Continuance of Hearings; Cancellation of Hearings

(1) Upon the request of any party or on its own motion, the Board may, for good cause, continue a hearing for a reasonable period of time not to exceed 60 days to obtain additional information required to assist the Board in its decision.

(2) If an inmate asks for cancellation of a hearing, it must be for good cause, in writing, and with seven days advance notice. If the board finds that the cancellation request does not fulfill these requirements, the inmate shall not be eligible to request another hearing for 90 days from the date of the scheduled hearing.

Stat. Auth.: ORS 183.341(2)
Stats. Implemented:
Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07

Bureau of Labor and Industries
Chapter 839

Rule Caption: Employer must request additional information before treating potential OFLA leave as an unauthorized absence.

Adm. Order No.: BLI 1-2007

Filed with Sec. of State: 1-16-2007

Certified to be Effective: 1-17-07

Notice Publication Date: 11-1-06

Rules Amended: 839-009-0250

Subject: This amendment will provide that an employer having reason to believe an employee's continuing absence following OFLA leave may qualify as OFLA leave may not treat the absence as unauthorized unless the employer requests additional information to determine whether the absence is OFLA qualifying.

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

839-009-0250

Notice by Employee; Designation by Employer

(1) Except in situations described in sections (2) and (3) of this rule, a covered employer may require an eligible employee to give 30 days written notice, including an explanation of the need for leave, before starting OFLA leave. The employee is not required to specify that the request is for OFLA leave:

(a) An employee able to give advance notice of the need to take OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave;

(b) An employer may request additional information to determine that a requested leave qualifies for designation as OFLA leave, except in cases of parental leave (no medical certification required) or sick child leave (no medical verification may be required until after three occurrences);

(c) The employer may provisionally designate an absence as OFLA leave until sufficient information is received to make a determination;

(d) An employee on OFLA leave who needs to take more leave than

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originally authorized should give the employer reasonable notice prior to the end of the authorized leave, following the employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of OFLA leave has ended and an employee does not return to work, an employer having reason to believe the continuing absence may qualify as OFLA leave must request additional information, and may not treat a continuing absence as unauthorized unless requested information is not provided or does not support OFLA qualification.

(2) When an employee is unable to give the employer 30 days notice, the employee is encouraged to give the employer as much advance notice as is practicable.

(3) When taking OFLA leave in an unanticipated or emergency situation, an employee must give verbal or written notice within 24 hours of commencement of the leave. This notice may be given by any other person on behalf of an employee taking unanticipated OFLA leave. The employer may require written notice by the employee within three days of the employee's return to work.

(4) If an employee fails to give notice as required by sections (1), (2), and (3) of this rule or the employer's policies, the employer may reduce the period of unused OFLA leave by up to three weeks in that one-year leave period:

(a) The employee may also be subject to disciplinary action under an employer's uniformly applied policy or practice. This practice must be consistent with the employer's discipline for similar violations of comparable rules;

(b) An employer may not reduce an employee's available OFLA leave or take disciplinary action unless the employer has posted the required Bureau of Labor and Industries Family Leave Act notice or the employer can otherwise establish that the employee had actual knowledge of the notice requirement;

(c) Federal regulations prohibit reducing the leave period under FMLA, but allow an employer to delay the start of leave because of improper notice (see 29 CFR § 825.304);

(d) When an employee is subject to both FMLA and OFLA, the employer must apply the discipline available under (4)(a) or (c) of this rule that is most beneficial to the employee's individual circumstances.

Stat. Auth.: ORS 659A.805

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

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 1-2007, f. 1-16-07, cert. ef. 1-17-07

Rule Caption: Clarifies application of the PWR to Construction Manager/General Contractor ("CM/GC") contracts.

Adm. Order No.: BLI 2-2007

Filed with Sec. of State: 1-23-2007

Certified to be Effective: 1-23-07

Notice Publication Date: 12-1-04

Rules Amended: 839-025-0020

Subject: The amendment to OAR 839-025-0020 clarifies application of the Prevailing Wage Rate (PWR) law to Construction Manager/General Contractor ("CM/GC") contracts by providing that a CM/GC contract becomes a public works contract under the PWR law either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time applies and is required to be included with the construction specifications for the CM/GC contract. For purposes of this rule, the CM/GC contract is deemed to have entered "the construction phase" when the public agency first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project.

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

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions

(1) For purposes of this rule:

(a) "Construction Manager/General Contractor contract" (or "CM/GC contract") means a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, con-

structability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the pre-construction tasks are complete or substantially complete. "CM/GC" refers to the general contractor/construction manager under this form of contract. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team;

(b) "Construction specifications" include the detailed description of physical characteristics of the improvement, design details, technical descriptions of the method and manner of doing the work, quantities or qualities of any materials required to be furnished, descriptions of dimensions, required units of measurement, composition or manufacturer, and descriptions of any quality, performance, or acceptance requirements.

(2) Every public works contract must contain the following:

(a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public contracting agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520);

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530);

(e) A provision that the contractor must pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price; that the fee must be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee must be made within 30 days of the final progress payment after completion of the contract.

(3) Every public works contract and subcontract must contain a provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher.

(4)(a) Except for CM/GC contracts, the specifications for every public works contract must contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 276a). The existing rate of wage is the rate in effect at the time the initial specifications were first advertised for bid solicitations. For CM/GC contracts, the specifications must contain a provision stating the prevailing rate of wage as provided in section (7) of this rule.

(b) If a public agency is required under paragraph (a) of this subsection to include the state and federal prevailing rates of wage in the specifi-

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cations, the public agency also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815 (2)(b).

(5) The provision described in sections (3) and (4) must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more (Reference: ORS 279C.830). A statement incorporating the applicable prevailing wage rate publication and any amendments thereto or Davis-Bacon wage rate determination into the specifications by reference will satisfy these requirements. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(6) All specifications for each contract awarded on the project must contain a provision stating that the contractor must pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price pursuant to ORS 279C.825. The fee must be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee must be made within 30 days of the final progress payment after completion of the contract (Reference: ORS 279C.830).

(7) When a public agency is a party to a CM/GC contract, the CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the CM/GC contract. For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price. For purposes of this rule, the CM/GC contract enters the construction phase when the agency first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project.

(8) Public contracting agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

Stat. Auth.: ORS 279C & 651.060
Stats. Implemented: ORS 279C.800-279C.870
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0020, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 2-2007, f. & cert. ef. 1-23-07

Rule Caption: Amends disability rules to clarify and add references to accommodation provisions in other rules.

Adm. Order No.: BLI 3-2007

Filed with Sec. of State: 1-29-2007

Certified to be Effective: 2-2-07

Notice Publication Date: 2-1-06

Rules Amended: 839-005-0010

Subject: The amendments clarify the requirements for accommodation of disabled persons by referencing those requirements in Disability Theories, OAR 839-005-0010(3). The amendments reference requirements for religious accommodation established by Oregon courts.

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

839-005-0010

Discrimination Theories

(1) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

- (a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(9) of these rules;
- (b) The complainant is a member of a protected class;
- (c) The complainant was harmed by an action of the respondent; and
- (d) The complainant's protected class was the reason for the respondent's action. In determining whether the complainant's protected class was

the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class. Unless the respondent can show that a bona fide occupational qualification or a bona fide voluntary or court-ordered affirmative action plan (OAR 839-005-0045) allows the action, the respondent has unlawfully discriminated.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the complainant was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the complainant differently than comparably situated individuals who were not members of the complainant's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was the reason for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(i) Pretext: If the respondent does rebut the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the reasons the respondent presents for its actions are a pretext for discrimination, the division will conclude that substantial evidence of unlawful discrimination exists.

(ii) Mixed Motive: If the respondent presents substantial evidence that legitimate, non-discriminatory reasons contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine that substantial evidence of discrimination exists.

(ii) The complainant at all times has the burden of proving that the complainant's protected class was the reason for the respondent's unlawful action.

(2) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(9) of these rules;

(b) The respondent has an employee standard or policy that is applied equally to all employees or applicants;

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(3) Discrimination based on disability may involve intentional discrimination, including harassment, or discrimination that need not be intentional, including adverse impact or failure to accommodate a disability. To be protected from discrimination based on disability, an individual must have a disability, as defined in ORS 659A.100(1) and (2) and the relevant rules. Reasonable accommodation for purposes of employment is defined in ORS 659A.118 and OAR 839-006-0206. Reasonable accommodation in real property transactions is covered by ORS 659A.145 and OAR 839-006-0410. Reasonable modifications in services, programs or activities and provision of auxiliary aids and services by state government are covered by ORS 659A.142, OAR 839-006-0270 and 0295. Removal of barriers to facilities, goods and services and provision of auxiliary aids by public accommodations are covered by ORS 659A.142 and OAR 839-006-0310 to 0330.

(4) An employer must reasonably accommodate an employee or applicant's religious belief, observance or practice unless the employer can demonstrate that such accommodation would cause undue hardship on the employer's business.

(5) Harassment in employment based on an individual's protected class is a type of intentional unlawful discrimination. In cases of alleged unlawful sexual harassment in employment see OAR 839-005-0030.

(a) Conduct of a verbal or physical nature relating to protected class-

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es other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(C) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(c) Employer Proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the employer's president, owner, partner or corporate officer.

(d) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against the individual. A tangible employment action includes, but is not limited to, any of the following:

(A) Terminating employment, including constructive discharge;

(B) Failing to hire;

(C) Failing to promote; or

(D) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(e) Harassment by Supervisor, No Tangible Employment Action: When harassment by a supervisor with immediate or successively higher authority over the individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(A) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(B) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(i) That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and

(ii) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(f) Harassment by Coworkers or Agents: An employer is liable for harassment by the employer's employees or agents who do not have immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(g) Harassment by Non-Employees: An employer is liable for harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases, the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(h) Withdrawn Consent: An employer may be liable for harassment by the employer's supervisory or non-supervisory employees, agents or non-employees even if the acts complained of are of a kind previously consented to by the offended individual, if the employer knew or should have known that the offended individual had withdrawn consent to the offensive conduct.

(i) When employment opportunities or benefits are granted because of an individual's submission to an employer's harassment, the employer is liable for unlawful discrimination against other individuals who were qualified for but denied that opportunity or benefit.

(6) Harassment in Housing and Public Accommodations: Harassment on the basis of a protected class, including sexual harassment, is an unlawful practice in housing and in places of public accommodation when:

(a) Substantial evidence of the elements of OAR 839-005-0010(1) is shown; and

(b) Such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment. The standard for determining whether harassment in housing and in places of public accommodation creates an intimidating, hostile or offensive environment is whether a reasonable per-

son in the circumstances of the complaining individual would so perceive it.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2007, f. 1-29-07, cert. ef. 2-2-07

Rule Caption: Amends rules to clarify that Oregon disability statutes require interactive process between employer and employee.

Adm. Order No.: BLI 4-2007

Filed with Sec. of State: 1-29-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 12-1-05

Rules Amended: 839-006-0205, 839-006-0206

Subject: The amendments clarify that Oregon statutes prohibiting discrimination on the basis of disability require reasonable accommodations, which includes a duty of employers to engage in an interactive process with an individual with a disability regarding accommodation. This is already the current policy position of the bureau, and federal law also requires it. The Oregon Court of Appeals ruled in *Stamper v. Salem Keizer School District* that Oregon law requires an interactive process.

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

839-006-0205

Definitions

(1) "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more major life activities;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

(2) "Employer" means any person that employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard, as provided in ORS 659A.106. The "six or more persons" need not be employed within Oregon.

(3) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(4) "Essential functions" are the fundamental duties of a position a person with a disability holds or desires.

(a) A job function may be essential for any of several reasons, including but not limited to, the following:

(A) The position exists to perform that function;

(B) A limited number of employees is available to carry out the essential function; or

(C) The function is highly specialized so that the position incumbent was hired for the expertise or ability required to perform the function.

(b) Evidence of whether a particular function is essential includes but is not limited to:

(A) The amount of time spent performing the function;

(B) The consequences of not performing the function;

(C) The terms of a collective bargaining agreement;

(D) The work experience of past incumbents in the job; and

(E) The current work experience of incumbents in similar jobs.

(5) "Labor organization" includes any organization constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(6) "Major life activity" includes, but is not limited to, self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(a) Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(b) To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

(7) "Medical," as used in ORS 659A.133 and 659A.136 and these rules, means any information, whether oral, written or electronic that:

(a) Is created or received by an employer; and

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(b) Relates to the past, present, or future physical or mental health status or condition of a person.

(8) "Misclassified," as used in ORS 659A.100 (2) (b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(9) An "otherwise qualified person with a disability" is a person with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position that the person holds or desires, and who can, with or without reasonable accommodation, perform the position's essential functions.

(10) "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 and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(11) "Reasonable accommodation" is defined in OAR 839-006-0206.

(12) "Substantially limits" means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(c) Factors that could affect whether an impairment "substantially limits a major life activity" include, but are not limited to, the presence of other impairments that combine to make the impairment disabling.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, 659A.103, 659A.142, 659A.112 - 659A.139

Hist.: BL 2-1984, f. & cert. 1-31-84; BL 15-1990, f. 10-29-90, cert. ef. 11-1-90; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 4-2007, f. 1-29-07, cert. ef. 2-1-07

839-006-0206

Reasonable Accommodation

(1) "Reasonable Accommodation" means modifications or adjustments:

(a) To a job application process that enable an otherwise qualified applicant with a disability to be considered for the position;

(b) To the work environment, or to the manner or circumstances under which a position is customarily performed, that enable an otherwise qualified employee or applicant with a disability to perform the position's essential functions; or

(c) That enable an otherwise qualified employee or applicant with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without a disability.

(2) Reasonable accommodation of an otherwise qualified employee or applicant with a disability may include, but is not limited to:

(a) Making existing facilities used by employees readily accessible to and usable by an employee with a disability;

(b) Providing job restructuring, such as part-time or modified work schedules or reassignment to vacant positions;

(c) Acquiring or modifying equipment or devices;

(d) Appropriately adjusting or modifying examinations, training materials or policies;

(e) Providing qualified readers or interpreters; or

(f) Providing a leave of absence.

(3) Failure of an employer to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee or applicant with a disability who requests reasonable accommodation or otherwise discloses to the employer a disability that may require reasonable accommodation, will be found to be prohibited discrimination unless the employer can demonstrate that reasonable accommodation would impose an undue hardship on the business of the employer. Undue hardship is defined at ORS 659A.121.

(4) Once an otherwise qualified employee or applicant with a disability has requested reasonable accommodation or otherwise disclosed to the employer a disability that may require reasonable accommodation, the employer has a duty to initiate a meaningful interactive process with the employee or applicant to determine whether reasonable accommodation would allow the employee or applicant to perform the essential functions of a position held or sought.

(5) A meaningful interactive process is an informal process between an otherwise qualified employee or applicant with a disability and an employer in an effort to identify potential reasonable accommodation.

(a) An interactive process between an employee or applicant with a disability and an employer, that readily identifies mutually agreeable reasonable accommodation, is a meaningful interactive process.

(b) When reasonable accommodation is not readily identifiable, a meaningful interactive process identifies the nature of the limitations resulting from the disability, relevant to potential reasonable accommodation that could allow the employee or applicant to perform the essential functions of the job.

(6) A meaningful interactive process is a mandatory step in the reasonable accommodation of an otherwise qualified employee or applicant with a disability. Failure of an employer to engage in a meaningful interactive process with an otherwise qualified employee or applicant with a disability who has requested reasonable accommodation or has otherwise disclosed to the employer a disability that may require reasonable accommodation is a failure to reasonably accommodate in violation of ORS 659A.112(2)(e) and:

(a) The employer may be found liable for remedies described in OAR 839-003-0090 (6) regardless of whether reasonable accommodation would have been possible; and

(b) The employer may also be found liable for any other remedies described in OAR 839-003-0090 if reasonable accommodation would have been possible.

(7) An employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to an employee or applicant with a disability arising out of transsexualism. However, an employer may not:

(a) Refuse to hire an applicant or promote an employee;

(b) Bar or discharge an employee or applicant from employment; or

(c) Discriminate in compensation, terms, conditions or privileges of employment because an employee or applicant is transsexual when the employee or applicant is otherwise qualified.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.112 - 659A.139

Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 4-2007, f. 1-29-07, cert. ef. 2-1-07

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

Adm. Order No.: BLI 5-2007

Filed with Sec. of State: 1-30-2007

Certified to be Effective: 1-31-07

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).

(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 or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau

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of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

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

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02, cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04, cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06, cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06, cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; 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

Construction Contractors Board Chapter 812

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

Adm. Order No.: CCB 1-2007

Filed with Sec. of State: 1-25-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 9-1-06, 11-1-06

Rules Amended: 812-003-0240

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

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-003-0240

Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. 670.600 defines “independent contractor” for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for “independent contractors”. One requirement is that an “independent contractor” must be engaged in an “independently established business.” Another requirement is related to licenses and certificates that are required for an “independent contractor” to provide services. A third requirement is that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others.

(b) The specific focus of this rule is the “direction and control” requirement. See ORS 670.600 for the requirements of the “independently established business” test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the “direction and control” test:

(A) “Means” are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the “means” used in performing servic-

es include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) “Manner” is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the “manner” by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) “Free from direction and control” means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor’s services does not constitute direction and control over the means or manner of providing those services.

(4) Application of “direction and control” test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscaping businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor’s services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor’s services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee’s customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor’s services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(5) As used in ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an “independent contractor” if the standards of ORS 670.600 are met.

(6) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

(7) The Board adopts the form “Independent Contractor Certification Statement” as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS 701.075(1)(j).

Stat. Auth.: ORS 670.310, 670.605 & 701.235

Stats. Implemented: ORS 670.600, 670.605 & 701.075

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 1-2007, f. 1-25-07, cert. ef. 2-1-07

ADMINISTRATIVE RULES

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

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

Adm. Order No.: OHP 1-2007

Filed with Sec. of State: 1-29-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 12-1-06

Rules Adopted: 409-021-0150

Rules Amended: 409-021-0010

Rules Ren. & Amend: 409-021-0025 to 409-021-0115, 409-021-0020 to 409-021-0120, 409-021-0015 to 409-021-0130, 409-021-0030 to 409-021-0140

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

Rules Coordinator: Cheryl Knottingham—(503) 378-2439, ext. 325

409-021-0010

Definitions

As used in this division:

(1) "Computer" means a desktop personal computer physically located in the Office.

(2) "Data use agreement" means the terms, conditions, restrictions, and other rules governing the use of health data as specified in Form D-1 (Research Data Request) and in Form D-3 (OHPR Data Use Agreement).

(3) "Electronic media" means the consumer media commonly used to store and transport up to 4.7 GB of data. This includes, but is not limited to, floppy diskettes, CDs, DVDs, and other forms of removable storage media.

(4) "Format" means the way health data appears in a display, on electronic media, on printed copy, or in output or data files produced by the Office's computer software.

(5) "Health data" means an electronic or printed copy of a document, book, paper, file, or other materials, regardless of mode received, that is filed or maintained in pursuit of law or in connection with the transaction of public business. Health data reported to the Office from hospitals and other health care facilities may include information that is protected health information when it is maintained at the hospital or health care facility. The Office obtains such information because it is required by law, and because the Office acts in the capacity of a health oversight agency. The Office is not a covered entity or a business associate of a covered entity. Health data may include, but is not limited to:

(a) The socioeconomic and demographic characteristics of a population;

(b) The incidence of specific diseases or injuries;

(c) The severity of the diseases and injuries;

(d) The supply of health care services;

(e) Characteristics of the health care providers;

(f) The utilization of health care services; or

(g) Determining the need for health care services.

(6) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1996 and the regulations published Title 45, Parts 160 and 164, of the Code of Federal Regulations.

(7) "Office" means the Office for Oregon Health Policy and Research.

(8) "Person" means any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.

(9) "Public use health data file" means an aggregation of health data without personal identifiers that are publicly available for download, available through electronic mail, or available for delivery on electronic media, and at the Office's discretion may require an approved data use agreement.

(10) "Requestor" means the person who:

(a) Requests to inspect health data as provided in OAR 409.021.0120.

(b) Requests one or more copies of one or more public use health data files as provided in OAR 409.021.0130.

(c) Requests one or more copies of one or more limited health data sets as provided in OAR 409.021.0140.

(11) "Restricted health data set" means health data, other than routinely available public use data files, provided exclusively for purposes that are specified in an approved data use agreement. Limited data sets as defined by HIPAA shall be considered restricted health data sets.

(12) "Software" means a proprietary package of written programming language that instructs a computer to perform certain tasks.

(13) "Staff time" means the total time required by staff to complete a data request starting from initial contact to final contact with requestor, including searching for information, summarizing, duplicating, accessing the data, or any other time required by staff to complete the request.

(14) "State" means the State of Oregon.

Stat. Auth.: ORS 192.440 & 442.420(3)(d)

Stats. Implemented: ORS 192.410 - 192.440 & 442.420(3)(d)

Hist.: SHPD 5-1986, f. & ef. 1-24-86; HP 2-1988, f. & cert. ef. 3-25-88; HP 1-1996, f. & cert. ef. 1-2-96; OHP 1-1997, f. & cert. ef. 8-25-97; OHP 1-2002, f. & cert. ef. 1-2-02; OHP 1-2007, f. 1-29-07, cert. ef. 2-1-07

409-021-0115

Calculation of Fees

The Office shall charge fees necessary to fully recover the reasonable costs of responding to data requests and requests to examine health data maintained by the Office.

(1) The costs that the Office shall recover include, but are not limited to:

(a) Cost of materials and copying as provided in OAR 409-909-0020.

(b) Cost of staff time necessary to respond to the request.

(c) Administrative costs necessary to process the request.

(d) Any reasonable additional costs the Office deems necessary to respond to the request.

(2) Upon receipt of a completed form D-1, the Office shall provide a written estimate of fees within a reasonable period of time, unless the complete fees for the data request are the published fees for obtaining copies of public use health data files.

(3) The Office reserves the right to discount or waive fees for State agencies or at the discretion of the Administrator of the Office.

(4) The Office may develop contractual agreements for routinely providing data to a person at a discounted fee, upon approval of the Administrator of the Office.

Stat. Auth.: ORS 192.440 & 442.420(3)(d)

Stats. Implemented: ORS 192.410 - 192.440 & 442.420(3)(d)

Hist.: SHPD 5-1986, f. & ef. 1-24-86; HP 2-1988, f. & cert. ef. 3-25-88; HP 1-1996, f. & cert. ef. 1-2-96; Renumbered from 409-021-0025, OHP 1-2007, f. 1-29-07, cert. ef. 2-1-07

409-021-0120

Inspection of Health Data

(1) An inspection of the health data that are maintained at the Office shall be only by appointment during the normal working days and business hours of the Office.

(2) Requests to inspect health data that are maintained by the Office may, at the Office's discretion, require an approved data use agreement as provided in OAR 409-021-0130(1).

(3) The inspection shall take place at the Office; on a case-by-case basis, other reasonable locations may be designated at the sole discretion of the Administrator of the Office.

(4) The inspection of the requested data shall be in a format commonly employed by the Office for maintaining the requested data.

(5) Recovery of fees, if any, shall take place at the time of inspection.

Stat. Auth.: ORS 192.440 & 442.420(3)(d)

Stats. Implemented: ORS 192.410 - 192.440 & 442.420(3)(d)

Hist.: SHPD 5-1986, f. & ef. 1-24-86; HP 2-1988, f. & cert. ef. 3-25-88; HP 1-1996, f. & cert. ef. 1-2-96; Renumbered from 409-021-0020, OHP 1-2007, f. 1-29-07, cert. ef. 2-1-07

409-021-0130

Requests to Obtain Copies of Public Use Health Data Files

(1) Any requestor who wishes to obtain copies of public use health data files maintained by the Office shall provide all of the following:

(a) Form D-1 (Research Data Request)

(b) Form D-2 (Data Order Form)

(c) Full payment of fees.

(2) All requests for public use health data files require the written approval of the Research and Data Manager.

(3) Upon approval and receipt of full payment of fees, one copy of the requested public use health data file will be provided to the requestor.

(4) The Office shall respond to public use health data file requests within a reasonable period of time, except that the Office's response may be delayed so that critical operations and activities are not unduly disrupted. The Office shall notify the requestor in writing if an extensive delay is anticipated.

ADMINISTRATIVE RULES

(5) This rule shall not apply to health data that the Office routinely makes available for direct download from the Office's web site.

[ED. NOTE: Forms referred are available from the agency.]

Hist.: SHPD 5-1986, f. & ef. 1-24-86; HP 2-1988, f. & cert. ef. 3-25-88; HP 2-1992, f. & cert. ef. 10-19-92; HP 2-1994, f. & cert. ef. 4-22-94; HP 1-1996, f. & cert. ef. 1-2-96; OHP 1-1997, f. & cert. ef. 8-25-97; OHP 1-2002, f. & cert. ef. 1-2-02; Renumbered from 409-021-0015, OHP 1-2007, f. 1-29-07, cert. ef. 2-1-07

409-021-0140

Requests and Requirements to Obtain Restricted Health Data Sets

(1) The Office may authorize the disclosure of health data in accordance with an approved data use agreement entered into by both the Office and a researcher, pursuant to which the Office may disclose a restricted health data set to a researcher for research, public health, or health care operations. The intent of this rule is to generally apply the legal standard established in the HIPAA Privacy Rule applicable to limited data sets, 45 CFR 164.514(e).

(2) Any requestor who wishes to obtain restricted health data sets from the Office shall provide all of the following:

- (a) Form D-1 (Research Data Request)
- (b) Form D-2 (Data Order Form)
- (c) Form D-3 (Data Use Agreement)
- (d) Full payment of fees.

(3) All requests for restricted health data sets require the written approval of the Research and Data Manager.

(4) Upon approval and receipt of full payment of fees, the Office is authorized to provide one copy of the requested restricted health data set to the requestor.

(5) The Office shall respond to restricted health data set requests within a reasonable period of time, except that the Office's response may be delayed so that critical operations and activities are not unduly disrupted. The Office shall notify the requestor in writing if an extensive delay is anticipated.

[ED. NOTE: Forms referred are available from the agency.]

Stat. Auth.: ORS 192.440 & 442.420(3)(d)

Stats. Implemented: ORS 192.410 - 192.440 & 442.420(3)(d)

Hist.: SHPD 5-1986, f. & ef. 1-24-86; HP 2-1988, f. & cert. ef. 3-25-88; HP 2-1992, f. & cert. ef. 10-19-92; HP 2-1994, f. & cert. ef. 4-22-94; HP 1-1996, f. & cert. ef. 1-2-96; OHP 1-1997, f. & cert. ef. 8-25-97; OHP 1-2002, f. & cert. ef. 1-2-02; Renumbered from 409-021-0030, OHP 1-2007, f. 1-29-07, cert. ef. 2-1-07

409-021-0150

Denial of Requests to Inspect or Obtain Copies of Health Data

The Office shall deny requests to inspect health data, receive copies of public use health data sets, and receive copies of restricted health data sets in order to prevent uses that are not consistent with current agreements, policies, rules, regulations, or statutes.

(1) The Office shall deny requests to examine health data or receive copies of health data for reasons that include, but are not limited to:

- (a) Fulfilling the request violates one or more of the Office's current data use agreements with one or more other persons.
- (b) Fulfilling the request requires unreasonable interference with the Office's regular discharge of duties.
- (c) Fulfilling the request requires disclosures that violate HIPAA privacy rules (45 CFR parts 160 and 164).
- (d) Fulfilling the request requires disclosures that are an unreasonable invasion of privacy. If a request is denied for this reason, the burden is on the requestor to provide the Office clear and convincing evidence that fulfilling the data request is not an unreasonable invasion of privacy and that the public interest requires disclosing the requested data.

(2) Nothing in these rules authorizes the Office to disclose health data in a form that allows easy and precise identification of individual patients or individual licensed health care professionals.

Stat. Auth.: ORS 192.440 & 442.420(3)(d)

Stats. Implemented: ORS 192.410 - 192.440 & 442.420(3)(d)

Hist.: OHP 1-2007, f. 1-29-07, cert. ef. 2-1-07

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Department of Agriculture Chapter 603

Rule Caption: Housekeeping changes to Plant Division rules: correct spelling, italicization, update distributions, weed list, and dates.

Adm. Order No.: DOA 2-2007

Filed with Sec. of State: 1-30-2007

Certified to be Effective: 1-30-07

Notice Publication Date: 1-1-07

Rules Amended: 603-052-0114, 603-052-0115, 603-052-0120, 603-052-0129, 603-052-0150, 603-052-0360, 603-052-0450, 603-052-1200, 603-052-1221

Subject: Proposed changes would: add Jackson County in the list of counties under quarantine for Dutch Elm disease (602-052-0114), correct spelling and italicize *Rhagoletis mendax* in blueberry maggot quarantine (603-052-0115), exempt tissue culture plantlets from oak wilt quarantine (603-052-0120), correct italicization in phytophagous snail quarantine (603-052-0129), update references to most recent Pest Management Guides in the cherry fruit fly control areas (603-052-0150), clarify that landowners are responsible for cull onion disposal in the Malheur County onion maggot control area (603-052-0360), correct, italicization in the cherry bark tortix quarantine (603-052-0450), reconcile noxious weed quarantine with state noxious weed list by adding Jubata grass and deleting short-fringed knapweed and wild proso millet (603-052-1200), and corrects italicization in glassy-winged sharpshooter quarantine (603-052-1221).

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0114

Quarantine; Dutch Elm Disease and Elm Yellows Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the fungus *Ophiostoma novo-ulmi*, currently the fungus that causes Dutch elm disease in North America and related species *O. ulmi* and elm yellows (*elm phloem necrosis*) phytoplasma.

(2) Areas under Quarantine:

- (a) In Oregon, the counties of: Benton, Clackamas, Jackson, Lane, Linn, Malheur, Marion, Multnomah, Polk, Union, Washington and Yamhill
- (b) All states and districts of the United States except Alaska, Arizona, Florida, Hawaii, Louisiana, New Mexico and Utah.

(3) Commodities Covered. All trees, plants, cuttings, scions, leaves, bark, roots, or other parts, except seed, of all species of elm (*Ulmus spp.*) and of the related genera *Zelkova* and *Planera*, including wood products manufactured from bark-bearing parts thereof. Tissue culture plantlets in sealed, sterile containers are exempt from this regulation.

(4) Restrictions:

(a) Commodities Prohibited from Quarantine Areas. All commodities described in section (3) of this rule originating or grown within or shipped from any state or district described in subsection (2)(b) of this rule, except as provided in subsection (b) of this section, are prohibited entry into the State of Oregon whether moved direct from said areas or diverted or reconsigned from any such areas. All tools or equipment utilized in the pruning or disposal of infected commodities are also prohibited entry into the State of Oregon unless they are decontaminated by an approved method therefore;

(b) Commodities Admitted Under Origin Certificate. Commodities described in section (3) of this rule may be permitted entry into the State of Oregon if each lot or shipment is accompanied by a certificate issued by an official state agency of the state of origin certifying the kind and amount of commodities covered by the certificate, that all such commodities are a product of the state from which shipped or of another state within which neither Dutch Elm Disease nor Elm Yellows phytoplasma is known to occur, that such commodities are free from the described disease, and setting forth in either case the name of the state where produced;

(c) Commodities Restricted Within Quarantine Areas. With exception of commercially produced nursery stock, commodities described in section (3) of this rule situated within the counties described in subsection (2)(a) of this rule, are prohibited movement within or outside said areas except for the transportation of such commodities to locations authorized by the Department for the burning, burial, or other approved method of disposal thereof. All tools or equipment utilized in the pruning or disposal of infected commodities are also prohibited movement within or outside said areas unless they are decontaminated by an approved method therefore.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 1088(11-76), f. 3-22-76, ef. 4-1-76; AD 24-1977, f. 10-25-77, ef. 11-15-77; AD 3-1995, f. & cert. ef. 4-5-95; DOA 3-2005, f. & cert. ef. 2-4-05; DOA 2-2007, f. & cert. ef. 1-30-07

603-052-0115

Quarantine; Blueberry Maggot

(1) Establishing Quarantine. A quarantine is established against blueberry maggot (*Rhagoletis mendax*).

ADMINISTRATIVE RULES

(2) Area under Quarantine. All states, districts, and territories of the United States east of and including the States of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. All states of the United States west of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas are not included therein.

(3) Commodities Covered. All fresh fruit of blueberry and blueberry plants (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection).

(4) All commodities covered are prohibited entry into Oregon from the area under quarantine with the exception of items listed in (5) below.

(5) Exceptions:

(a) No restrictions are placed by this quarantine upon the entry into the State of Oregon of fruits which upon arrival are frozen solid and which are held under refrigeration to assure their solid frozen state;

(b) Fruits affected by this quarantine, which have been held in cold storage for a continuous period of at least 40 days during which period the temperature in said cold storage area has been maintained at 32° F or less, may be admitted into the State of Oregon providing that the lot or shipment of the same is accompanied by an official certificate, issued by an agency of the state of origin authorized to do so, evidencing compliance with the requirements of this subsection.

(6) Disposition of Commodities in Violation of Quarantine. All commodities described in section (3) of this rule inspected by the Department and determined to be in violation of this quarantine and not permitted entry pursuant to section (5) of this rule, shall be immediately returned by the person receiving the same to the point of origin or, at his option and without expense or indemnity paid by the Department, destroyed by such person.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305 - 570.325

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 1033(20-74), f. 6-26-74, ef. 7-25-74; AD 10-1997, f. & cert. ef. 7-2-97; DOA 2-2007, f. & cert. ef. 1-30-07

603-052-0120

Quarantine; Oak Wilt Disease

(1) Establishing a Quarantine. A quarantine is established against Oak Wilt Disease (*Ceratocystis fagacearum*).

(2) Area Under Quarantine. All states and districts of the United States.

(3) Commodities Covered. All rooted trees, seedling plants, cuttings, scions, bark, leaf mold, roots, or other unpeeled parts, except seed, of all species of oak (*Quercus* spp.), chestnut (*Castanea* spp.), chinquapin (*Castanopsis* spp.), and tanbark oak (*Lithocarpus densiflora*). Tissue clulture plantlets in sealed, sterile containers are exempt from this quarantine.

(4) Restrictions:

(a) Commodities Prohibited from Quarantine Areas: All commodities described in section (3) of this rule originating or grown within or shipped from any state or district described in section (2) of this rule, except as provided in subsection (b) of this section, are prohibited entry into the State of Oregon whether moved directly from said areas or diverted or reconsigned from any such area;

(b) Commodities Admitted Under Origin Certificate: Commodities described in section (3) of this rule may be permitted entry into Oregon provided each lot or shipment is accompanied by a certificate issued by an official agency of the state of origin certifying that all commodities covered by the certificate are a product of the state from which shipped or of another state, neither of which is known to have oak wilt disease occur; certifying that such commodities are free from the described disease; and setting forth in either case the name of the state where produced and the kind and amount of commodities covered by the certificate.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 1087(10-76), f. 3-22-76, ef. 4-1-76; DOA 2-2007, f. & cert. ef. 1-30-07

603-052-0129

Quarantine; Against Exotic Phytophagous Snails

(1) Establishing Quarantine. A quarantine is established against exotic phytophagous snails that are members of the Phylum Mollusca of the Class Gastropoda characterized by a calcareous shell covering the visceral hump. This quarantine applies to exotic phytophagous snails in any stage of development, and includes, but is not limited to: brown garden snail (*Helix aspersa* Muller), white garden snail (*Theba pisana* Muller), milk snail (*Otala lactea* Muller), giant African snail (*Achatina* spp.), giant South American snail (*Megalobulimus oblongus* Muller), and all other exotic phytophagous snails (hereafter, "exotic phytophagous snails"). These snails

are very important garden and agricultural pests causing severe damage to leaves and fruits of many plants.

(2) Areas Under Quarantine. The entire states of Arizona, California, Hawaii, New Mexico, Texas, Utah, Washington, and any other state or territory where exotic phytophagous snails are established.

(3) Covered Commodities. Exotic phytophagous snails in any stage of development. Grass sod and all plants with roots in soil and any other plant material or articles capable of transporting exotic phytophagous snails into Oregon are hereby declared to be hosts or possible carriers of the pests herein quarantined and are prohibited entry into this state directly, indirectly, diverted, or reconsigned unless there is compliance with section (4) of this rule.

(4) Conditions:

(a) Covered commodities from regulated areas may be permitted entry into Oregon only when such commodities are accompanied by a certificate of quarantine compliance issued by an authorized official from the state of origin which certifies that it has been determined by official inspection immediately prior to shipment that such covered commodities were found to be free of all life stages of exotic phytophagous snails or that such commodities originate from an area determined by official inspection to be free of exotic phytophagous snails. The original certification document shall be forwarded to the Oregon State Department of Agriculture, Plant Division, 635 Capitol St. NE, Salem, Oregon 97310, immediately by First Class mail or fax (503) 986-4786. Each lot or shipment of the covered commodities shall be accompanied by a copy of the above described certification document. The Oregon receiver to whom the commodities are shipped shall notify the department immediately upon receipt of such commodities and shall hold the same until they are released by the department.

(b) Cut greens, cut flowers and soil-free plants including bare root plants, plant crowns, roots for propagation, bulbs, corms, tubers, and rhizomes of plants washed free of adherent soil are excepted from the quarantine, if such plant materials are found upon inspection not to be infested with exotic phytophagous snails or are found not to bear soil accumulations sufficient to carry or obscure any life stage of exotic phytophagous snails.

(c) Certified and noncertified covered commodities shall not be shipped together in the same transporting vehicle, and any such mixing of certified and noncertified covered commodities shall nullify certification and result in the rejection of the entire shipment of covered commodities. Upon inspection and determination by the Oregon State Department of Agriculture that the transporting vehicle or any properly certified covered commodities are infested with any life stage of exotic phytophagous snails, such shipment shall be found in violation of this quarantine.

(5) Heliculture Prohibited. Raising, maintaining, selling, shipping and/or holding live exotic phytophagous snails within the State of Oregon is prohibited.

(6) Disposition of Commodities in Violation of the Quarantine. All covered commodities described in section (3) of this rule found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, or at the receivers option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.

(7) Exceptions. Upon request, and upon investigation and finding that unusual circumstances exist justifying such action, the department may issue a permit allowing entry into this state of covered commodities without meeting the requirements of subsection (4)(a) of this rule. However, all conditions specified in the permit shall be met before such permit will be recognized.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 14-1983, f. 11-15-83, ef. 12-1-83; AD 12-1997, f. & cert. ef. 7-31-97; DOA 8-1999, f. & cert. ef. 5-14-99; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07

603-052-0150

Control Areas and Procedures

(1) As authorized by ORS 570.405 to 570.435, a control area is established in each of the following counties for the protection of the cherry industry in that area through the eradication or control of the cherry fruit fly:

- (a) Hood River County;
- (b) Lane County;
- (c) Linn County;
- (d) Marion County;
- (e) Polk County;
- (f) Umatilla County;
- (g) Union County;

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(h) Yamhill County; and

(i) The portion of Wasco county, north of Warm Springs Reservation.

(2) Approved IPM practices, including spray formulations, are those recommended by the Oregon State Extension Service as described for specific control areas in the following extension documents:

(a) For Hood River and Wasco counties: **Pest Management Guide for Tree Fruits in the Mid-Columbia Area**. EM 8203, Oregon State University Extension Service.

(b) For Lane, Linn, Marion, Polk and Yamhill counties: **Pest Management Guide for the Willamette Valley**, EM 8329, Oregon State University Extension Service.

(c) For Umatilla and Union counties **Cherry Fruit Fly Pest Management for control areas in Umatilla and Union counties**. EM 8587, Oregon State University Extension Service.

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

Stat. Auth.: ORS 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 603, f. & ef. 10-31-58; AD 974(7-72), f. 7-27-72, ef. 8-15-72; AD 1073(19-75), f. & ef. 12-5-75; AD 11-1977, f. 5-10-77, ef. 5-20-77; DOA 4-2005, f. & cert. ef. 2-14-05; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07

603-052-0360

Control Area: Onion Maggot — Malheur County

(1) A control area is established within the boundaries of Malheur County for the protection of the onion industry by the eradication or control of the insect pest known as the onion maggot. This control area order is based on IPM principles first recognized and used by Malheur County growers in 1957.

(2) The following methods of eradication and control are declared to be the proper methods used in this control area order:

(a) All cull or waste onions in Malheur County shall be disposed of by a method approved by this control order prior to March 15 each year; for onions sorted after that date, the resulting cull and waste onions shall be disposed of within one week after such sorting;

(b) Disposal of cull or waste onions shall be accomplished only as set forth below:

(A) Disposal by covering in a dump site approved by the Oregon Department of Environmental Quality (DEQ). Culls and onion debris shall be dumped and covered by at least 12 inches of onion-free soil by March 15 each year;

(B) Disposal by animal feeding. Culls and onion debris shall be completely removed from feeding areas by March 15 and buried under 12 inches of onion-free soil. Onions tramped into the soil so they cannot be removed shall be plowed to a depth of 12 inches;

(C) Disposal by chopping or shredding. Chopped or shredded onion debris that is incapable of sprouting may be returned to the field at a tonnage rate no higher than the DEQ-approved rate of 80 tons per acre and plowed to a depth where no onion parts are exposed on the surface;

(D) Composting. All onion debris shall be incorporated into the compost bed and completely covered by 12 inches of onion-free soil;

(E) Disposal of residue in onion producing fields. Commercial onion fields where sort out bulbs are left at harvest shall be disked to destroy the bulbs and shall be plowed to a depth of at least 12 inches by March 15 each year. Seed bulbs shall be disposed of in the same manner following the last harvest. The owner of the field is ultimately responsible for compliance with this rule;

(F) If inclement weather prevents plowing, the culls will be treated with an EPA-labeled insecticide currently listed in the 2005 PNW Insect Control Handbook at prescribed intervals until proper disposal occurs.

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

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 590, f. 9-10-58, ef. 9-28-58; AD 784(8-64), f. 4-29-64, ef. 5-15-64; AD 4-1995, f. & cert. ef. 4-5-95; DOA 3-1999, f. & cert. ef. 1-29-99; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07

603-052-0450

Quarantine; Cherry Bark Tortrix

(1) Establishing a Quarantine. A quarantine is established against the pest known as cherry bark tortrix, *Enarmonia formosana* (Scopoli).

(2) Areas Under Quarantine. The entire state of Washington, the province of British Columbia, and any other state, territory or province where the presence of an established population of cherry bark tortrix is confirmed and effective eradication procedures have not been implemented, as determined by the Director of the Oregon Department of Agriculture. In Oregon, Multnomah and Clackamas counties.

(3) Commodities Covered. The cherry bark tortrix, *Enarmonia formosana* (Scopoli); host plants of the cherry bark tortrix, including all species of the genera, *Crataegus*, *Cydonia*, *Malus*, *Prunus*, *Pyracantha*, *Pyrus* and *Sorbus*; and unseasoned firewood derived from trees of these host plant genera. Uninfested nursery stock plants of these genera that are less than two inches in diameter are exempted from the quarantine.

(4) Restrictions. Regulated commodities shall not be shipped or moved directly or indirectly from the regulated areas into the state of Oregon unless accompanied by a permit or certificate issued by a state or federal agriculture official from the regulated area and based upon the following conditions:

(a) The regulated plants have been grown in a screened greenhouse or screenhouse adequate to exclude the adults of cherry bark tortrix; or

(b) Such regulated plants have been treated in accordance with a fumigation schedule approved in writing by the Director of the Oregon Department of Agriculture; or

(c) Each dormant, defoliated, regulated host plant shall be inspected by an authorized agricultural official of the regulated state or province for the presence of cherry bark tortrix and found free of any evidence of infestation by that pest;

(d) Portions of states or provinces listed in the area under quarantine may have counties that are not infested with cherry bark tortrix. Shipments of covered commodities may be accepted from these noninfested counties if annual surveys are made in such counties and the results of such surveys are negative for cherry bark tortrix. A list of counties so approved will be maintained by the Oregon Department of Agriculture. Agricultural officials of a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and giving the following information: areas surveyed, how the survey was carried out, personnel involved and, if the county was previously infested, date of last infestation. If heavy infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of and covered commodities from noninfested counties will only be allowed entry into Oregon if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Oregon.

(5) Persons shipping regulated commodities into the state of Oregon must comply with Oregon's notification requirement for imported tree and shrub nursery stock, OAR 603-054-0027.

(6) The person to whom the regulated commodities are shipped shall hold the articles until they are inspected and released by a duly appointed inspector of the state of Oregon.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600 & 570.305

Hist: AD 6-1996, f. & cert. ef. 6-10-96; DOA 7-2005, f. & cert. ef. 2-15-05; DOA 2-2007, f. & cert. ef. 1-30-07

603-052-1200

Quarantine; Noxious Weeds

(1) Establishing Quarantine. A quarantine is established against the noxious weeds listed herein. Noxious weeds have become so thoroughly established and are spreading so rapidly that they have been declared a menace to the public welfare. ORS 570.505.

(2) Areas Under Quarantine. The entire state of Oregon and all other States of the United States and all foreign countries.

(3) Covered Plants. For purposes of this rule the term "plants" applies to whole plants, plant parts, and seeds. This rule applies to all "A" and "B" designated noxious weeds listed herein, except as provided in subsections (c) and (d). Plants on the Federal Noxious Weed List (7 C.F.R. 360.200) are also covered by this rule, with the exception of Japanese blood grass, *Imperata cylindrica*, var. Red Baron and Chinese water spinach, *Ipomoea aquatica*.

(a) "A" designated weeds. Weeds of known economic importance which occur in the state in small enough infestations to make eradication/containment possible; or which are not known to occur, but their presence in neighboring states makes future occurrence in Oregon seem imminent.

(A) African rue — *Peganum harmala*;

(B) Camelthorn — *Alhagi pseudalhagi*;

(C) Coltsfoot — *Tussilago farfara*;

(D) Cordgrasses:

(i) Common — *Spartina anglica*;

(ii) Dense-flowered — *Spartina densiflora*;

(iii) Saltmeadow — *Spartina patens*;

(iv) Smooth — *Spartina alterniflora*.

(E) European water chestnut — *Trapa natans*;

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- (F) Giant hogweed — *Heracleum mantegazzianum*;
- (G) Goatgrasses:
- (i) Barbed — *Aegilops triuncialis*;
- (ii) Ovate — *Aegilops ovata*.
- (H) Hawkweeds:
- (i) King-devil — *Hieracium piloselloides*;
- (ii) Meadow — *Hieracium pratense*;
- (iii) Mouse-ear — *Hieracium pilosella*;
- (iv) Orange — *Hieracium aurantiacum*;
- (v) Yellow — *Hieracium floribundum*.
- (I) Hydrilla — *Hydrilla verticillata*;
- (J) Kudzu — *Pueraria lobata*;
- (K) Matgrass — *Nardus stricta*;
- (L) Paterson's curse — *Echium plantagineum*;
- (M) Purple nutsedge — *Cyperus rotundus*;
- (N) Silverleaf nightshade — *Solanum elaeagnifolium*;
- (O) Skeletonleaf bursage — *Ambrosia tomentosa*;
- (P) Squarrose knapweed — *Centaurea virgata*;
- (Q) Starthistles:
- (i) Iberian — *Centaurea iberica*;
- (ii) Purple — *Centaurea calcitrapa*.
- (R) Syrian bean-caper — *Zygophyllum fabago*;
- (S) Texas blueweed — *Helianthus ciliaris*;
- (T) Thistles:
- (i) Plumeless — *Carduus acanthoides*;
- (ii) Smooth distaff — *Carthamus baeticus*;
- (iii) Woolly distaff — *Carthamus lanatus*.
- (U) Yellow floating heart — *Nymphoides peltata*.
- (b) "B" designated weeds. Weeds of economic importance which are regionally abundant, but which may have limited distribution in some counties.
- (A) Austrian peaweed (Swainsonpea) — *Sphaerophysa salsula*;
- (B) Bearded creeper (common crupina) — *Crupina vulgaris*;
- (C) Biddy-biddy — *Acaena novae-zelandiae*;
- (D) Brooms:
- (i) French — *Genista monspessulana*;
- (ii) Portuguese — *Cytisus striatus*;
- (iii) Scotch — *Cytisus scoparius*;
- (iv) Spanish — *Spartium junceum*;
- (E) Buffalobur — *Solanum rostratum*;
- (F) Butterfly bush — *Buddleja davidii** (*except named horticultural varieties);
- (G) Common bugloss — *Anchusa officinalis*;
- (H) Creeping yellow cress — *Rorippa sylvestris*;
- (I) Cutleaf teasel — *Dipsacus laciniatus*;
- (J) Dodder — *Cuscuta spp.** (*except northwest natives);
- (K) Dyers woad — *Isatis tinctoria*;
- (L) English ivy — *Hedera helix** (*except named horticultural varieties);
- (M) Eurasian watermilfoil — *Myriophyllum spicatum*;
- (N) False brome — *Brachypodium sylvaticum*;
- (O) Field bindweed — *Convolvulus arvensis*;
- (P) Garlic Mustard — *Alliaria petiolata*;
- (Q) Giant horsetail — *Equisetum telmateia*;
- (R) Gorse — *Ulex europaeus*;
- (S) Halogeton — *Halogeton glomeratus*;
- (T) Himalayan blackberry — *Rubus discolor** (R. aremeniacus & R. procerus) (*except fruit for consumption);
- (U) Houndstongue — *Cynoglossum officinale*;
- (V) Johnsongrass — *Sorghum halepense*;
- (W) Jointed goatgrass — *Aegilops cylindrical*;
- (X) Jubata grass — *Cortaderia jubata*;
- (Y) Knapweeds:
- (i) Diffuse — *Centaurea diffusa*;
- (ii) Meadow — *Centaurea pratensis* (jacea x nigra);
- (iii) Russian — *Acroptilon repens*;
- (iv) Spotted — *Centaurea maculosa* (C. stoebe).
- (Z) Knotweeds:
- (i) Giant — *Polygonum sachalinense*;
- (ii) Himalayan — *Polygonum polystachyum*;
- (iii) Japanese (fleece flower) — *Polygonum cuspidatum* (Fallopia japonica).
- (AA) Kochia — *Kochia scoparia*;
- (BB) Mediterranean sage — *Salvia aethiopsis*;
- (CC) Medusahead rye — *Taeniatherum caput-medusae*;
- (DD) Old man's beard — *Clematis vitalba*;
- (EE) Perennial pepperweed — *Lepidium latifolium*;
- (FF) Poison hemlock — *Conium maculatum*;
- (GG) Policeman's helmet — *Impatiens glandulifera*;
- (HH) Puncturevine — *Tribulus terrestris*;
- (II) Purple loosestrife — *Lythrum salicaria*;
- (JJ) Quackgrass — *Agropyron repens*;
- (KK) Ragweed — *Ambrosia artemisiifolia*;
- (LL) Rush skeletonweed — *Chondrilla juncea*;
- (MM) Saltcedar — *Tamarix ramosissima*;
- (NN) Small broomrape — *Orobanche minor*;
- (OO) South American waterweed (Elodea) — *Egeria* (Elodea) densa;
- (PP) Spikeweed — *Hemizonia pungens*;
- (QQ) Spiny cocklebur — *Xanthium spinosum*;
- (RR) Spurges:
- (i) Leafy — *Euphorbia esula*;
- (ii) Myrtle — *Euphorbia myrsinites*.
- (SS) Sulfur cinquefoil — *Potentilla recta*;
- (TT) Tansy ragwort — *Senecio jacobaea*;
- (UU) Thistles:
- (i) Bull — *Cirsium vulgare*;
- (ii) Canada — *Cirsium arvense*;
- (iii) Italian — *Carduus pycnocephalus*;
- (iv) Musk — *Carduus nutans*;
- (v) Scotch — *Onopordum acanthium*;
- (vi) Slender-flowered — *Carduus tenuiflorus*.
- (VV) Toadflax:
- (i) Dalmation — *Linaria dalmatica*;
- (ii) Yellow — *Linaria vulgaris*.
- (WW) Velvetleaf — *Abutilon theophrasti*;
- (XX) Whitetops:
- (i) Hairy — *Lepidium pubescens*;
- (ii) Lens-podded — *Lepidium chalapensis*;
- (iii) Whitetop (hoary cress) — *Lepidium draba*.
- (YY) Yellow flag iris — *Iris pseudacorus*;
- (ZZ) Yellow nutsedge — *Cyperus esculentus*;
- (AAA) Yellow starthistle — *Centaurea solstitialis*;
- (c) Agricultural seed as defined in Oregon's Seed Law, ORS 633.511 to 633.750, is exempt from this quarantine but subject to the noxious weed seed tolerances in OAR 603-056-0205.
- (d) Other commodities such as but not limited to wheat are exempt from this quarantine to the extent that they are contaminated with noxious weed seed.
- (4) Prohibited and Permitted Acts.
- (a) All plants covered in section (3) of this rule are prohibited entry into the State of Oregon.
- (b) All plants listed in section (3) of this rule are prohibited from transport, purchase, sale or offering for sale in the State of Oregon.
- (c) All plants listed in section (3) of this rule are prohibited from being propagated in the State of Oregon.
- (d) All plants listed in section (3) may be collected from the wild in areas that are already infested with the specific species that is collected, provided that the plants, plant parts, or seed are not used for propagation or sale within the State of Oregon.
- (5) Disposition of Plants in Violation of the Quarantine. All covered plants listed in section (3) of this rule are found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, if from out of state, or at the owner's option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.
- (6) Exceptions. The director may issue a permit allowing entry into this state, propagation, or selling of plants covered by this rule, upon request, and upon investigation and finding that unusual circumstances exist justifying such action, and that the benefits of granting the permit outweigh the potential harm that may result from the requested action. The director may impose specific conditions on any permit issued hereunder, and the permit may be canceled for failure to meet the conditions therein. Any permit issued under this section shall be for a limited duration not to exceed one year.

Stat. Auth.: ORS 561.020, 561.190, 561.510 & 570.305

Stats. Implemented: ORS 561.510

Hist.: DOA 5-1999, f. & cert. ef. 4-5-99; DOA 13-2000, f. & cert. ef. 5-8-00; DOA 7-2002, f. & cert. ef. 2-1-02; DOA 26-2002, f. & cert. ef. 12-10-02; DOA 27-2004, f. & cert. ef. 12-28-04; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07

ADMINISTRATIVE RULES

603-052-1221

Quarantine; Glassy-Winged Sharpshooter

(1) Establishing a Quarantine. A quarantine is established against glassy-winged sharpshooter, *Hoalodisca coagulata*. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries from the artificial spread of glassy-winged sharpshooter. Glassy-winged sharpshooter is a vector of Pierce's disease, *Xylella fastidiosa*, in grapes and other diseases of important horticultural plants. Neither glassy-winged sharpshooter nor *X. fastidiosa* are known to be established in Oregon. Introduction of glassy-winged sharpshooter could result in serious damage to vineyards in Oregon and cause trade restrictions on many other host plants.

(2) Area under Quarantine: Mexico; the entire States of Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, and Texas; and any other state found to be infested with glassy-winged sharpshooter during the life of this quarantine. In Oregon, any property where glassy-winged sharpshooter is found.

(3) Commodities Covered: All plants referenced in Appendix A. This does not include cut flowers, cut foliage, leafless budwood, grafting wood, or dormant, leafless nursery stock except all types of propagative material of grape plants (*Vitis spp.*) (see (4)(c) below). All life stages of the glassy-winged sharpshooter, including eggs, nymphs, and adults, and *Xylella fastidiosa*.

(4) Provisions of the Quarantine: All shipments of covered commodities from areas under quarantine outside the state of Oregon are prohibited unless they meet the conditions below:

(a) Covered commodities, except grape plants (*Vitis spp.*), from non-infested counties in California (see (b) below) are exempt from provisions of this quarantine.

(b) Covered commodities originating from the area under quarantine including infested counties in California: Fresno, Kern, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, Santa Barbara, Tulare, Ventura, and any other county found to be infested with glassy-winged sharpshooter during the life of this quarantine, must meet either (A) or (B) below.

NOTE: An infestation is defined as an established, reproducing population as evidenced by positive trap catches or sightings over more than one generation of the glassy-winged sharpshooter or more than one life stage of the glassy-winged sharpshooter found on plants not including regulatory interceptions on recently imported plants.

(A) Originate from nurseries under compliance agreement with the state of origin Department of Agriculture requiring adherence to specific protocols to ensure that shipped host nursery stock is free of glassy-winged sharpshooter; or

(B) Have been treated with a registered pesticide effective at killing all stages of glassy-winged sharpshooter prior to shipment as near to the time of shipping as is reasonably possible. A phytosanitary certificate or certificate of quarantine compliance must accompany the shipment with one of the following additional declarations: "All glassy-winged sharpshooter host plants in this shipment have been grown in a nursery under compliance agreement with the [fill in state] Department of Agriculture to ensure freedom from glassy-winged sharpshooter," or "All glassy-winged sharpshooter host plants in this shipment have been treated with [fill in name and rate of pesticide] for glassy-winged sharpshooter."

(c) Grape plants (*Vitis spp.*) from the area under quarantine, including the entire state of California, must be treated for glassy-winged sharpshooter as in (4)(b)(A) or (B) above and must be tested and found free of *Xylella fastidiosa* (see procedures in (4)(c)(A) to (G) below). A phytosanitary certificate must accompany the shipment with one of the following additional declarations: "Grape plants (*Vitis spp.*) in this shipment have been treated for glassy-winged sharpshooter with [fill in name and rate of pesticide] and a representative sample of [fill in number tested] has been tested and found free of *Xylella fastidiosa*," or "Grape plants (*Vitis spp.*) in this shipment have been grown under a compliance agreement with the [fill in state] Department of Agriculture to ensure freedom from glassy-winged sharpshooter and a representative sample of [fill in number tested] has been tested and found free of *Xylella fastidiosa*." Grape Vine Sampling and Analysis Procedure for *Xylella fastidiosa*:

(A) Samples shall be taken from plants located in lots identified for shipment to Oregon.

(B) Samples from up to five individual plants may be combined (bulked) for analysis purposes.

(C) Samples shall be composed of petiole and/or midrib tissue.

(D) Analysis of samples for *X. fastidiosa* shall be done using ELISA or PCR testing by a laboratory operated by an official state or federal regulatory agency or by an approved cooperator.

(E) Sampling and analysis of non-dormant (green) plant material must take place within 60 days before the date of shipment of the plants into Oregon. Sampling and analysis of plants to be shipped dormant must take place prior to leaf drop, but within 60 days of leaf drop during the previous season.

(F) Sampling and analysis of plant material shall be under the direct supervision of state or county regulatory officials.

(G) The following table should be used for determining the number of samples required for laboratory testing of grape plants for *Xylella fastidiosa*: [Table not included. See ED. NOTE.]

(d) Notification of regulated commodity shipment is required. The shipper shall mail, FAX or e-mail documents including the phytosanitary certificate or certificate of quarantine compliance, listing the type and quantity of plants, address of shipper, address of recipient, test results if required in (4)(c) above, and contact phone numbers to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301; FAX: 503/986-4786; e-mail: quarantine@oda.state.or.us. The Department may require that shipments be held until inspected and released.

(e) Sites within Oregon where glassy-winged sharpshooter is found associated with covered commodities imported from the area under quarantine must be treated with a registered pesticide effective at killing all stages of glassy-winged sharpshooter. All imported host material received from areas under quarantine must be treated as well as all other host material in a reasonable buffer zone approved by the Oregon Department of Agriculture. Host material within the spray block may not be moved or sold until after it is treated. In cases where spray blocks include more than one owner, each owner will be responsible for spraying host material on their own property.

(5) Violation of quarantine. Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000, as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, chapter 390, section 2; nursery license suspension or nursery license revocation. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the State.

(6) Review of this Quarantine: The necessity for this quarantine and its effectiveness will be reviewed by the department and other interested parties in 2003. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Tables and Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190, 561.510 & 561.540

Stats. Implemented: ORS 570.305

Hist.: DOA 35-2000, f. & cert. ef. 12-15-00; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07

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

Adm. Order No.: DOA 3-2007

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

Certified to be Effective: 2-2-07

Notice Publication Date: 12-1-06

Rules Amended: 603-027-0105, 603-027-0170, 603-027-0180, 603-027-0206, 603-027-0220, 603-027-0635, 603-027-0640, 603-027-0670, 603-027-0680, 603-027-0700

Subject: Adopt the 2007 Edition National Institute of Standards and Technology (NIST) Handbook 44; 2006 Edition NIST Handbook 130 sections on Packaging and Labeling Regulations, Method of Sale of Commodities, and Examination Procedure for Price Verification; 2005 Edition of NIST Handbook 133; housekeeping to remove obsolete rules regarding uncompensated for temperature spring scales, ticket printers on propane delivery truck meters, ticket printers on refined petroleum delivery trucks; and amend the definition of "predominantly in favor."

Rules Coordinator: Sue Gooch—(503) 986-4583

603-027-0105

Application

The Weights and Measures Packaging and Labeling requirements for all food and nonfood commodities in package form shall be the Uniform Packaging and Labeling Regulation requirements adopted by the National Conference on Weights and Measures, as published by the U.S. Department of Commerce in its "NIST (National Institute of Standards and Technology Handbook 130 2006 Edition, entitled "Uniform Laws And Regulations in the areas of legal metrology and motor fuel quality".

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

ADMINISTRATIVE RULES

Stat. Auth.: ORS 618
Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.211, 618.216, 618.221, 618.226, 618.231 & 618.246
Hist.: AD 1011(1-74), f. 1-7-74, ef. 1-25-74; AD 12-1984, f. & ef. 9-24-84; AD 15-1986, f. & ef. 12-19-86; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0170

Package Checking Procedures

The procedures for checking the accuracy of the net content statement on packaged goods shall be those adopted by the National Conference on Weights and Measures, and contained in the Fourth Edition of NIST Handbook 133, published by the United States Department of Commerce National Institute of Standards and Technology (NIST), January 2005 and entitled "NIST Handbook 133 Checking the Net Contents of Packaged Goods".

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

Stat. Auth.: ORS 561 & 618
Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.211, 618.221 & 618.231
Hist.: AD 15-1986, f. & ef. 12-19-86; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0180

Examination Procedures for Price Verification.

The procedures for price verification and accuracy in any store, including those that use Universal Product Code (U.P.C.) scanners and price-look-up codes at the checkout counter as a means for pricing, shall be those adopted by the National Conference on Weights and Measures, and contained in the National Institute of Standards and Technology (NIST) Handbook 130 2006 Edition, entitled "Uniform Laws And Regulations in the areas of legal metrology and engine fuel quality", subsection "Examination Procedure for Price Verification".

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

Stat. Auth.: ORS 561 & 618
Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.096, 618.201 & 618.236
Hist.: DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0206

Weights and Measures Requirements

The weights and measures requirements as to methods of sale of all food and nonfood commodities shall be the requirements adopted by the National Conference on Weights and Measures, as published by the United States Department of Commerce in its "NIST (National Institute of Standards and Technology) Handbook 130 (2006 Edition) — Uniform Regulation for the Method of Sale of Commodities."

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

Stat. Auth.: ORS 561, 618 & 621
Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.206, 618.226, 618.236, 618.241 & 618.246
Hist.: AD 12-1984, f. & ef. 9-24-84; AD 15-1986, f. & ef. 12-19-86; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0220

Exceptions to the National Institute of Standards and Technology Handbook 130 (2006 Edition)

The following exceptions and amendments are made to said handbook identified in OAR 603-027-206 Method of Sale of Commodities:

(1) Ready-to-Eat Food Definition. Change Section 1.12.1. Definition to read as follows: "'Ready-to-Eat Food' is restaurant-style food offered or exposed for sale without additional cooking or preparation, whether in restaurants, supermarkets, or similar food service establishments, packaged on the premises for convenience and presentation, and that is ready for consumption, though not necessarily on the premises where sold. Ready-to-Eat Food does not include sliced luncheon products, such as meat, poultry, or cheese when sold separately."

(2) Ready-to-Eat Food Methods of Sale. Change Section 1.12.2. Methods of Sale to read as follows: "Ready-to-Eat Food sold from bulk, or in servings packed on the premises, may be sold by weight, measure, or count (count includes servings) provided that:

(a) When Ready-to-Eat Foods are sold by count or measure, when such methods of sale are not customary, they shall be offered for sale by count or measure in areas of the establishment where customers would expect to find Ready-to-Eat Foods (e.g. Deli Section, Produce Section, etc.); and

(b) When Ready-to-Eat Foods are offered for sale near similar products packaged off of the premises, the Ready-to-Eat Foods shall be sold by the same method of sale as similar products."

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.206, 618.211, 618.216, 618.221, 618.226, 618.231, 618.236 & 618.246
Hist.: DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0635

Adoption of the National Institute of Standards and Technology Handbook 44

Except as provided in OAR 603-027-0640, the specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment within Oregon shall be those adopted by the National Conference on Weights and Measures, and contained in the 2007 Edition of Handbook 44, published by the U.S. Department of Commerce, entitled the "National Institute of Standards and Technology Handbook 44-Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", which publication is by this reference hereby made a part of this rule.

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

Stat. Auth.: ORS 561 & 618
Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.086, 618.096, 618.115, 618.151 & 618.275
Hist.: AD 1010(23-73), f. 12-20-73, ef. 1-11-74; AD 1056(2-75), f. 4-16-75, ef. 5-11-75; AD 6-1977, f. & ef. 3-21-77; AD 10-1979, f. & ef. 8-22-79; AD 19-1981, f. & ef. 8-21-81; AD 2-1986, f. & ef. 1-21-86; AD 9-1988, f. & cert. ef. 12-15-88; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 8-2000, f. & cert. ef. 3-29-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0640

Exceptions to the National Institute of Standards and Technology Handbook 44

The following exceptions and amendments are made to said handbook identified in OAR 603-027-0635:

(1) General Code: Section G-UR. User Requirements. In the last sentence of subsection G-UR.4.1 "Maintenance of Equipment", change "device user" to "device owner or operator".

(2) Scale Code:

(a) Section UR.3. User Requirements. At the end of subsection UR.3.3 "Single-Draft Vehicle Weighing", of the Scale Code in said handbook, add a new paragraph (c): "(c) The requirements of this rule apply only to new or used vehicle scales installed after August 13, 1975."

(b) Section UR.3. User Requirements. At the end of subsection UR.3.7.(a) add "and domestic solid waste".

(c) (Add a new subsection UR.3.3.1. "Multiple-Draft Vehicle Weighing", to the Scale Code in said handbook: "UR.3.3.1. Multiple Draft Vehicle Weighing. A vehicle scale installed and in use for weighing highway vehicles prior to August 13, 1975, may, at its then existing location, continue to be used for commercially weighing a highway vehicle or a coupled highway vehicle in multiple-draft rather than a single draft if:

(A) The vendor and vendee to the weighing transaction or an agent of either with written authority to consent to the transaction, agree in writing to a multiple-draft weight determination and provide written disclosure of the multiple-draft weight determination for the information of third parties to the weighing transaction, in a manner prescribed by the Department;

(B) At least one of the approaches to such a scale is straight, level and in the same plane as the scale platform and the weight determination is made using that approach; and

(C) The vehicle weight is limited or distributed on the scale platform so as not to exceed the manufacturer's rated sectional capacity for such a scale."

(d) Non-price-computing non-electronic mechanical scales of 50 kilograms (110 pounds) capacity or less that meet other Scale Code design, performance, marking and user requirements are exempt from ACCURACY CLASS MARKING under Section S.5. provided that devices intended for Class III applications excluding retail precious metals and semi-precious gem weighing under Table 7a. of Scale Code Section UR.1.1(a) shall have a minimum of 240 scale divisions.

(3) Appendix D Definitions.

(a) Direct Sale. Replace with the following: "A sale in which both parties in the transaction are present when the quantity is being determined."

(b) Remanufactured device. At the end of the Remanufactured device definition add "by a remanufacturer".

ADMINISTRATIVE RULES

(c) Remanufacturer. Add the following definition: "Remanufacturer. A company or individual who produces remanufactured devices or remanufactured main elements for resale."

(4) Hydrocarbon Gas Vapor-Measuring Devices Code. Section 3.33. Add a new subsection "N.7. Leak Test" to the Hydrocarbon Gas Vapor-Measuring Devices Code in said handbook: "N.7. Leak Test. Each hydrocarbon gas vapor-measuring device shall be submitted to a pressure leak test not to exceed the manufacturer's maximum rated pressure."

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.086, 618.096, 618.115, 618.151 & 618.275

Hist.: AD 1010(23-73), f. 12-20-73, ef. 1-11-74; AD 1050(40-74), f. 11-20-74, ef. 12-11-74; AD 1056(2-75), f. 4-16-75, ef. 12-11-74; AD 6-1977, f. & ef. 3-21-77; AD 9-1979, f. & ef. 8-16-79; AD 12-1981, f. & ef. 7-6-81; AD 2-1986, f. & ef. 1-21-86; AD 9-1988, f. & ef. 12-15-88; AD 8-1990, f. & ef. 4-5-90; AD 3-1992, f. & ef. 4-9-92; AD 12-1996, f. & ef. 12-10-96; DOA 8-2000, f. & ef. 3-29-00; DOA 9-2002, f. & ef. 2-15-02; DOA 10-2002, f. & ef. 3-7-02; DOA 11-2004, f. & ef. 3-26-04; DOA 20-2004, f. & ef. 6-28-04; DOA 3-2007, f. & ef. 2-2-07

603-027-0670

Definitions

As used in this Chapter, unless the context requires otherwise:

(1) "Placed in Service" means to install or repair following official rejection of any weighing or measuring device used commercially or intended to be used commercially.

(2) "Predominantly in Favor" means any and all weighing or measuring equipment, by group or entirety, in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator:

(a) More than 50 percent of the total devices with errors in favor of the device owner or operator; and

(b) In the case of measuring devices, more than 50 percent of the devices dispensing any single product, grade, service level, or payment method, with errors in favor of the device owner or operator. Devices that are not consistently minus (i.e. have either one "zero" or one "plus" error in addition to one minus error) on either the normal or special test will not be included in the calculations to determine if the entire site or a specific product, grade, service level, or payment method, is predominantly minus.

(3) "Repair," in any of its variant forms, means to adjust or recondition any weighing or measuring device following official rejection.

(4) "Service Agency" means any agency, firm, company or corporation which for hire, award, commission, or any other payment of any kind, installs, services, repairs or reconditions a commercial weighing or measuring device.

(5) "Serviceperson" means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device.

Stat. Auth.: ORS 561.190 & 618

Stats. Implemented: ORS 618.031 & 618.156

Hist.: DOA 26-1999, f. & ef. 12-6-99; DOA 3-2007, f. & ef. 2-2-07

603-027-0680

Placed in Service

A weighing or measuring device shall not be used commercially in the State of Oregon until:

(1) It is licensed as required in ORS 618.121;

(2) Either:

(a) A Placed in Service Report is completed and distributed as required in OAR 603-027-0690; or

(b) Express permission is given to the device owner or operator by a representative of the Measurement Standards Division,

(3) The devices are in compliance with all applicable requirements of the 2007 Edition of the National Institute of Standards and Technology (N.I.S.T.) Handbook 44;

(4) The devices are issued an active National Type Evaluation Program (N.T.E.P.) Certificate of Conformance (CC) on the entire weighing or measuring system unless otherwise exempted;

(5) The devices are installed in accordance with the manufacturer's instructions;

(6) The devices are adjusted within applicable tolerances and not Predominantly in Favor of the device owner or operator;

(7) The devices are adjusted as closely as practicable to zero error; and

(8) Security seals are appropriately affixed to any mechanism designed to be sealed.

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

Stat. Auth.: ORS 561.190 & 618

Stats. Implemented: ORS 618.031 & 618.156

Hist.: DOA 26-1999, f. & ef. 12-6-99; DOA 9-2002, f. & ef. 2-15-02; DOA 20-2004, f. & ef. 6-28-04; DOA 3-2007, f. & ef. 2-2-07

603-027-0700

Responsibilities of Service Person or Service Agency

The Service person or Service Agency is responsible for placing in service, installing, repairing, and adjusting devices such that:

(1) The devices are in compliance with all applicable requirements of the 2007 Edition of the National Institute of Standards and Technology (N.I.S.T.) Handbook 44;

(2) The devices are issued an active National Type Evaluation Program (N.T.E.P.) Certificate of Conformance (CC) on the entire weighing or measuring system unless otherwise exempted;

(3) The devices are installed in accordance with the manufacturer's instructions;

(4) The devices are adjusted within applicable tolerances and not Predominantly in Favor of the device user;

(5) The devices are adjusted as closely as practicable to zero error;

(6) Security seals are appropriately affixed to any mechanism designed to be sealed; and

(7) A Placed in Service Report is completed and distributed as required in 603-027-0690.

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

Stat. Auth. ORS 618.031 & 618.156

Stats. Implemented: ORS 618.031 & 618.156

Hist.: DOA 26-1999, f. & ef. 12-6-99; DOA 9-2002, f. & ef. 2-15-02; DOA 20-2004, f. & ef. 6-28-04; DOA 3-2007, f. & ef. 2-2-07

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

Rule Caption: Adopts 2007 Oregon Structural Code and Oregon Mechanical Specialty Code.

Adm. Order No.: BCD 1-2007

Filed with Sec. of State: 2-15-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 10-1-06

Rules Amended: 918-440-0010, 918-460-0010, 918-460-0015, 918-480-0010

Subject: Adopts the 2006 International Mechanical Code and the appended International Fuel Gas Code with Oregon Amendments, and will be known as the 2007 Oregon Mechanical Specialty Code. Adopts the 2006 International Building Code with Oregon amendments and will be known as the 2007 Oregon Structural Specialty Code (OSSC). Moves appendix 'N' "Low-Rise Multiple-Family Dwelling Construction" from the 2005 Oregon Residential Specialty Code to the 2007 OSSC.

Rules Coordinator: Marianne Manning—(503) 373-7438

918-440-0010

Adopted Oregon Mechanical Specialty Code

Effective April 1, 2007 the 2007 Oregon Mechanical Specialty Code is the 2006 Edition of the **International Mechanical Code**, and International Fuel Gas Code as published by the International Code Council and amended by the Building Codes Division.

[Publications: Publications referenced are available for review at the division. See division website for information on where to purchase publications.]

Stat. Auth.: ORS 455.020, 455.030 & 455.110

Stats. Implemented: ORS 455.110

Hist.: DC 35, f. 6-5-74, ef. 6-25-74; DC 52(Temp), f. & ef. 7-3-75 thru 10-31-73; DC 62, f. 11-20-75, ef. 1-1-76; DC 68, f. 3-3-76, ef. 4-1-76; DC 75, f. 5-21-76, ef. 8-1-76; DC 85, f. 8-19-76, ef. 10-1-76; DC 22-1978, f. 9-1-78, ef. 10-1-78; DC 8-1979, f. 4-30-79, ef. 5-1-79/8-1-79/1-1-80; DC 14-1979, f. 12-27-79, ef. 1-1-80; DC 6-1980, f. 6-5-80, ef. 7-1-80; DC 11-1981, f. & ef. 7-20-81; DC 13-1981, f. 10-30-81; ef. 11-1-81; DC 14-1983, f. 6-23-83, ef. 8-1-83; DC 26-1984, f. 8-31-84, ef. 9-15-84; DC 10-1986, f. 6-30-86, ef. 7-1-86; DC 5-1987(Temp), f. & ef. 3-26-87; BCA 3-1987, f. & ef. 8-4-87; BCA 7-1987, f. & ef. 9-3-87; Renumbered from 814-027-0005; BCA 34-1989, f. 12-21-89, ef. 1-1-90; BCA 32-1991(Temp), f. & ef. 9-30-91; BCA 6-1992, f. 3-24-92, cert. ef. 3-27-92; BCA 27-1992, f. 12-29-92, cert. ef. 1-1-93; BCD 2-1995, f. & ef. 2-9-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 18-2002, f. 7-26-02, cert. ef. 10-1-02; BCD 10-2004, f. 8-6-04 cert. ef. 10-1-04; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07

918-460-0010

Adopted Oregon Structural Specialty Code

Effective April 1, 2007 the 2007 Oregon Structural Specialty Code is the 2006 Edition of the **International Building Code**, as published by the International Code Council, and amended by the Building Codes Division.

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

Stat. Auth.: ORS 455.020, 455.447 & 455.610

Stats. Implemented: ORS 455.110

Hist.: DC 34, f. 6-5-74, ef. 6-25-74; DC 36(Temp), f. & ef. 7-1-74; DC 37, f. 8-30-74, ef. 9-25-74; DC 45, f. 4-7-75, ef. 4-25-75; DC 51(Temp), f. & ef. 7-3-75 - 10-31-75; DC 61, f. 11-20-75, ef. 1-1-76; DC 67, f. & ef. 2-19-76; DC 68, f. 3-3-76, ef. 4-1-76; DC 76, f. 5-21-76, ef. 8-1-76; DC 77, f. 5-26-76, ef. 6-3-76; DC 84, f. 8-19-76, ef. 10-1-76; DC 102, f. & ef. 11-1-77; DC 104, f. 12-1-77, ef. 12-10-77; DC 2-1978, f. 1-20-78, ef. 3-1-78; DC 18-1978, f. 5-4-78, ef. 5-15-78; DC 5-1978(Temp), f. 2-22-78, ef. 3-1-78 thru 4-29-78; DC 29-1978, f. 10-27-78, ef. 1-1-79; DC 31-1978(Temp), f. 12-8-78, ef. 1-1-79; DC 33-1978(Temp), f. 12-27-78, ef. 1-1-79; DC 6-1979 (Temp), f. 3-13-79, ef. 4-1-79; DC 8-1979, f. 4-30-79, ef. 5-1-79/8-1-79/1-1-80; DC 12-1979(Temp), f. 7-2-79, ef. 8-1-79; DC 13-1979, f. 11-1-79, ef. 12-1-79; DC 7-1980, f. 6-5-80, ef. 7-1-80; DC 15-1980(Temp), f. & ef. 10-13-80; DC 11-1981, f. & ef. 7-20-81; DC 13-1981, f. 10-30-81, ef. 11-1-81; DC 15-1981, f. 10-30-81, ef. 1-1-82; DC 9-1982, f. & ef. 3-1-82; DC 14-1983, f. 6-23-83, ef. 8-1-83; DC 26-1984, f. 8-31-84, ef. 9-15-84; DC 35-1984, f. & ef. 11-28-84; DC 14-1985(Temp), f. & ef. 6-21-85; DC 21-1985, f. 12-18-85, ef. 1-1-86; DC 10-1986, f. 6-30-86, ef. 7-1-86; DC 19-1986, f. 10-31-86, ef. 11-1-86; DC 5-1987(Temp), f. & ef. 3-26-87; DC 12-1987(Temp), f. 4-21-87, ef. 4-24-87; BCA 7-1987, f. & ef. 9-3-1987; BCA 11-1987, f. & ef. 10-21-87; BCA 12-1987, f. & ef. 11-5-87; Renumbered from 814-026-0005; BCA 34-1989, f. 12-21-89, cert. ef. 1-1-90; BCA 30-1990, f. 12-21-90, cert. ef. 1-1-92; BCA 43-1991(Temp), f. 12-24-91, cert. ef. 1-1-92; BCA 3-1992(Temp), f. 3-4-92, cert. ef. 3-5-92; BCA 12-1992, f. 6-29-92, cert. ef. 7-1-92; BCA 27-1992, f. 12-29-92, cert. ef. 1-1-93; BCA 3-1993(Temp), f. & cert. ef. 3-3-93; BCA 19-1993(Temp), f. 8-26-93, cert. ef. 9-1-93; BCA 26-1993, f. 10-22-93, cert. ef. 11-1-93; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07

918-460-0015

Amendments to the Structural Specialty Code

The Oregon Structural Specialty Code is adopted and amended pursuant to chapter 918, division 8. Amendments adopted for inclusion into the Oregon Structural Specialty Code are placed in this rule, showing the section reference, a descriptive caption and a short description of the amendment.

[Publications: Publications referenced are available for review at the division. See division website for information on where to purchase publications.]

Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 447.247, 455.110 & 455.112

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004, f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 22-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 23-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 1-2006, f. & cert. ef. 2-1-06; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07

918-480-0010

Amendments to the Oregon Residential Specialty Code

(1) The Oregon Residential Specialty Code is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the Oregon Residential Specialty Code are placed in this rule, showing the section reference, a descriptive caption and a short description of the amendment.

(2) Effective April 1, 2005:

(a) The 2003 Edition of the Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials and amended by the division are adopted as the plumbing provisions of the Oregon Residential Specialty Code; and

(b) The 2005 Edition of the NFPA 70, National Electrical Code and amended by the division are adopted as the electrical provisions of the Oregon Residential Specialty Code;

(c) Effective April 1, 2007 Appendix N, Low-Rise Multiple-Family Dwelling Construction is moved from the 2005 Oregon Residential Specialty Code to the 2007 Oregon Structural Specialty Code.

[Publications: Publications referenced are available for review at the division. See division website for information on where to purchase publications.]

Stat. Auth.: ORS 455.020, 455.110, 455.525 & 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformatting 1-19-98; BCD 3-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00, cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02, cert. ef. 10-1-02 thru 3-29-03; BCD 30-2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03; BCD 33-2002, f. 12-20-02, cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD

5-2005, f. & cert. ef. 3-28-05; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07

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

Rule Caption: Clarification of loan originator supervision and change education requirements; miscellaneous corrections, mostly technical in nature.

Adm. Order No.: FCS 1-2007

Filed with Sec. of State: 1-17-2007

Certified to be Effective: 1-17-07

Notice Publication Date: 10-1-06

Rules Amended: 441-860-0010, 441-860-0020, 441-860-0030, 441-860-0040, 441-860-0060, 441-875-0020, 441-880-0020, 441-880-0030

Subject: The amendments involved substantive changes to rules concerning supervision of loan originator activity and education for loan originators. Licensees will be required to diligently supervise all loan originators operating under that licensee's license, regardless of the employment status of the loan originator. Loan originators will be required to take an entry level course and pass the corresponding examination before taking any loan applications, rather than taking the course and examination during the first six months of employment as a loan originator. A grace of approximately 90 days is granted for existing loan originators who have not yet taken the entry level course or passed the examination. A passing score on the examination will be valid for two years. Finally, some of the amendments involve miscellaneous corrections to existing rules.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-860-0010

Definitions

(1) The term "Branch Office" is defined as a location, separate from the principal place of business of the licensed mortgage broker or mortgage banker ("licensee"), where a licensee or persons authorized to act on behalf of a licensee perform the activities described in ORS 59.840(5)(a) and 59.840(7)(a).

(2) The term "Principal Place of Business" is defined as that location, designated by the licensee, where the owners, officers, directors or other control person conduct the business of the licensee and maintains the books and records of the licensee.

(3) "Employee" is defined as any individual who has an employment relationship, acknowledged by both the employee and the licensee, which meets the following conditions:

(a) The employee receives payment or is paid by the licensee in a manner wherein deductions for Federal Unemployment Tax, Federal Insurance Contributions Act, and other such federal and state taxes have been withheld by the licensee;

(b) The licensee has the right to hire and terminate the employee, and hire and terminate the employee's assistants;

(c) The licensee provides the methods and procedures for performing the employee's services; and

(d) The licensee supervises the employee in the conduct of the employee's business and supervises the employee's compliance with applicable law and rules and the employee may not act in any capacity as an employee or independent contractor for another licensee.

(4) "Material Litigation" is defined as any past or pending litigation, which would be relevant to the Director's action on an application for a mortgage broker or mortgage banker license, including but not limited to the following types of litigation:

(a) Any conviction within the previous ten years from the date of the application, of a misdemeanor, an essential element of which is fraud, or for any felony;

(b) Any pending misdemeanor charge, an essential element of which is fraud, or any felony charge;

(c) Any civil action within the previous ten years from the date of the application, including suits filed in civil court, administrative actions, arbitration proceedings, or alternative dispute resolutions, involving allegations of financial misconduct and compensatory damages of \$10,000 or more;

(d) Any pending civil action including suits filed in civil court, administrative actions, arbitration, or alternative dispute resolution, involving

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allegations of financial misconduct and compensatory damages of \$10,000 or more; and

(e) Any bankruptcy filing or declaration of bankruptcy within the previous ten years from the date of the application.

(5) The term "Independent Accountant" means a certified public accountant (CPA) or public accountant (PA) who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.

(6) The term "Negotiating a Loan" and "Negotiating Terms of a Loan" means discussing in any manner with a borrower or potential borrower, the amount of a loan, the interest rate or any other cost associated with the loan, the length of the loan, any terms or conditions of a loan, or the preparation of any loan application forms.

(7) The term "Clients' Trust Account" means the account held in a federally insured financial institution into which Trust Funds, as defined pursuant to OAR 441-875-0010(6), are deposited.

(8) A person is not "engaged in the business of making loans secured by an interest in real estate" as used in ORS 59.840(5)(b)(C) and (7)(b)(F) if the person does not make more than 10 loans secured by an interest in residential real estate in any twelve month period.

(9) "False, misleading or deceptive statements or representation" in regards to advertising are defined to include:

(a) Advertising "wholesale rates" to the public or using the phrase "wholesale rates" in an advertisement;

(b) Advertising a rate which is bought down from the lender over the life of the loan without disclosing in the ad that rate is bought down and the cost of the buy down, to the consumer; and

(c) Advertising any program which would be in violation of Regulation X, 24 CFR 3500.14, regarding kickbacks and unearned fees, including soliciting referrals with a promise to pay the advertising costs of any settlement provider;

(d) For purpose of this subsection, "advertising" and "advertisement" are defined as any distribution of information regarding loan products by the mortgage banker or mortgage broker to members of the public.

(10) The term "Certified Authority" is defined as an organization certified by the Director to approve or provide, or both, loan originator's entry level and continuing education and tests.

(11) The term "Provider" is defined as a person who has been approved by the Certified Authority to provide entry-level or continuing education and tests, or both, to a loan originator.

(12)(a) The term "Notification Date" is defined as the date of the Director's receipt of the first initial, renewal, or amended mortgage banker/broker licensee application which lists the loan originator's name. For an existing licensee, the notification to the Director of a person functioning as a loan originator is considered an amended application and establishes the notification date for that loan originator.

(b) For a loan originator not subject to continuing education requirements while employed by an exempt entity, but who was previously the subject of notification to the director as a loan originator, the date of the director's receipt of an initial, renewal or amended application which again lists that loan originator's name is a new Notification Date for that loan originator.

Stat. Auth.: ORS 59.900(1)

Stats. Implemented: ORS 59.840, 59.845, 59.935, 59.945, 59.975, 59.977

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07

441-860-0020

Application Procedure

Each person desiring to obtain a mortgage banker or mortgage broker license shall apply to the Director by submitting the following:

(1) A completed application on a form approved by the Director;

(2) A surety bond or letter of credit pursuant to ORS 59.850(4) and OAR 441-860-0090;

(3) Financial statements prepared in accordance with generally accepted accounting principles, consisting of a balance sheet and a statement of income or operations which is dated not more than six months prior to submission of the application:

(a) The financial statements may be prepared by the licensee, except that if the Director finds it in the public interest, the Director may require that a licensee submit financial statements prepared by an independent accountant;

(b) If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of application shall also be submitted.

(4) Written Authorization to examine the applicant's Clients' Trust Account pursuant to ORS 59.935(3) or, in the case of a neutral escrow depository, a copy of the escrow agreement pursuant to OAR 441-875-0040(4);

(5) A copy of the written Notice to Financial Institution of Establishment of Clients' Trust Accounts pursuant to ORS 59.940. In the event the applicant does not receive client funds except at the time of closing, an Affidavit and Undertaking in the form and on terms approved by the Director;

(6) The name of the registered agent of the mortgage banker or mortgage broker as filed with the Corporations Division of the Secretary of State for the State of Oregon;

(7)(a) Each of the following persons shall submit the information required under the provisions of subsections (b) and (c) of this section:

(A) Any director, officer, and shareholder with ownership of greater than or equal to 10 percent of outstanding shares of a corporate applicant;

(B) Owner, if the applicant is an unincorporated sole proprietorship; and

(C) Each managing partner of a limited or general partnership.

(b) A biographical statement including name, address, social security number, date of birth, and a description of any material litigation for the preceding ten years. If more than one name or social security number has been used by any of the persons submitting the biographical statement, all names and social security numbers must be submitted; and

(c) An employment history for the ten years prior to the date of the application which shall include the name of each employer, job position and title, date each employment began and date each employment ended;

(d) Each branch supervisor shall submit an employment history for the ten years prior to the date of the application, or the date of employment as a supervisor. The employment history shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(8) The information required pursuant to OAR 441-880-0030 for loan originators;

(9) The information required pursuant to OAR 441-860-0030 for each branch office;

(10) Initial fees. An initial application fee composed of a fixed component in the amount of \$825 and a variable component in the amount of \$60 for each reported loan originator to be employed by or associated with the firm to do business in this state, plus a fee of \$165 for each initial branch office operated by a licensee that will do business in this state;

(11) Additional branch offices. A fee of \$247.50 for each branch office added after the mortgage banker or mortgage broker license is issued;

(12)(a) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.980 and OAR 441-850-0005 through 441-885-0010 is insufficient to fund the administration of ORS 59.840 through 59.980, the Director may amend this rule to increase the fees to an amount necessary to fund the administration of ORS 59.840 through 59.980 plus a reasonable emergency fund;

(b) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.980 and OAR 441-850-0005 through 441-885-0010, exceeds the amount necessary to fund the administration of ORS 59.840 through 59.980, the Director may amend this rule to decrease the fees to an amount necessary to administer ORS 59.840 through 59.980 plus a reasonable emergency fund;

(c) If the Director finds that the balance of revenues collected exceeds the amount necessary to administer ORS 59.840 through 59.980 and provide a reasonable emergency fund, the Director may issue an Order granting a partial rebate of fees due from each applicant or licensee over a period of time specified in the Order.

(13) If an applicant for a license submits an application which is incomplete in any respect, the Director will contact the applicant to request the missing information. The applicant will have 30 days to respond to the request for information from the Director. If the applicant fails to respond, the application will be withdrawn.

Stat. Auth.: ORS 59.850, 59.855 & 59.900

Stats. Implemented: ORS 59.845 & 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2007, f. & cert. ef. 1-17-07

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441-860-0030

Branch Office Licensing

In the event a mortgage banker or mortgage broker wishes to operate a branch office as defined in OAR 441-860-0010, the licensee must submit the licensing fee specified in OAR 441-860-0020(10) and provide the following information on the original license application form or upon an amendment to the original application at least 30 days before the branch commences operation:

(1) The address of the location of each branch office, and the mailing address if different, and the branch office telephone number email address and facsimile number.

(2) The information required pursuant to OAR 441-860-0020(7) regarding the branch supervisor who will supervise the activities of the employees of the branch to insure compliance with all applicable rules and regulations.

(3) Upon satisfaction of the requirements listed above in (1) and (2), a separate branch office license will be issued by the Director for posting in the branch office location.

Stat. Auth.: ORS 59.850(1) & 59.900

Stats. Implemented: ORS 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 1-2007, f. & cert. ef. 1-17-07

441-860-0040

Supervision of Branch Offices and Loan Originators

(1)(a) Branch offices shall be supervised by the licensee to insure compliance with ORS 59.840 through 59.980 and OAR 441-850-0005 through 441-885-0010. The licensee must diligently supervise and control every loan originator employed by the licensee who is or should be registered in Oregon.

(b) For purposes of this rule:

(A) "Loan originator employed by the licensee" means every loan originator operating under the authority of the licensee's license, regardless of whether the loan originator is an employee of the licensee or purports to act as an agent or independent contractor for the licensee;

(B) "Supervisor" means a partner, officer, branch manager, or other experienced person with management or supervisory responsibilities who is an employee of the licensee.

(2) To diligently supervise and control a loan originator employed by the licensee, the licensee shall:

(a) Establish, maintain and enforce written procedures to supervise the activities of loan originators employed by the licensee and other associated persons that are subject to its supervision and to supervise the operation of each office of the licensee transacting loans with Oregon consumers. The procedures shall be reasonably designed to achieve compliance with applicable Oregon and federal lending laws and rules, including ORS 59.840-59.980;

(b) Review the activities of each office transacting loans with Oregon consumers, which shall include the examination of customer loan files, including closed and opened files. The reviews shall be reasonably designed to assist in detecting violations of, preventing violations of and achieving compliance with applicable mortgage lending laws, regulations and rules, as well as detecting and preventing irregularities or abuses. Each mortgage broker shall retain a record of the dates and findings of each review. The duties of this rule may be delegated to a qualified supervisor;

(c) Provide a copy of the procedures required by this rule to every loan originator employed by the licensee in written or electronic format;

(d) Ensure that loan originators obtain training to address deficiencies identified by the licensee in loan file and operations reviews;

(e) Establish procedures for handling consumer complaints and develop procedures to identify the types of consumer complaints that must be forwarded to a supervisor for review. Complaints that must be forwarded to a supervisor include complaints about material changes in loan terms, fees or expenses, or material omissions about loan terms, fees or expenses. The licensee shall also develop procedures for investigating, responding to and keeping a record of complaints forwarded to a supervisor.

(3) In establishing the procedures in section (2) of this rule and in determining the frequency of office reviews, the licensee shall consider the following:

(a) The number of loan transactions made by the licensee;

(b) The number of office locations transacting loans with Oregon consumers;

(c) The number of affiliated persons assigned to each location;

(d) The nature and complexity of the loan transactions that the licensee predominantly makes;

(e) The number of loan originators assigned to a location;

(f) The number of loan originators assigned to the supervision of an individual supervisor; and

(g) The results of previous office reviews.

(4) In establishing the procedures in section (2) of this rule and in determining the number of files from each loan originator to be reviewed, the licensee shall consider the following:

(a) The knowledge and years of lending experience of a loan originator;

(b) The disciplinary history of and the number of complaints received about a loan originator;

(c) The experience and level of sophistication of the borrowers of a loan originator, if specific segments of society are targeted as customers by the loan originator or licensee;

(d) The nature and complexity of the loan transactions that the licensee predominantly makes; and

(e) The results of previous file reviews for a particular loan originator.

(5) The licensee is subject to disciplinary action of the director for any violation of the Oregon Mortgage Lender Law or corresponding rules committed by a loan originator employed by the licensee, whether or not that accountability is documented in any written agreement.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-2007, f. & cert. ef. 1-17-07

441-860-0060

Equivalent and Related Experience

(1) An applicant or a managing partner, director, executive officer or other individual occupying a similar position or performing similar functions who has experience in the following categories shall be given full credit for such experience toward meeting the experience requirement contained in ORS 59.850(2):

(a) Origination of loans secured by lien interests in real estate;

(b) Negotiation of loans secured by lien interests in real estate;

(c) Underwriting of loans secured by lien interests in real estate; or

(d) Persons who supervise the activities of those persons enumerated in subsections (a) through (c) of this section.

(2) An applicant who has experience, within the five year period preceding the application date, in the following categories may receive partial credit for such experience toward the experience requirement contained in ORS 59.840 through 59.980. Credit may be given in only one category listed and for not more than three years actual experience. Credit given shall be in the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker and mortgage broker license as set forth below. The remaining years of experience required to qualify for a license shall be obtained from experience in categories listed in section (1) of this rule. The categories of possible alternative experience for which partial credit is available, and the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker or mortgage broker license are:

(a) Escrow officer, 3:2;

(b) Loan processor with responsibility primarily for loans secured by lien interests on real estate, 3:2;

(c) Branch manager of lender with responsibilities primarily for loans not secured by lien interests on real estate, 3:1.5;

(d) Loan officer with responsibility primarily for loans not secured by lien interests on real estate, 3:1.5;

(e) Paralegal with demonstrated experience in real estate financing matters, 3:1;

(f) Real estate broker with an Oregon license or a license from a state with substantially equivalent real estate licensing requirements, 3:1;

(g) Title officer with a title company, 3:1;

(h) Real estate broker, not within subsection (f) of this section, 3:1;

(i) Real estate salesperson with an Oregon license or a license from a state with substantially equivalent licensing requirements, 3:1;

(j) Licensed real estate appraiser, 3:1; and

(k) Real estate salespersons not included in subsection (i) of this section, 3:0.5.

(3) An applicant who does not originate loan applications or negotiate loan terms but who is in the business of selling real estate paper whether as issuer, agent or principal, to persons other than persons enumerated in ORS 59.035(4), or who engages all or part of the time, for the account of others or for the person's own account, in the business of accepting funds from one or more persons other than persons enumerated in ORS 59.035(4) for investment in real estate paper, shall be given full credit for experience

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toward meeting the three of the past five year experience requirement contained for:

(a) Experience as a licensed securities salesperson under the provisions of ORS 59.165; or,

(b) Experience as a securities salesperson effecting transactions in securities which are exempt from registration under the provisions of ORS 59.025 and 59.035.

(4) The individual listed as the "experienced person" on the applicant's licensing application may not work, as an employee or independent contractor as the "experienced person," for another licensee.

Stat. Auth.: ORS 59.850(2) & 59.900

Stats. Implemented: ORS 59.840

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07

441-875-0020

Branch Office Trust Accounts

Compliance with the provisions of OAR 441-875-0020 through 441-875-0040 does not relieve any person of any other duties and liabilities under ORS 59.840 through 59.980, Oregon Administrative Rules, the Oregon Securities Law found in ORS Chapter 59 or any other provisions of law:

(1) Branch offices shall maintain a separate trust account if:

(a) The main office of the licensee does not maintain a trust account or deposit funds into a neutral escrow depository on behalf of the branch offices' clients; or

(b) The main office of the licensee is not located within the State of Oregon.

(2) If the branch office maintains a trust account separate from the main office, the licensee shall be responsible for supervision of the branch office trust account to ensure compliance with the provisions of OAR 441-875-0030 and ORS 59.935 and 59.940.

(3) If the branch office places funds into a neutral escrow depository, the licensee shall be responsible for supervision of the branch office activities to ensure compliance with the provisions of OAR 441-875-0030 and ORS 59.935(1).

(4) Branch offices may maintain a trust account separate from any trust account maintained by the main office provided the branch office complies with all provisions under OAR 441-875-0030 and ORS 59.935(4).

(5) Examination of the branch office books and records relating to the trust accounts may be made at such time as the Director or his authorized representative may choose.

Stat. Auth.: ORS 59.900 & 59.935

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-2007, f. & cert. ef. 1-17-07

441-880-0020

Educational Requirements

(1) Each loan originator required to take an entry-level course and pass an examination on state and federal laws and rules relating to mortgage lending in this state must complete a Certified Authority approved course and pass a Certified Authority approved examination prior to taking a loan application from any Oregon consumer. However, a loan originator who was hired prior to the effective date of this rule amendment is granted an extension to April 13, 2007 to complete the entry-level course and pass the examination.

(2) A passing score on a Certified Authority approved entry level examination is valid for 2 years from the date of passing the examination.

(3) Each loan originator must complete 20 hours of continuing education within 24 months of their Notification Date and every subsequent 24-month period. There shall be no carryover of hours of continuing education between periods.

(4) Any person who fails to meet the continuing education requirement may not function as a loan originator until they take a Certified Authority approved entry-level course and pass a Certified Authority approved examination on state and federal laws and rules relating to mortgage lending in this state.

Stat. Auth.: ORS 59.975

Stats. Implemented: ORS 59.969, 59.975

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07

441-880-0030

Employer's Requirements

(1) Not later than January 30, 2002, employers are required to provide the Director with a list of all loan originators and the information in section (3) of this rule.

(2) Within 30 days of a person starting to function as a loan originator or ending functioning as a loan originator, the employer must notify the Director by amending their licensee application in a form approved by the Director.

(3) If the notice is for a person starting to function as a loan originator, the amendment shall include the following information about the loan originator:

(a) Name;

(b) The start date as a loan originator;

(c) Current business and home address, telephone, and e-mail address;

(d) Social security number or a detailed physical description of the loan originator including: height, weight, eye and hair color, and a description of any unique physical characteristics such as birthmarks and tattoos;

(e) Date of birth; and

(f) Certification of compliance with ORS 59.967(2), 59.969(4)(a) & (b) and 59.971.

(4) If the notice is for a person ending functioning as a loan originator, the amendment should include the following information:

(a) Name;

(b) The ending date as a loan originator;

(c) Last known contact information; and

(d) The reason for termination if it was for failure to comply with state or federal laws, regulations or rules.

(5) At the time for each mortgage banker/broker license application or renewal, the employer must notify the Director of the names and current contact information of the loan originators employed, including certification of compliance with ORS 59.967(2), 59.969(4)(a) & (b) and 59.971.

(6) No employer may hire, or continue to employ, a person to serve as a loan originator who has not met the educational requirements of ORS 59.840 through 59.980, 59.969 & 59.975 and OAR 441-880-0020.

(7) As courses are satisfactorily completed by the loan originators, the employer shall retain a copy of the completion certificate in the loan originator's personnel file for review by the Director at the time of the next occurring examination or for five years, whichever first occurs.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.969

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 1-2007, f. & cert. ef. 1-17-07

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Workers' Compensation Insurance; Premium Audit Program; Form of Payroll Statement.

Adm. Order No.: ID 1-2007

Filed with Sec. of State: 1-17-2007

Certified to be Effective: 1-17-07

Notice Publication Date: 11-1-06

Rules Amended: 836-043-0110

Subject: This rulemaking amends a rule governing the worker's compensation insurance premium audit program. The rule required the insurer, if a policy is not audited, to obtain a signed payroll statement from the employer. The amended rule deletes the requirement that the statement be signed, allowing employers and insurers to satisfy this reporting requirement electronically.

Rules Coordinator: Sue Munson—(503) 947-7272

836-043-0110

Insurer Premium Audit Program

(1) The rates, rating plans and rating systems approved by and on file with the Insurance Division shall govern the audited payroll and the adjustment of premiums, subject to the provisions of this rule.

(2) For the purpose of determining the premium of an insured employer whose policy produces an annual earned premium of \$10,000 or more, the insurer of the employer shall make a physical audit of the employer's records at least once annually, except as provided in this section. For as long as the insurer continues to provide coverage to an employer, when the insurer finds that the audit premium difference is less than five

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percent for each of two consecutive policy years for which the insurer provided coverage, the insurer need audit only every third renewal policy subsequent to the policy most recently audited. If the insurer finds at any audit that the audit premium difference is five percent or greater, the insurer must again audit the employer's policy at least annually until the insurer finds an audit premium difference of less than five percent for each of two consecutive policy years. For each policy year for which a policy is not audited, the insurer shall obtain a payroll statement from the employer. For purposes of this section, the basis for the audit premium difference for an employer shall be the audited standard premium as defined in each insurer's approved rating system.

(3) An insurer shall audit five percent of all policies that are issued by the insurer and produce an annual earned premium of less than \$10,000 but more than \$1,000. In each year when such a policy is not audited, the insurer shall obtain a payroll statement from the employer. If neither an audit nor a statement of payroll is obtained, the insurer shall give satisfactory reason to the Division. Of the policies described in this section, the insurer shall first select such policies that show multiple classifications, high rates or indications of contract labor, or any combination of such criteria.

(4) When an insurer increases premium for an employer based on a premium audit, the insurer shall include in the final premium audit billing a notification to the employer of the following matters, as required by ORS 737.318:

(a) That the employer may appeal to the Director, as allowed by ORS 737.505; and

(b) That the written request required to initiate the appeal must be received by the Director not later than the 60th day after the employer receives the final premium audit billing.

(5) The final premium audit billing must be entitled "Final Premium Audit Billing" at the top of the front page. The notification required in section (4) of this rule shall include the following wording, or substantially equivalent wording approved by the Director, that is prominently displayed and in not less than 12-point type:

Notice: You, the employer, may appeal this final premium audit billing. You must initiate your appeal by submitting a written request for a hearing to the Director of the Department of Consumer and Business Services, State of Oregon. Your request must be received by the Director not later than the 60th day after you received this billing. Who may submit an employer's request?

1. If the employer is a sole proprietor, the employer or an attorney for the employer may submit the request.
2. If the employer is a partnership, an attorney for the partnership or any member of the partnership may submit the request.
3. If the employer is a corporation, association or organized group, an attorney for the corporation, association or organized group or an authorized officer or regular employee of the corporation, association or organized group may submit the request.
4. If the employer is a governmental authority other than a state agency, an attorney for the governmental agency or an authorized officer or employee of the governmental authority may submit the request.

Please state in your request the date on which you received your final premium audit billing.

The request for hearing must be sent to the following address:
Director, Department of Consumer and Business Services
Insurance Division
350 Winter St. NE, Room 440
Salem, OR 97301-3883

Assistance is available on the Insurance Division's web page, at <http://www.cbs.state.or.us/external/ins/> and by e-mail, at DCBS.INSMAIL@state.or.us

After you submit your request for hearing, the Insurance Division will provide you a petition form. In the petition, you must state the reasons you believe your insurer billed you incorrectly and describe the actions you wish the Director to take to correct the matter.

You are entitled to a hearing only if the Director has received your completed petition and has determined that the Director has jurisdiction over the matter. You may send a copy of your request for hearing to your insurer so that you may attempt to resolve the dispute with your insurer prior to a hearing. You may seek resolution up to the time set for the hearing, but please remember:

1. The 60-day period for initiating your request continues to run even though you may be negotiating with your insurer.
2. Your request must be received at the address above not later than the 60th day after you received this billing.

You may wish to consult with an attorney about your case.

(6) In addition to the requirements of section (4) of this rule, if the premium audit billing is based in whole or part on a determination by the insurer that one or more persons are employees rather than an independent contractor, the insurer must also include in the notification with respect to each such person, an explanation of that determination. The explanation must name the person, designate or describe the position or tasks for which the person is determined to be an employee and give reasons for the determination.

(7) For purposes of this rule, the term "final premium audit billing" has the meaning given that term in OAR 836-043-0170.

Stat. Auth.: ORS 731 & 737
Stats. Implemented: ORS 737.318(1) & 737.505(4)

Hist.: ID 1-1988, f. & cert. ef. 1-20-88; ID 13-1988(Temp), f. & cert. ef. 7-27-88; ID 15-1988(Temp), f. & cert. ef. 9-2-88; ID 4-1989, f. & cert. ef. 2-28-89; ID 9-1990, f. 5-10-90, cert. ef. 6-1-90; ID 6-1997(Temp), f. & cert. ef. 5-30-97; ID 17-1997, f. 11-25-97, cert. ef. 11-26-97; ID 1-2000, f. & cert. ef. 2-10-00; ID 1-2007, f. & cert. ef. 1-17-07

Rule Caption: Rulemaking Permitting Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities.

Adm. Order No.: ID 2-2007

Filed with Sec. of State: 2-12-2007

Certified to be Effective: 2-12-07

Notice Publication Date: 1-1-07

Rules Adopted: 836-031-0800, 836-031-0805, 836-031-0810, 836-031-0815

Subject: This rulemaking recognizes, allows and prescribes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities, in connection with life insurance, for policies sold on or after January 1, 2007.

Rules Coordinator: Sue Munson—(503) 947-7272

836-031-0800

Purpose, authority

(1) The purpose of OAR 836-031-0800 to 836-031-0815 is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with ORS 733.306 and OAR 836-031-0765.

(2) OAR 836-031-0800 to 836-031-0815 are adopted pursuant to the authority of ORS 731.244 and 733.306, for the purpose of implementing ORS 733.306.

Stat. Auth.: ORS 731.244 & 733.306

Stats. Implemented: ORS 733.306

Hist.: ID 2-2007, f. & cert. ef. 2-12-07

836-031-0805

Definitions

(1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined in section (2) of this rule. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(a) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table;

(b) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table;

(c) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers;

(d) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO Nonsmoker and Smoker Tables, as adopted by the NAIC at the September, 2006 national meeting and published in the NAIC Proceedings, 3rd Quarter 2006. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

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(3) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for the history of ongoing electronic communications and data transfer ensuring data integrity with insurers that are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth: ORS 731.244 & 733.306
Stats. Implemented: ORS 733.306
Hist.: ID 2-2007, f. & cert. ef. 2-12-07

836-031-0810

2001 CSO Preferred Class Structure Table

At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in OAR 836-031-0800 to 836-031-0815, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election may be made until the insurer demonstrates at least 20 percent of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of OAR 836-031-0800 to 836-031-0815, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation "Recognition of the 2001 CSO Mortality Table For Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation."

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth: ORS 731.244 & 733.306
Stats. Implemented: ORS 733.306
Hist.: ID 2-2007, f. & cert. ef. 2-12-07

836-031-0815

Conditions

(1) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class;

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class;

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(3) Unless exempted by the Director, each authorized insurer using the 2001 CSO Preferred Class structure Table shall annually file with the Director, with the NAIC or with a statistical agent designated by the NAIC and acceptable to the Director, statistical reports showing mortality and other information ask the Director may deem necessary or expedient for the administration of the provisions of OAR 836-031-0800 to 836-031-0815. The form of the reports shall be established by the Director or the Director

may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the Director.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth: ORS 731.244 & 733.306
Stats. Implemented: ORS 733.306
Hist.: ID 2-2007, f. & cert. ef. 2-12-07

Rule Caption: Coordination of Group Health Insurance Policy Benefits; Effective Date of Rulemaking.

Adm. Order No.: ID 3-2007

Filed with Sec. of State: 2-12-2007

Certified to be Effective: 2-12-07

Notice Publication Date: 12-1-06

Rules Amended: 836-020-0770

Subject: This rulemaking moves to January 1, 2008, the effective date of rulemaking relating to coordination of group and blanket health insurance benefits that was adopted in 2006, and requires the Director of the Department of Consumer and Business Services to review the rules and their implementation experience after January 1, 2010.

Rules Coordinator: Sue Munson—(503) 947-7272

836-020-0770

Authority, Purpose and Effective Date of OAR 836-020-0770 to 836-020-0805

(1) OAR 836-020-0770 to 836-020-0805 are adopted by the Director of the Department of Consumer and Business Services pursuant to the authority of ORS 731.244 and 743.552, for the purpose of implementing ORS 743.549 and 743.552.

(2) The purpose of OAR 836-020-0770 to 836-020-0805 is to:

(a) Establish a uniform order of benefit determination under which plans pay claims;

(b) Reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, as provided in OAR 836-020-0770 to 836-020-0805, do not have to pay their benefits first; and

(c) Provide greater efficiency in the processing of claims when a person is covered under more than one plan.

(3) Insurers must make their plans compliant with OAR 836-020-0770 to 836-020-0805 not later than January 1, 2008. Until the date on which an insurer makes a plan of the insurer compliant, the plan shall continue to be subject to the prior rules, OAR 836-020-0700 to 836-020-0765. In the event a question of order of benefit determination arises between a plan operating under OAR 836-020-0770 to 836-020-0805 and a plan operating under the prior rules, OAR 836-020-0700 to 836-020-0765, the order of benefit determination shall be governed by the prior rules.

(4) The Director shall review OAR 836-020-0770 to 836-020-0805 after January 1, 2010 to evaluate their effect in the group health insurance marketplace, upon consumers and upon the costs of coordinating health insurance benefits, and to determine whether further rulemaking is called for.

Stat. Auth: ORS 731.244, 743.552
Stats. Implemented: 743.549, 743.552
Hist.: ID 14-2006, f. & cert. ef. 7-20-06; ID 3-2007, f. & cert. ef. 2-12-07

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

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

Adm. Order No.: WCB 1-2007

Filed with Sec. of State: 1-19-2007

Certified to be Effective: 3-1-07

Notice Publication Date: 11-1-06

Rules Amended: 438-005-0046, 438-022-0005

Subject: Amends OAR 438-005-0046(1) to permit filing of requests for hearing and Board review by means of e-mail to a single e-mail address with an attached electronic copy of the completed request for hearing or request for Board review form in a specified format (Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg)). Amends OAR 438-005-0046(2) to permit service by e-mail of requests for hearing or Board review, provided that the copy is sent in a format readable by the recipient. These amendments are

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effective March 1, 2007 and apply to all requests for hearing and Board review filed, and to all services of such requests made on or after March 1, 2007. Amends OAR 438-022-0005 to adopt by reference the Attorney General's Model Rules for Rulemaking adopted by the Department of Justice effective January 1, 2006. This amendment is effective March 1, 2007 and applies to all rulemaking actions initiated on or after March 1, 2007.

Rules Coordinator: Vicky Scott—(503) 378-3308

438-005-0046

Filing and Service of Documents; Correspondence

(1) Filing:

(a) Except as otherwise provided in these rules, "filing" means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;

(b) In addition to the procedures otherwise described in these rules, "filing" may also be accomplished in the manner prescribed in OAR 436, division 009 or 010 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;

(c) If filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;

(d) Filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute may be accomplished by electronic mail (e-mail). To electronically file a request for hearing or Board review, a party shall:

(A) Send an e-mail to: request.wcb@state.or.us; and

(B) Attach an electronic copy of a completed Workers' Compensation Board "Request for Hearing Form," or a completed request for Board review. These attachments must be in a format of Microsoft Word 2000@ (.doc, .txt, .rtf), Adobe Reader@ (.pdf), or formats that can be viewed in Internet Explorer@ (.tif, .jpg).

(C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the appropriate completed electronic form which must be in a format of Microsoft Word 2000@ (.doc, .txt, .rtf), Adobe Reader@ (.pdf), or formats that can be viewed in Internet Explorer@ (.tif, .jpg). An electronic filing under subsection (d) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.

(e) Except for the documents specified in subsection (c) or (d) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely;

(f) "Filing" includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:

(A) The document transmitted indicates at the top that it has been delivered by FAX;

(B) The Board's facsimile transmission number is used; and

(C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.

(2) Service:

(a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d), or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is complete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail regarding requests for hearing or Board

review filed under OAR 438-005-0046(1)(d) is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d), or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number. Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, cert. ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1991(Temp), f. 5-24-91, cert. ef. 5-28-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-1999(Temp), f. 9-24-99, cert. ef. 10-23-99 thru 4-14-00; WCB 1-2000, f. 3-29-00, cert. ef. 4-3-00; WCB 1-2007, f. 1-19-07, cert. ef. 3-1-07

438-022-0005

Adoption of Attorney General's Model Rules

To the extent that the following rules are applicable to the Workers' Compensation Law (Chapter 656), the Board hereby adopts by reference OAR 137-001-0005 through 137-001-0100 (Attorney General's Model Rules for Rulemaking), as adopted by the Department of Justice effective January 1, 2006.

Stat. Auth.: ORS 656.726(5) & 654.025(2)

Stats. Implemented: ORS 183.341(4)

Hist.: WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 1-2007, f. 1-19-07, cert. ef. 3-1-07

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

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

Adm. Order No.: WCD 1-2007

Filed with Sec. of State: 1-30-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 436-170-0002, 436-170-0100, 436-170-0200, 436-170-0300

Subject: These rules are adopted to:

- Provide guidance to agencies referenced in ORS 670.600 as to how the statute will be implemented;
- Clarify the meaning of terms used in ORS 670.600; and
- Provide guidance to interested persons as to how the agencies referenced in ORS 670.600 will apply the provisions of that statute.

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

Rules are available on the internet: <http://www.wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-170-0002

Purpose of Rule

The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

Stat. Auth.: ORS 656.726(4), 670.605

Stats. Implemented: ORS 316.162, 670.600

Hist.: WCD 1-2007, f. 1-30-07, cert. ef. 2-1-07

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436-170-0100

Statutory Context

(1) ORS 670.600 generally establishes three requirements for “independent contractors.” One requirement is that an “independent contractor” must be engaged in an “independently established business.” Another requirement is related to licenses and certificates that are required for an “independent contractor” to provide services. A third requirement is that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others.

(2) The specific focus of this rule is the “direction and control” requirement. See ORS 670.600 for the requirements of the “independently established business” test and for licensing and certification requirements.

Stat. Auth: ORS 656.726(4), 670.605

Stats. Implemented: ORS 316.162, 670.600

Hist.: WCD 1-2007, f. 1-30-07, cert. ef. 2-1-07

436-170-0200

Direction and Control Test

(1) ORS 670.600 states that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the “direction and control” test:

(a) “Means” are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the “means” used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(b) “Manner” is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the “manner” by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(c) “Free from direction and control” means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(2) Right to specify results to be achieved. Specifying the final desired results of the contractor’s services does not constitute direction and control over the means or manner of providing those services.

Stat. Auth: ORS 656.726(4), 670.605

Stats. Implemented: ORS 316.162, 670.600

Hist.: WCD 1-2007, f. 1-30-07, cert. ef. 2-1-07

436-170-0300

Application of “direction and control” test in construction and landscape industries

(1) The provisions of this section apply to:

- (a) Architects licensed under ORS 671.010 to 671.220;
- (b) Landscape architects licensed under ORS 671.310 to 671.479;
- (c) Landscaping businesses licensed under ORS 671.510 to 671.710;
- (d) Engineers licensed under ORS 672.002 to 672.325; and
- (e) Construction contractors licensed under ORS chapter 701.

(2) A licensee described in section (1) that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(a) The licensee specifies the desired results of the subcontractor’s services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(b) The licensee specifies the desired results of the subcontractor’s services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(c) When specified by the licensee’s customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor’s services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock,

which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(d) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(e) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(f) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

Stat. Auth: ORS 656.726(4), 670.605

Stats. Implemented: ORS 316.162, 670.600

Hist.: WCD 1-2007, f. 1-30-07, cert. ef. 2-1-07

Department of Corrections Chapter 291

Rule Caption: Computation of Inoperative Time for Transitional Leave Violators or Inmates on Escape Status.

Adm. Order No.: DOC 1-2007

Filed with Sec. of State: 1-31-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 9-1-06

Rules Amended: 291-100-0008, 291-100-0130

Subject: These rules amendments are necessary to address calculation of inoperative time as it relates to short-term transitional leave suspensions. When determining how inoperative time should be calculated for inmates whose short-term transitional is suspended, it was necessary to bring consistency between short-term transitional leave suspensions and escapes. The rules were also amended to change how inoperative time is calculated for escapes.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-100-0008

Definitions

(1) Abscond: Unauthorized absence from parole or post-prison supervision.

(2) Commitments: A sentence of incarceration to the legal and physical custody of the Department of Corrections.

(3) Concurrent/Consecutive Ghosts: Inmates with Oregon Department of Corrections sentences who are housed in a federal or another state’s jurisdiction (not physically housed in an Oregon Department of Corrections facility) and their Oregon sentence is ordered to be served either concurrently or consecutively to a sentence from the federal or other state’s jurisdiction.

(4) Custodial Authority: The authority holding physical custody of the inmate, who is responsible for certifying time served while in their custody.

(5) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(6) Earned Time Credits: Sentence reduction credits that can be earned by an inmate sentenced under Sentencing Guidelines, pursuant to ORS 421.121 and the department’s rule on Prison Term Modification, OAR 291-097.

(7) Escape: Unauthorized departure of an inmate from the physical or legal custody of the Department of Corrections. Escape includes “constructive escape” where an inmate has any unserved felony sentence(s) in excess of 12 months and, by no effort of the inmate, is voluntarily absent from the Department of Corrections (for example, where an inmate is released from custody after serving a local supervisory sentence despite the inmate having any unserved felony sentence(s) in excess of 12 months).

(8) Extra Good Time Credits: Sentence reduction credits that can be earned by an inmate sentenced for crimes committed prior to November 1, 1989, (Non-Sentencing Guidelines), pursuant to ORS 421.120(1)(c), (d) and (e) and 421.122, and the department’s rule on Prison Term Modification, OAR 291-097.

(9) Face Sheet: Document that shows a summary of sentences for which an inmate is incarcerated by the Department of Corrections.

(10) Good Time Date: An indeterminate sentence release date calculated for inmates serving a sentence(s) for crime(s) committed prior to November 1, 1989, (Non-Sentencing Guidelines), achieved through reduc-

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tion in the sentence due to granting of statutory good time and extra good time credits.

(11) Inmate: A person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(12) Inoperative Time: Time spent on abscond, escape, or unauthorized departure from custody, transitional leave, or parole or post-prison supervision, which does not count toward service of the sentence.

(13) Intake Facility: A Department of Corrections facility designated by the department to receive inmates upon commitment to the legal and physical custody of the department, and to conduct intake evaluation of the inmate, including custody classification, needs assessment and some program assessments.

(14) Jail Good Time/Work Time Credits: Time credits for good behavior and work performed as allowed for inmates in a county local correctional facility pursuant to ORS 169.110 and 169.120, which are included as time thus served toward a probation revocation sentence if certified as part of the probationary sentence.

(15) Judgment: Document issued by the court that commits an inmate to the legal and physical custody of the Department of Corrections, and reflects the inmate's sentence length, any applicable statutes, term of post-prison supervision (for crimes committed on or after November 1, 1989), and court-ordered supervision conditions, if any.

(16) Maximum Sentence Expiration Date: The very latest date that a person can be held or supervised by the department on a particular sentence.

(17) Offender: Any person under the supervision of the Department of Corrections, local supervisory authority or community corrections who is on probation, parole, or post-prison supervision status.

(18) ORS 137.635 Sentence: A determinate sentence resulting from a conviction of one or more of ten listed felony crimes (i.e., Murder, including any aggravated form of Murder, Manslaughter I, Assault I, Kidnapping I, Rape I, Sodomy I, Sexual Penetration With a Foreign Object I, Burglary I, Arson I and Robbery I), if the inmate also has a prior conviction for one or more of those ten listed felony crimes.

(19) Parole Release Date: The date on which an inmate is ordered to be released from an indeterminate prison sentence(s) to parole by the Board of Parole and Post-Prison Supervision. Parole release may be to the community, detainee or to another Department of Corrections sentence.

(20) Parole Suspension: Issuance of an arrest and detain warrant by the Board of Parole and Post-Prison Supervision which ceases the running of an inmate's parole.

(21) Parole Violator: Any person whose parole has been revoked by the Board of Parole and Post-Prison Supervision.

(22) Post-Prison Supervision: A period of community supervision ordered by the sentencing judge for offenders convicted of a crime(s) committed on or after November 1, 1989.

(23) Post-Prison Supervision Violator: Any person whose post-prison supervision has been revoked by the Board of Parole and Post-Prison Supervision.

(24) Predicate Crime: A crime listed in ORS 137.635(2) that serves as a previous conviction in designating an inmate as an ORS 137.635 felon.

(25) Pre-sentencing Guidelines Sentences: Sentences imposed for crimes committed on or after October 4, 1977 and prior to November 1, 1989. Also may be referred to as "Matrix" sentences.

(26) Prison Term:

(a) Sentencing Guidelines Sentences: The length of incarceration time within a Department of Corrections facility as established by the court in the judgment.

(b) Pre-Sentencing Guidelines Sentences: The length of required incarceration time within a Department of Corrections facility as established by the order of the Board of Parole and Post-Prison Supervision setting of a parole release date.

(27) Projected Release Date: A release date calculated for inmates serving a sentence(s) for crimes committed on or after November 1, 1989 (Sentencing Guidelines), based on earned time sentence reduction credits earned through the last review period and a projected full compliance of earned time sentence reduction credits on the remaining sentence to be served.

(28) Qualifying ORS 137.635 Conviction: Conviction of a crime listed in ORS 137.635 that was committed following a predicate conviction of any of the ten crimes listed in ORS 137.635.

(29) Release Date Adjustment Form (CD 1417): A standardized form used by the Department of Corrections for documentation of the request

and approval/disapproval for early release as authorized by the Department of Corrections.

(30) Revocation Sanction: A term of incarceration or confinement designated by the Board of Parole and Post-Prison Supervision (or its designee) for violation of conditions of parole and post-prison supervision.

(31) Sentence: The punishment given to a person who has been convicted (i.e. found to be guilty) of a crime.

(a) Sentencing Guidelines Sentences: For purposes of these rules and Department of Corrections sentence computation, "sentence" means the length of incarceration time within a Department of Corrections facility, as established by the court in the judgment.

(b) Pre-Sentencing Guidelines Sentences: The length of time an inmate is ordered to the legal and physical custody of the Department of Corrections, up to the maximum indeterminate amount authorized by Oregon law, as established by the court in the judgment and reduced by statutory and extra good time credits.

(32) Sentencing Guidelines Sentences: Sentences imposed for crimes committed on or after November 1, 1989.

(33) Statutory Good Time Credits: Prison term reduction credits granted to an inmate sentenced for crimes committed prior to November 1, 1989, (Non-Sentencing Guidelines), pursuant to ORS 421.120(1)(a) and (1)(b), and these rules.

(34) Time Served Certification: A signed statement by a sheriff of the number of days an inmate was imprisoned prior to delivery of the inmate to a Department of Corrections facility.

(35) Time Served Credits: Pre-sentence time an inmate is confined in a county jail prior to sentencing, as certified in accordance with this rule. Time served credits also include time confined in jail between sentencing and arrival at a Department of Corrections intake facility.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: CD 23-1983, f. & ef. 5-2-83; CD 51-1985, f. & ef. 8-16-85; CD 45-1986, f. & ef. 10-21-86; CD 7-1989, f. & cert. ef. 5-25-89; CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05; DOC 9-2006(T), f. & cert. ef. 8-7-06 thru 2-3-07; DOC 1-2007, f. 1-31-07, cert. ef. 2-1-07

291-100-0130

Computation of "Inoperative Time"

(1) Pursuant to 137.370(2), time on escape or on "suspend" status from transitional leave outside a Department of Corrections or other assigned facility status will not be credited toward service of a department sentence.

(2) An inmate's service of a department sentence ceases on the date that the inmate escapes from a Department of Corrections or other assigned facility or on the date that transitional leave is suspended. A full day of credit will be given for the day of escape or for the day transitional leave is suspended. The inmate's sentence commences to run again on the date the inmate is incarcerated in an Oregon county jail with a full day of credit given for the day of incarceration in an Oregon county jail, with earned time calculated in accordance with OAR 291-097-0020(8). If Oregon county jail incarceration information cannot be obtained or verified by the department, the inmate's sentence commences to run again on the date the inmate is incarcerated in a Department of Corrections facility.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05; DOC 9-2006(T), f. & cert. ef. 8-7-06 thru 2-3-07; DOC 1-2007, f. 1-31-07, cert. ef. 2-1-07

Rule Caption: Vocational Training Projects.

Adm. Order No.: DOC 2-2007

Filed with Sec. of State: 1-31-2007

Certified to be Effective: 1-31-07

Notice Publication Date: 11-1-06

Rules Repealed: 291-017-0005, 291-017-0010, 291-017-0015, 291-017-0017, 291-017-0020, 291-017-0025

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

Rules Coordinator: Janet R. Worley—(503) 945-0933

Department of Fish and Wildlife
Chapter 635

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

ADMINISTRATIVE RULES

Adm. Order No.: DFW 5-2007
Filed with Sec. of State: 1-18-2007
Certified to be Effective: 1-18-07
Notice Publication Date: 12-1-06
Rules Amended: 635-047-0025

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

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-047-0025

Marking of Birds

All privately owned game birds to be released must be premarked in a manner prescribed by the department:

(1) All game birds reared for release upon hunting preserves shall be identified by a healed toe mark or be marked with a plastic poultry band or marked by a nasal scar. A nasal scar is a permanent deformity caused by a device that partially obstructs the bird's vision. For a healed toe mark, the terminal joint, including the entire toenail, shall be clipped from the outside of the right foot of each chick.

(2) In the event that an operator acquires birds that have not been toe marked, they shall be banded prior to release by the operator with plastic poultry bands or other bands approved by the department.

(3) Any wild game bird incidentally taken upon a hunting preserve at any time other than the general open season therefore shall be immediately marked with a wild bird seal that has been issued by the department. The fee for such seals shall be \$10.00 each. Any unused wild bird seals may be submitted for refund not later than 30 days after the close of business if a preserve discontinues operation.

(4) Operators shall pay for in advance and have on hand not less than 10 wild bird seals at all times.

(5) A wild bird seal shall be securely affixed to any wild bird taken outside the general season or any wild hen pheasant before it leaves the premises of the hunting preserve.

(6) A record of the date of issue and the names and address of persons receiving wild bird seals must be maintained by the operator and available to department personnel or enforcement officers at all times.

Stat. Auth.: ORS 496.012, 496.138, 496.570, 497.102, 497.156 & 497.248
Stats. Implemented: ORS 496.012, 496.138, 496.570, 497.102, 497.156 & .248
Hist.: GC 101, f. 7-9-59, Renumbered from 630-023-0025, Renumbered from 635-007-0025; FWC 115-1992, f. & cert. ef. 10-28-92; DFW 86-1999, f. & cert. ef. 11-1-99; DFW 7-2002, f. & cert. ef. 1-17-02; DFW 66-2006(Temp), f. & cert. ef. 7-25-06 thru 1-15-07; Administrative correction 1-16-07; DFW 5-2007, f. & cert. ef. 1-18-07

Rule Caption: Access and Habitat Program Emergency Seeding.

Adm. Order No.: DFW 6-2007
Filed with Sec. of State: 1-18-2007
Certified to be Effective: 1-18-07
Notice Publication Date: 12-1-07
Rules Adopted: 635-090-0200

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

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-090-0200

Emergency Seeding

(1) This section creates a special, fast-track review and approval process available to the Board for emergency seeding projects that address recent, wildfire-caused impacts to lands providing wildlife habitat. Notwithstanding any other rule, the Board may (at its discretion) process grant applications for such emergency projects using any or all of the special process elements provided by subsection (2) of this rule. However, the substantive standards provided in other rules shall still apply, with the addition of the special criteria specified in subsection (4) below.

(2) When processing an application for an emergency project, the Board may:

(a) Consult with the appropriate Regional Advisory Council in the most expeditious manner available (which may include fax, e-mail or telephone);

(b) Consider and vote on the application during a special meeting of the Board upon shorter notice than required for regular Board meetings; and

(c) Hold such a special Board meeting via telephone conference call.

(3) Any emergency grant application recommended by the Board through the special procedures provided by this rule shall be forwarded to the Director (rather than the Commission) for final funding decision. The Director shall act on such a recommendation within 7 working days of receipt.

(4) The Board shall apply the following special criteria to emergency grant applications, in addition to the general standards provided elsewhere in this division:

(a) The proposed project must be located entirely on private land;

(b) The project site must provide critical habitat for wildlife;

(c) The project must propose emergency seeding to benefit wildlife, and the seed mixture has been approved by the local ODFW district biologist;

(d) All equipment needed to complete the project is available; and

(e) The seeding can be completed in the timeframe required.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.232, 496.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232, 496.242
Hist.: DFW 6-2007, f. & cert. ef. 1-18-07

Rule Caption: Set 2007 commercial Tribal winter salmon; Columbia and lower Willamette rivers; and Select Area seasons.

Adm. Order No.: DFW 7-2007(Temp)

Filed with Sec. of State: 1-31-2007

Certified to be Effective: 2-1-07 thru 7-30-07

Notice Publication Date:

Rules Amended: 635-017-0095, 635-023-0095, 635-023-0125, 635-041-0065, 635-042-0110, 635-042-0145, 635-042-0160, 635-042-0180

Subject: Amend rules to modify recreational and commercial fishing seasons for sturgeon in the lower Willamette River and the Columbia River below Bonneville Dam. Adopt 2007 non-Indian recreational and commercial winter and spring seasons for salmon and shad in the mainstem Columbia River and Select Area fisheries. Adopt 2007 winter commercial Treaty Indian fisheries in the mainstem Columbia River above Bonneville Dam. Modifications are consistent with the action taken January 25, 2007 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

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 white sturgeon three days per week, Thursday, Friday and Saturday, during the following periods:

(a) Monday, January 1, 2007 through Wednesday, January 31, 2007.

(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) Thursday, February 1, 2007 through Tuesday, July 31, 2007; and

(b) Monday, October 1, 2007 through Monday, December 31, 2007.

(4) The retention of white sturgeon in the area identified in subsection

(2) of this rule is prohibited August 1, 2007 through September 30, 2007.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07

635-023-0095

Sturgeon Season

(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 from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon during the following periods:

ADMINISTRATIVE RULES

(a) Monday, January 1, 2007 through Wednesday January 31, 2007 three days per week, Thursday, Friday, and Saturday; and

(b) Thursday February 1 through Tuesday July 31, 2007 and Monday, October 1, 2007 through Monday, December 31, 2007 four days per week, Thursday, Friday, Saturday and Sunday.

(3) The retention of white sturgeon in the area identified in subsection (2) of this rule is prohibited August 1, 2007 through September 30, 2007.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) Monday, January 1, 2007 through Monday, April 30, 2007, and
(b) Saturday, May 12, 2007 through Wednesday, July 4, 2007.

(5) The retention of white sturgeon in the area identified in subsection (4) of this rule is prohibited May 1, 2007 through May 11, 2007 and from July 5, 2007 through December 31, 2007.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42-60" in overall length may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon between 45-60" in overall length may be retained.

(8) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1, 2007 through July 31, 2007.

(9) The retention of green sturgeon is prohibited effective January 1, 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.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07

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 April 30, 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 of two adult adipose fin-clipped salmon or two adipose fin-clipped steelhead may be retained 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

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 12 noon February 1 to 6:00 p.m. March 21.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 48-60 inches in length in The Dalles and John Day pools and White sturgeon between 45-60 inches in the Bonneville Pool may be sold or kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 3-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07

635-042-0110

Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) of this rule daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods: Monday May 14, 2007 through Friday May 18, 2007; Monday May 21, 2007 through Friday May 25, 2007 and Tuesday May 29, 2007 through Friday June 1, 2007; Monday June 4, 2007 through Friday June 8, 2007; Monday June 11, 2007 through Friday June 15, 2007 and Monday June 18, 2007 through Friday June 22, 2007.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank to a deadline marker on the Washington bank, both such deadline markers located approximately four miles downstream from Bonneville Dam.

(3) It is *unlawful* to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982(Temp), f. & ef. 6-11-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp),

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f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; 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; Administrative correction 8-22-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07

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.

(ii) Upstream of old Youngs Bay Bridge: 3:00 p.m. to 7:00 p.m. Wednesday March 14, 2007.

(iii) 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:

(i) Entire Youngs Bay: 6:00 p.m. Thursday April 19, 2007 to 6:00 a.m. Friday April 20, 2007; 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:

(i) 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. 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. 8-7-87; 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

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

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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: Thursday April 19 to Friday April 20, 2007; 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)(i), 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;

(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. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-

05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07

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), Thursday April 19–Friday April 20, 2007; 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;

(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 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 3-23-06 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

Rule Caption: Expansion of Non-Indian Commercial Gill Net Sturgeon Season in the Columbia River below Bonneville Dam.

Adm. Order No.: DFW 8-2007(Temp)

Filed with Sec. of State: 2-12-2007

Certified to be Effective: 2-13-07 thru 8-11-07

Notice Publication Date:

Rules Amended: 635-042-0135

ADMINISTRATIVE RULES

Subject: Amended rule adds two additional non-Indian commercial gill net fishing periods for harvest of white sturgeon in the mainstem Columbia River below Bonneville Dam. Revisions are consistent with the action taken February 12, 2007 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0135

Sturgeon Season

(1) White sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam, Zones 1-5, during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) White sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon, adipose fin-clipped salmon, and shad may be sold from this fishery. Effective Tuesday February 13, 2007, a maximum of ten white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the season is open. The open fishing periods are:

6:00 p.m. Tuesday January 9, 2007 to 6:00 p.m. Wednesday January 10, 2007;
6:00 p.m. Tuesday January 16, 2007 to 6:00 p.m. Wednesday January 17, 2007;
6:00 p.m. Tuesday January 23, 2007 to 6:00 p.m. Wednesday January 24, 2007;
6:00 p.m. Tuesday January 30, 2007 to 6:00 p.m. Wednesday January 31, 2007;
6:00 p.m. Tuesday February 6, 2007 to 6:00 p.m. Wednesday February 7, 2007;
6:00 p.m. Tuesday February 13, 2007 to 6:00 p.m. Wednesday February 14, 2007;
6:00 p.m. Thursday February 15, 2007 to 12:00 noon Friday February 16, 2007;
6:00 p.m. Tuesday February 20, 2007 to 6:00 p.m. Wednesday February 21, 2007;
6:00 p.m. Thursday February 22, 2007 to 12:00 noon Friday February 23, 2007.

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(4) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(5) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (2) of this rule.

(6) The retention of green sturgeon is prohibited effective January 1, 2007.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05,

cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 8-2007(Temp), f. 2-12-07, cert. ef. 2-13-07 thru 8-11-07

Rule Caption: Housekeeping and technical corrections to rules for Tribal, sport, and commercial Columbia River fisheries.

Adm. Order No.: DFW 9-2007

Filed with Sec. of State: 2-14-2007

Certified to be Effective: 2-14-07

Notice Publication Date: 1-1-07

Rules Amended: 635-023-0095, 635-023-0125, 635-041-0063, 635-041-0065, 635-042-0001, 635-042-0010, 635-042-0022, 635-042-0110, 635-042-0133, 635-042-0135, 635-042-0145, 635-042-0160, 635-042-0180

Subject: Rules amended reflect regulations adopted jointly by the Columbia River Compact agencies of Oregon and Washington relating to: 1) commercial fishing in the Columbia River below Bonneville Dam and Select Areas; 2) treaty Indian commercial, subsistence and ceremonial fishing in the Columbia River above Bonneville Dam; 3) sport fishing in the mainstem Columbia River; and 4) housekeeping and technical corrections to ensure rules consistency.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-023-0095

Sturgeon Season

(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 from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon during the following periods:

(a) Monday, January 1, 2007 through Wednesday January 31, 2007 three days per week, Thursday, Friday, and Saturday; and

(b) Thursday February 1 through Tuesday July 31, 2007 and Monday October 1, 2007 through Monday December 31, 2007 four days per week, Thursday, Friday, Saturday and Sunday.

(3) The retention of white sturgeon in the area identified in subsection (2) of this rule is prohibited August 1, 2007 through September 30, 2007.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) Monday January 1, 2007 through Monday April 30, 2007, and

(b) Saturday May 12, 2007 through Wednesday July 4, 2007.

(5) The retention of white sturgeon in the area identified in subsection (4) of this rule is prohibited May 1, 2007 through May 11, 2007 and from July 5, 2007 through December 31, 2007.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42-60 inches in overall length may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon between 45-60 inches in overall length may be retained.

(8) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1, 2007 through July 31, 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.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; 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

ADMINISTRATIVE RULES

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 April 30, 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 of two adult adipose fin-clipped salmon or two adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2007 Oregon Sport Fishing 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

635-041-0063

Sturgeon Setline Fishery

(1) Sturgeon may be taken by setline for commercial purposes from 12 Noon January 1 through 12 Noon January 31 in all of Zone 6.

(a) In The Dalles and John Day pools sturgeon taken must be between 48-60 inches in length.

(b) In the Bonneville Pool sturgeon taken must be between 45-60 inches in length.

(c) Sturgeon taken as described in subsections (1)(a) and (1)(b) of this rule may be sold or kept for subsistence use.

(2) Closed areas are set forth under OAR 635-041-0045.

(3) During the sturgeon setline season it shall be unlawful to:

(a) Operate any fishing gear other than setlines except as provided in OAR 635-041-0060;

(b) Operate any setline having more than 100 hooks;

(c) Use other than single hooks size 9/0 or larger;

(d) Operate any setline on which the buoy or marker does not have the tribal identification number of the individual operating the line clearly marked on it and which is attached in a manner that will not allow it to float visibly on the surface at all times.

(4) Notwithstanding OAR 635-041-0045(6)-(11), it is lawful during the open season to fish for sturgeon by means of set lines in the Columbia River within areas at and adjacent to the mouths of rivers.

Stat. Auth.: ORS 183.325, 506.119

Stats. Implemented: ORS 506.129, 507.030

Hist.: FWC 89, f. & cert. ef. 1-28-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 2-21-78; FWC 2-1979, f. & cert. ef. 1-25-79; Renumbered from 635-035-0063; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 12-1980, f. & cert. ef. 2-29-80; FWC 64-1980(Temp), f. & cert. ef. 11-7-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 9-1983(Temp), f. & cert. ef. 3-1-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 2-1985, f. & cert. ef. 1-30-85; FWC 4-1986(Temp), f. & cert. ef. 1-28-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 48-1988, f. & cert. ef. 6-21-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 12-1989(Temp), f. & cert. ef. 3-21-89; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 9-1991, f. & cert. ef. 1-31-91; FWC 37-1991(Temp), f. & cert. ef. 4-3-91; FWC 4-1992, f. 1-30-92, cert. ef. 2-1-92; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 41-1992(Temp), f. 6-30-92, cert. ef. 7-1-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 15-

1996(Temp), f. & cert. ef. 4-1-96; FWC 25-1996(Temp), f. 5-14-96, cert. ef. 5-15-96; FWC 23-1997(Temp), f. 4-4-97, cert. ef. 4-7-97; FWC 35-1997(Temp), f. & cert. ef. 6-13-97; FWC 40-1997(Temp), f. 6-20-97, cert. ef. 6-23-97; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 50-1998(Temp), f. 6-25-98, cert. ef. 6-26-98 thru 7-24-98; DFW 57-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 22-1999(Temp), f. & cert. ef. 4-1-99 thru 4-23-99; DFW 28-1999(Temp), f. & cert. ef. 4-23-99 thru 7-31-99; DFW 41-1999(Temp), f. & cert. ef. 6-7-99 thru 7-31-99; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 14-2000(Temp), f. 3-17-00, cert. ef. 3-20-00 thru 7-31-00; DFW 31-2000(Temp), f. 6-9-00, cert. ef. 6-10-00 thru 7-31-00; DMV 43-2000(Temp), f. 8-7-00, cert. ef. 8-8-00 thru 8-20-00; DFW 66-2000(Temp), f. 9-29-00, cert. ef. 10-2-00 thru 12-31-00; DFW 43-2001(Temp), f. 5-23-01, cert. ef. 5-24-01 thru 11-20-01; DFW 65-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 114-2001(Temp), f. & cert. ef. 12-13-01 thru 12-31-01; DFW 51-2002(Temp), f. & cert. ef. 5-22-02 thru 9-1-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 121-2002(Temp), f. 10-24-02, cert. ef. 10-27-02 thru 12-31-02; DFW 49-2003(Temp), f. & cert. ef. 6-5-03 thru 9-1-03; DFW 58-2003(Temp), f. & cert. ef. 7-9-03 thru 12-31-03; DFW 67-2003(Temp), f. 7-18-03, cert. ef. 7-21-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 120-2003(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 69-2006(Temp), f. 7-28-06, cert. ef. 7-31-06 thru 12-31-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 9-2007, f. & cert. ef. 2-14-07

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 12 noon February 1 to 6:00 p.m. March 21.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 48-60 inches in length in The Dalles and John Day pools and white sturgeon between 45-60 inches in the Bonneville Pool may be sold or kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & cert. ef. 1-28-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 2-21-78; FWC 2-1979, f. & cert. ef. 1-25-79; FWC 13-1979(Temp), f. & cert. ef. 3-30-1979. Renumbered from 635-035-0065; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 2-1985, f. & cert. ef. 1-30-85; FWC 4-1986(Temp), f. & cert. ef. 1-28-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-20-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; 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

635-042-0001

Management and Catch Reporting Areas

Management and Catch Reporting Areas shall include those waters of the Columbia River defined as follows:

(1) Zone 1 is easterly of a line projected from the knuckle of the south jetty on the Oregon bank to the inshore end of the north jetty on the Washington bank, and westerly of a line projected from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon bank.

(2) Zone 2 is easterly of a line projected from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon bank, and westerly of a line projected from the 4-second flashing green light "81" on the Washington bank to a boundary marker on the easterly end of the Beaver Terminal Pier in Oregon, including all waters of Grays Bay, those waters of Deep River downstream of the Highway 4 Bridge, all waters of Seal Slough, those waters of Grays River downstream of a line projected between fishing boundary markers on both banks at the Leo Reisticka farm, and those

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waters of Elokomin Slough and Elokomin River downstream of the Highway 4 Bridge.

(3) Zone 3 is easterly of a line projected from the 4-second flashing green light "81" on the Washington bank to a boundary marker on the easterly end of the Beaver Terminal Pier in Oregon, and westerly of a line projected true west from the east or upstream bank of the Lewis River mouth in Washington.

(4) Zone 4 is easterly of a line projected true west from the east or upstream bank of the Lewis River in Washington, and westerly of a line projected true north from Rooster Rock on the Oregon bank, and those waters of Camas Slough downstream of the western most powerline crossing at the James River Mill.

(5) Zone 5 is easterly of a line projected true north from Rooster Rock on the Oregon bank, and westerly of a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock.

(6) Area 2S is from a downstream boundary of a true north/south line through flashing red 4-second light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank to a deadline marker on the Washington bank, both such deadline markers located approximately four miles downstream from Bonneville Dam.

Stat. Auth.: ORS 183, 506, 507 & 509
Stats. Implemented: ORS 183, 506, 507 & 509
Hist.: FWC 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989 (Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; DFW 9-2007, f. & cert. ef. 2-14-07

635-042-0010

Fishing Gear

(1) As used in these Columbia River fishing rules, gill net includes drift gill net, floater gill net, diver gill net, and is a monofilament or multi-filament mesh net with a cork and lead line which is in a position to drift with the tide or current at all times while it is being fished. There must be sufficient buoyancy in the corks and/or floats on the cork line so the net is free to drift with the current. The lead or weight on the lead line of a gill net shall not exceed two pounds in total weight on any one fathom, measurement to be taken along the cork line of the net. However, should extra or added weights appear necessary to operate a net, permission to use in excess of two pounds weight per fathom of net may be granted by the Director upon written application which includes adequate justification for the additional leads or weights.

(2) It is *unlawful* for a gill net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(3) It is unlawful to:

(a) Take any species of salmon from the Columbia River for commercial purposes by any means other than by gill net;

(b) Fish more than one gill net from a licensed commercial fishing boat at any one time;

(c) Fish with or have on the boat while fishing a gill net which exceeds 1,500 feet in length;

(d) Fish with or have on the boat while fishing any gill net of a mesh size not authorized for use at that time, except during December 1-March 31 the following applies:

(A) While fishing during open salmon and/or sturgeon seasons, smelt gill nets with a mesh size not more than two inches may be stored on the boat;

(B) While fishing during open smelt seasons, gill nets with a mesh size greater than two inches may be stored on the boat.

(e) Fish with or have on the boat while fishing any gill net of a mesh size greater than 9-3/4 inches, except that snagging nets as described in ORS 509.240 are permitted;

(f) Fish with or have on the boat while fishing a gill net which does not meet the construction requirements for a gill net as set forth in section (1) of this rule, except while fishing during the Tongue Point Select Area Salmon Season (OAR 635-042-0170) gill nets with leadline in excess of two pounds per fathom may be stored on the boat.

(4) The mesh size of any gill net is determined only after the meshes are wet from soaking in water not less than one hour. Three consecutive meshes are then placed under ten pounds of vertical tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh.

(5) As used in these rules, "slackers" means a single piece of material or cord, not webbing or mesh, connected vertically or woven in the mesh of the net between the cork and lead lines. It is used to tie netting in a shortened state to give the net surface flexibility.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 23-1978, f. & ef. 5-4-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0110; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 13-1981, f. & ef. 4-3-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 9-2007, f. & cert. ef. 2-14-07

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 8 inches or more than 9-3/4 inches.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. 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.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

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(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2006 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2007 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2006. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. & cert. ef. 3-1-06, cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. & cert. ef. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 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; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07

635-042-0110

Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods: Monday May 14, 2007 through Friday May 18, 2007; Monday May 21, 2007 through Friday May 25, 2007, Tuesday May 29, 2007 through Friday June 1, 2007; Monday June 4, 2007 through Friday June 8, 2007; Monday June 11, 2007 through Friday June 15, 2007 and Monday June 18, 2007 through Friday June 22, 2007.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank to a deadline marker on the Washington bank, both such deadline markers located approximately four miles downstream from Bonneville Dam.

(3) It is unlawful to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982 (Temp), f. & ef. 6-11-82; FWC 2-1983, f. & ef. 1-21-83, f. & ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. & ef. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. & cert. ef. 2-9-90; FWC 20-1990, f. & cert. ef. 3-15-90; FWC 10-1991, f. & cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. & cert. ef. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. & cert. ef. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. & cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. & cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. & cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; 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; Administrative correction 8-22-06; DFW 7-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07

635-042-0133

Sturgeon Size

(1) White sturgeon between 48 inches and 60 inches in overall length may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon and sturgeon fishing seasons with the same fishing gear authorized for the taking of salmon or sturgeon.

(2) Length of a commercially caught sturgeon shall be defined as the shortest distance between the tip of the nose and the extreme tip of the tail while the fish lies on its side on a flat surface with its tail in a normal position.

(3) It is *unlawful* to:

(a) Mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon;

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(b) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or cannery;

(c) Have in possession any white sturgeon smaller than 48 inches or larger than 60 inches in overall length.

(d) Fail to return to the water immediately and unharmed, any green sturgeon, any white sturgeon not of lawful size, or any white sturgeon taken in excess of any commercial catch or possession limits prescribed by Department rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 9-2007, f. & cert. ef. 2-14-07

635-042-0135

Sturgeon Season

(1) White sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Retention of green sturgeon in all mainstem Columbia River and Select Area commercial fisheries is prohibited.

(3) White sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon and adipose fin-clipped salmon may be sold from this fishery. The open fishing periods are:

6:00 p.m. Tuesday January 9, 2007 to 6:00 p.m. Wednesday January 10, 2007;
6:00 p.m. Tuesday January 16, 2007 to 6:00 p.m. Wednesday January 17, 2007;
6:00 p.m. Tuesday January 23, 2007 to 6:00 p.m. Wednesday January 24, 2007;
6:00 p.m. Tuesday January 30, 2007 to 6:00 p.m. Wednesday January 31, 2007;
6:00 p.m. Tuesday February 6, 2007 to 6:00 p.m. Wednesday February 7, 2007;
6:00 p.m. Tuesday February 13, 2007 to 6:00 p.m. Wednesday February 14, 2007;
6:00 p.m. Tuesday February 20, 2007 to 6:00 p.m. Wednesday February 21, 2007.

(4) White sturgeon and salmon must be delivered to wholesale fish dealers, cannerys, or fish buyers undressed (in the round).

(5) It is unlawful to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any white sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or cannery;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(6) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (2) of this rule.

(7) The retention of green sturgeon is prohibited.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef.

12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 8-2007(Temp), f. 2-12-07, cert. ef. 2-13-07 thru 8-11-07; DFW 9-2007, f. & cert. ef. 2-14-07

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.

(ii) Upstream of old Youngs Bay Bridge: 3:00 p.m. to 7:00 p.m. Wednesday March 14, 2007.

(iii) 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:

(i) Entire Youngs Bay: 6:00 p.m. Thursday April 19, 2007 to 6:00 a.m. Friday April 20, 2007; 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:

(i) 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,

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1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; 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

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 to Monday February 19, 2007; Sunday February 25 to Monday February 26, 2007; Sunday March 4 to Monday March 5, 2007; and Sunday March 11 to Monday March 12, 2007.

(b) Spring season: nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), Thursday April 19 to Friday April 20, 2007; 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 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;

(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) above, 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 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

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Rule Caption: Re-adoption of Commercial and Recreational Gear and Harvest Regulations for the Razor Clam Fishery.

Adm. Order No.: DFW 10-2007

Filed with Sec. of State: 2-14-2007

Certified to be Effective: 2-14-07

Notice Publication Date: 1-1-07

Rules Amended: 635-005-0030, 635-005-0031, 635-039-0090

Subject: These rules were originally adopted by the Oregon Fish and Wildlife Commission (OFWC) at their July 7, 2006 meeting. Due to procedural errors which occurred during the filing process, the OFWC re-adopted rules that standardize harvest methods for the commercial and recreational razor clam fishery by prohibiting the use

of the clam gun/tube for commercial harvest methods; define the minimum diameter of a recreational clam gun/tube; and define the proper method for the release of sub-legal clams in the commercial fishery by establishing language for the immediate return and placement of razor clams back to the sand.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-005-0030

Size Limit

(1) The minimum legal size of razor clams taken for commercial purposes is 3-3/4 inches from tip to tip of the shell. It is unlawful to possess any razor clams taken for commercial purposes which are less than the minimum legal size.

(2) All undersized razor clams must be immediately returned to the hole from which they were dug with the hinge oriented towards the ocean.

(3) The minimum legal size of cockle clams taken for commercial purposes under a bay clam dive permit (OAR 635-006-1015) is 2-1/4 inches at the widest dimension. It is unlawful to possess any cockle clams taken for commercial purposes under a bay clam dive permit which are less than the minimum legal size

(4) The minimum legal size of gaper clams taken for commercial purposes under a bay clam dive permit (OAR 635-006-1015) is 4 inches at the widest dimension. It is unlawful to possess any gaper clams taken for commercial purposes under a bay clam dive permit which are less than the minimum legal size.

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506

Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 255, f. 9-12-72, ef. 10-1-72; Renumbered from 625-010-0075, 1975; Renumbered from 635-036-0100, 1979; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 10-2007, f. & cert. ef. 2-14-07

635-005-0031

Fishing Gear

It is *unlawful* to take razor clams for commercial purposes by any means other than by hand or by shovel.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: ORS 506.129

Hist.: DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 10-2007, f. & cert. ef. 2-14-07

635-039-0090

Inclusions and Modifications

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish and canary rockfish that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2007 are specified in the Pacific Council Decisions or News documents dated June and November, 2006.

(b) Harvest targets for yelloweye rockfish and canary rockfish effective at the start of the Oregon sport fishery in 2007 are:

(A) yelloweye rockfish, 3.3 metric tons.

(B) canary rockfish, 6.6 metric tons.

(c) Harvest targets for yelloweye rockfish and canary rockfish may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) For 2007, the sport harvest cap for black rockfish is 318 metric tons.

(4) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).

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(5) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2007 the sport landing caps are:

- (a) Black rockfish and blue rockfish combined, 359 metric tons.
- (b) Other nearshore rockfish, 11.3 metric tons.
- (c) Cabezon, 15.8 metric tons.
- (d) Greenling, 5.2 metric tons.

(6) In addition to the regulations for Marine Fish in the 2007 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2007:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.
(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the 2007 Oregon Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 6 fish daily bag limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a), (b) and (c) including the following:

- (A) Minimum length for lingcod, 22 inches.
- (B) Minimum length for cabezon, 16 inches.
- (C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (b) and (c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 390. Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC

36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07

Rule Caption: Re-adoption of gear limitation program rules for the commercial ocean Dungeness crab fishery.

Adm. Order No.: DFW 11-2007

Filed with Sec. of State: 2-14-2007

Certified to be Effective: 2-14-07

Notice Publication Date: 1-1-07

Rules Amended: 635-005-0055, 635-006-1015, 635-006-1065

Subject: These rules were originally adopted by the Oregon Fish and Wildlife Commission (OFWC) at their June 9, 2006 meeting. Due to procedural errors which occurred during the filing process, the OFWC re-adopted rules that establish enforceable commercial Dungeness crab pot limits to: ensure the orderly conduct of this fishery; reduce the excess use of gear by the fleet; minimize gear conflict with other fisheries and reduce pot loss in the ocean; delegate authority for pot limit appeals to the Dungeness Crab Permit Review Board; and maximize the value of the Dungeness crab resource.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-005-0055

Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Use any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Use any crab pot which does not include a minimum of two circular escape ports of at least 4 -1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Use any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible and legible manner, the brand of the owner and an ODFW buoy tag, provided that:

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(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) After 45 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports.

(C) Permit holders must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the specific tag number of each lost tag, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(7) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(8) Possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that vessel's, or buoys not bearing tags issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(9) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(10) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(11) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(12) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(13) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07

635-006-1015

Requirement for Permit

1) The following provide general requirements for permits:

(a) Gillnet salmon — see ORS 508.775;

(b) Troll salmon — see ORS 508.801 and 508.828;

(c) Shrimp — see ORS 508.880 and 508.883;

(d) Scallop — see ORS 508.840 and 508.843;

(e) Roe-herring:

(A) It is *unlawful* for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.

(f) Sea Urchin:

(A) It is *unlawful* for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.

(g) Ocean Dungeness crab:

(A) Except as provided under the reciprocity provisions of ORS 508.941(3) or section (F) below, it is unlawful for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.

(B) If the Commission establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.

(C) In addition to certifying that the vessel is free of crab on November 30 each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots that will be used in that season's fishery before fishing.

(D) A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.

(E) Effective December 1, 2006, the number of crab pots allocated to a permit required under section (A) above will be determined as follows:

(i) The allocation will be based on documented landings of Ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;

(ii) The crab pot allocation will be the highest number of pots the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);

(iii) A crab pot allocation of 200 shall be assigned to a permit with landings less than 15,020 pounds in the 1995 to 1996 season, and 4,010 pounds in the 1996 to 1997 season, and 5,170 pounds in the 1997 to 1998 season, and 7,083 pounds in the 1998 to 1999 season, and 13,160 pounds in the 1999 to 2000 season, and 8,940 pounds in the 2000 to 2001 season;

(iv) A crab pot allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and

(v) A crab pot allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998 season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.

(h) Developmental Fisheries: See ORS 506.450 through 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

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(j) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.945.

(k) Brine Shrimp:

(A) It is unlawful to take or attempt to take brine shrimp for commercial purposes without first obtaining a brine shrimp fishery permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is unlawful for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Department may issue no more than three permits required by section (1)(k) of this rule.

(l) Bay clam dive fishery:

(A) It is unlawful:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time or where more than two persons without permits, excluding persons authorized by the Department for the performance of official duties, were on board any boat while harvesting, possessing, or transporting bay clams.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(l)(A)(i) of this rule and five south-coast permits required by (1)(l)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

(m) Sardine fishery:

(A) It is unlawful for an individual to operate a vessel in the Sardine fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095. The sardine fishery permit is not required for vessels to retain sardines as incidental catch in other fisheries.

(B) It is unlawful for a wholesaler, canner or buyer to buy or receive sardines taken in the Sardine fishery from a vessel for which the permit required by section (1)(m)(A) of this rule has not been issued.

(C) The Department may issue not more than 26 permits required by section (1)(m)(A) of this rule.

(D) The Sardine Advisory Group as defined under OAR 635-006-1065 may advise the Commission on increasing the number of permits, developing criteria for issuing the new permits, and other regulations concerning the sardine fishery.

(E) By January 1, 2008, vessels permitted under section (1)(m)(A) of this rule shall be operated or owned by the permit holder.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the license year.

(6) No vessel permit may be transferred away from a vessel without the lien holder's written permission.

(7) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921–508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 103-2001, f. & cert. ef. 10-23-01; DFW 95-2002, f. & cert. ef. 8-27-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 74-2006, f. & cert. ef. 8-7-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07

635-006-1065

Review of Denials

(1) Except for bay clam dive fishery and sardine fishery permits, an individual whose application for issuance or renewal of a limited entry permit is denied by the Department may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board. The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon — see ORS 508.796;

(b) Troll salmon — see ORS 508.825;

(c) Shrimp — see ORS 508.910;

(d) Scallop — see ORS 508.867;

(e) Roe-herring — see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin — see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab — see ORS 508.941. For the Ocean Dungeness crab fishery, a permit holder may request review of the Department's initial crab pot allocation or the Department's denial of replacement of lost buoy tags by doing so in writing to the Commercial Fishery Permit Board. The Board may adjust the number of crab pots allocated to a permit or approve replacement of lost buoy tags as follows:

(A) The Board may adjust the number of crab pots allocated to a permit:

(i) Based on additional landings documentation supplied by permit holder according to criteria under OAR 635-006-1015(1)(g)(E); or

(ii) The crab pot allocation may be increased by one tier as described under OAR 635-006-1015(1)(g)(E) based on circumstances during the qualifying seasons described in OAR 635-006-1015(1)(g)(E) beyond the control of the permit holder which created undue hardship as defined by OAR 635-006-1095(7)(d).

(B) The Board may approve replacement of lost buoy tags due to a catastrophic loss as defined under OAR 635-005-0055(1)(6)(g)(B).

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

(5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a bay clam fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted.

(b) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit.

(c) A party must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 to 183.550.

(6) Sardine fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a sardine fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted.

ADMINISTRATIVE RULES

(b) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit. The Sardine Advisory Board is designated as a party to the contested case.

(c) A party, including the Department, must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Sardine Advisory Group:

(A) Shall consist of members appointed by the Commission as follows:

- (i) Three members shall be chosen to represent the sardine industry.
 - (ii) Two members shall be chosen to represent the public.
- (B) Is subject to requirements of OAR 635-006-1200 sections (1) and (2).

Stat. Auth.: ORS 506.119, 508.921
Stats. Implemented: ORS 506.109, 508.941
Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DWF 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 4-2007(Temp), f. & cert. ef. 1-12-07 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07

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

Rule Caption: Oregon Pain Management Commission definitions, structure, and continuing education requirements for licensed health care professionals.

Adm. Order No.: DHSD 1-2007

Filed with Sec. of State: 2-1-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 1-1-07

Rules Adopted: 407-020-0000, 407-020-0005, 407-020-0010, 407-020-0015

Subject: Senate Bill 885 was passed in the 2001 legislative session and became effective January 1, 2002 as ORS 409.500 through 409.570, with Senate Bill 285 added later to 409.520 and 409.560. The statute established duties of the Pain Management Commission, membership and appointment requirements, funding matters and a continuing education requirement in pain management for most licensed health care professionals in Oregon. These rules will serve to provide further interpretation of those components with general applicability and which are not clearly defined in existing statutory language.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-020-0000

Purpose

The Pain Management Commission was established within the Department of Human Services for the purpose of developing pain management educational programs, recommendations and curriculum; representing patient concerns to the Governor and Legislative Assembly; and creating ways to improve pain management in Oregon through research, policy analysis, and model projects. In addition, the Pain Management Commission is charged with developing a specific pain management educational program for required completion by health care professionals under specified Licensing Boards.

Stat. Authority: ORS 409.500, 409.560, 409.570
Stats. Implemented: ORS 409.500 - 409.570
Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

407-020-0005

Definitions

For the purposes of this Division 407-020, the following definitions apply:

- (1) "Commission" means the Oregon Pain Management Commission.
- (2) "Licensed health care professionals" means those specifically identified licensees that report to the following Licensing Boards:

(a) Oregon Board of Medical Examiners, which includes: physicians, physician assistants and acupuncturists (with the exception of those listed under OAR chapter 847.677, identified as waived);

(b) Oregon State Board of Nursing, which includes: all registered nurses, licensed practical nurses and nurse practitioners;

(c) Oregon Board of Psychologist Examiners, which includes: all licensed psychologists;

(d) Oregon Board of Chiropractic Examiners, which includes: all licensed chiropractors;

(e) Oregon Board of Naturopathic Examiners, which includes: all licensed naturopathic physicians; and

(f) Oregon Board of Pharmacy, which includes: all licensed pharmacists.

(3) "Curriculum" means a recommended list of educational topics, compiled by the Commission, for medical professionals treating pain.

(4) "Pain management education program" means a specific one-hour web-based program developed by the Commission, in addition to six accredited hours of continuing education in pain management, end of life care or a combination of both.

Stat. Authority: ORS 409.500, 409.560, 409.570
Stats. Implemented: ORS 409.500 - 409.570
Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

407-020-0010

Commission Positions

(1) The Commission consists of:

(a) Nineteen members — seventeen voting members and two non-voting ex-officio members from the Oregon legislature; and

(b) Members that have experience or a demonstrated interest in pain management issues.

(2) In order to apply for a position on the Commission, an individual must:

(a) Complete a Pain Management Commission Interest Form; and

(b) Submit the interest form to the Pain Management Program within the Department of Human Services.

(3) Voting member appointments to the Commission are:

(a) Made by the Director of the Department of Human Services; and

(b) Subject to compliance with the approved commission bylaws.

(4) Department of Human Services staff participants in Commission meetings and overall operation include the:

(a) Pain Management Coordinator, who works in the Governor's Advocacy Office within the Department of Human Services and serves as staff to the Commission through meeting facilitation, daily organization of Commission business and affairs and other duties as directed by the Commission;

(b) Administrator of Governor's Advocacy Office, who works under the Director's Office within the Department of Human Services and participates in an advisory capacity representing Department of Human Services interests, issues and public policy.

Stat. Authority: ORS 409.500, 409.560, 409.570
Stats. Implemented: ORS 409.500 - 409.570
Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

407-020-0015

Pain Management Education Program Requirements

(1) Licensed health care professionals must complete a pain management education program in order to improve the care and treatment of individuals with painful conditions. The program includes:

(a) Six accredited hours of continuing education in pain management, end of life care or a combination of both; and

(b) The web-based training offered by the Commission.

(2) The pain management education program is a one time requirement that must be obtained:

(a) Within twenty-four months of January 2, 2006, which would include approved trainings acquired between January 2, 2004 and January 2, 2008; or

(b) Within twenty-four months of the first renewal of the individual's license after January 2, 2006.

Example: If an individual's license expired on December 15, 2005 then again on December 15, 2007, the individual may have obtained training to fulfill this requirement as far back as January 2, 2004 (2)(a) or they may obtain training through December 15, 2009 (2)(b) to comply with this requirement.

(3) For out of state health care professionals obtaining Oregon licensure or newly licensed health care professionals within Oregon, the pain management education program must be completed within 24 months of their first license renewal.

Example: If an individual becomes newly licensed in Oregon on June 15, 2009, their first renewal will be June 15, 2011. The individual may obtain their training from June 15, 2009 through June 15, 2013 (2)(b) to comply with this requirement.

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(4) If the licensing board for a licensed health care professional adopts, by rule, a pain management education program with topics substantially similar to the topics in the Commission's curriculum, that program satisfies this rule for the continuing education portion of the requirement, as long as the total number of hours is the same.

(5) The Commission shall update its curriculum every two years.

Stat. Authority: ORS 409.500, 409.560, 409.570

Stats. Implemented: ORS 409.500 - 409.570

Hist.: DHSD 1-2007, f. & cert. ef. 2-1-07

Rule Caption: Department authority for reimbursement of providing public records.

Adm. Order No.: DHSD 2-2007

Filed with Sec. of State: 2-15-2007

Certified to be Effective: 2-15-07

Notice Publication Date: 1-1-07

Rules Adopted: 407-003-0000, 407-003-0010

Subject: These rules provide the authority for the Department of Human Services to charge fees for cost reimbursement of providing public records.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-003-0000

Definitions

The following definitions apply to Oregon Administrative Rule 407-003-0010 unless otherwise indicated:

(1) "Department" refers to the Oregon Department of Human Services.

(2) "Designee" refers to any officer or employee of the Department, appointed by the Director to respond to requests for reduction or waiver of fees for public records of the Department.

(3) "Director" refers to the Director of the Department.

(4) "Person" includes any natural person, corporation, partnership, firm, or association.

(5) "Photocopy(ing)" includes a photograph, microphotograph and any other reproduction on paper or film in any scale, or the process of reproducing, in the form of a photocopy, a public record.

(6) "Public record" includes any writing that contains information relating to the conduct of the public's business that is prepared, owned, used or retained by the Department regardless of physical form or characteristics.

(7) "Requestor" refers to a person requesting inspection, copies, or other reproduction of a public record of the Department.

(8) "Writing" means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings. It includes information stored on computer tape, microfiche, photographs, films, tape or videotape or that is maintained in a machine readable or electronic form.

Stat. Auth: ORS 192.430, 409.050

Stats. Implemented: ORS 192.430, 192.440, 409.010

Hist.: DHSD 2-2007, f. & cert. ef. 2-15-07

407-003-0010

Fees for Inspection or Copies of Public Records and Department of Human Services Publications; Other Services

(1) The Department may charge a fee reasonably calculated to reimburse the Department for the cost of making public records available:

(a) Costs include but are not limited to:

(A) The services and supplies used in making the records available;

(B) The time spent locating the requested records, reviewing the records, and redacting, or separating material exempt from disclosure;

(C) Supervising a person's inspection of original documents;

(D) Copying records;

(E) Certifying copies of records;

(F) Summarizing, compiling, or organizing the public records to meet the person's request;

(G) Searching for and reviewing records even if the records subsequently are determined to be exempt from disclosure;

(H) Postal and freight charges for shipping the copies of the public records, sent first class or bulk rate based on weight;

(I) Indirect costs or third party charges associated with copying and preparing the public records; and

(J) Costs associated with electronic retrieval of records.

(b) When a Department of Justice review of the records is requested by the Department of Human Services, the Department may charge a fee

equal to the Attorney General's charge for the time spent by the attorney reviewing the public records, redacting material from the records, and segregating the public records into exempt and nonexempt records. A fee will not be charged for the cost of time spent by an attorney in determining the application of the provisions of ORS 192.410 to 192.505;

(c) Staff time will be calculated based on the hourly rate of pay and fringe benefits for the position of the person performing the work;

(d) The cost for publications will be based on the actual costs of development, printing and distribution, as determined by the Department;

(e) The cost for a public records request requiring the Department to access the State's mainframe computer system, may include but not be limited to costs for computer usage time, data transfer costs, disk work space costs, programming, and fixed portion costs for printing and/or tape drive usage.

(2) The Department will establish a list of fees used to charge requestors for the costs of preparing and making available public records for the following:

(a) Photocopies;

(b) Facsimile copies. The Department may limit the transmission to thirty pages;

(c) Electronic copies, diskettes, DVDs, and other electronically generated materials. The Department will determine what electronic media for reproduction of computer records will be used and whether the electronic media is to be provided by the Department or the requestor;

(d) Audio or video cassettes;

(e) Publications.

(3) The Department will review the list of fees established in policy from time to time in order to assure that the fees reflect current Department costs.

(4) No additional fee will be charged for providing records or documents in an alternative format when required by the Americans with Disabilities Act.

(5) The Department will notify requestors of the estimated fees for making the public records available for inspection or for providing copies to the requestor. If the estimated fees exceed \$25, the Department will provide written notice and will not act further to respond to the request until the requestor notifies the Department, in writing, to proceed with making the records available:

(a) The Department may require that all or a portion of the estimated fees be paid before the Department will proceed with making the record available;

(b) The Department may require that actual costs of making the record available be paid before the record is made available for inspection or copies provided.

(6) The Director or designee may reduce or waive fees when a determination is made that the waiver or reduction of fees is in the public interest because making the records available primarily benefits the general public. Factors that may be taken into account in making such a determination include, but are not limited to:

(a) The overall costs to be incurred by the Department is negligible; or

(b) Supplying the requested records or documents is within the normal scope of Department activity; or

(c) Requiring payment would cause extreme or undue financial hardship upon the requestor; or

(d) Discovery requests made as part of pending administrative, judicial, or arbitration proceedings.

(7) If the Department denies an initial verbal request for waiver or reduction of fees, the requestor will submit a written request. If the Department subsequently denies the written request for a waiver or reduction of fees, the requestor may petition the Attorney General for a review of the denial pursuant to the provisions of ORS 192.440(5) and 192.450.

Statutory Authority: ORS 192.430, 409.050

Stats. Implemented: ORS 192.430, 192.440, 409.010

Hist.: DHSD 2-2007, f. & cert. ef. 2-15-07

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 1-2007(Temp)

Filed with Sec. of State: 2-7-2007

Certified to be Effective: 2-7-07 thru 8-6-07

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Amended: 413-100-0020, 413-100-0130, 413-100-0135

Subject: The Department is amending three rules about Title IV-E foster care federal financial participation eligibility determinations for children in substitute care and in the care and custody of the Department. OAR 413-100-0020 is being amended to make its definitions consistent with federal and state Child Welfare definitions. While these 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 413-100-0130 about AFDC linkage for eligibility determinations and OAR 413-100-0135 about living with a specified relative and removal for eligibility determinations are being amended 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 with 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 whom the child was removed. States may no longer link the financial need to any specified relative the child had lived with in the six months prior to removal. The DRA requires at the annual redetermination 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 redetermination. The changes in OAR 413-130-0135 are retroactive to June 9, 2006. These three rules are also being amended to update terminology and clarify them.

A copy of the temporary rules can be accessed at the child welfare policy website: http://www.dhs.state.or.us/policy/childwelfare/cross_index.htm

Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0020

Definitions

The following definitions apply to OAR 413-100-0000 to 413-100-0365:

(1) "AFDC No-Adult Standard": The standard applicable to AFDC households that do not include an adult in the grant.

(2) "AFDC": The Aid to Families with Dependent Children Program as it existed on July 16, 1996, excluding changes implemented by the Oregon Options Waiver.

(3) "Amnesty Alien": Any person with proper INS documentation who, because of a well-founded fear of persecution due to race, religion, or political opinion, fled his or her homeland. The term "refugee" applies to all refugees and asylees with proper INS documentation, served by the Department under the Refugee Resettlement Program.

(4) "Assistance Unit": A group of individuals whose needs, income, and resources are considered together to determine their public assistance eligibility and the grant amount.

(5) "Certified Foster Home": For Title IV-E eligibility purposes under these rules (OAR 413-100-0000 to 413-100-0360), a foster home that the Department has certified.

(6) "Child Support": Any voluntary or court-ordered contribution by an absent parent. Support includes, but is not limited to, money payments, education, and necessary and proper shelter, food, clothing, and medical attention.

(7) "Citizen or Alien Status": The status of being a U.S. citizen or alien who is a qualified alien or unqualified alien, as defined by section 431 of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended by The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and The Balanced Budget Act of 1997.

(8) "Constructive Removal": The removal of a child who is not living with a "specified relative" when the voluntary custody or voluntary placement agreement is signed or the judicial order is entered. Constructive removal is described further in OAR 413-100-0135(3)(b).

(9) "Countable Income": The amount of available income, including earned and unearned income not specifically excluded by OAR 461-140-0040, used to determine eligibility for public assistance.

(10) "Court Order Date": The date a court of competent jurisdiction issues a court order that gives the Department responsibility for the child's care and custody.

(11) "Date a Child is Considered to have Entered Foster Care": The earlier of the following:

(a) The date that the court found the child to be within the jurisdiction of the court under ORS 419B.100; or

(b) 60 days from the date of removal.

(12) "Department": The Department of Human Services.

(13) "Earned Income": All legal, reportable income resulting from an individual's employment or self-employment.

(14) "Eligibility Month":

(a) The month in which the court was petitioned or court action was initiated that resulted in the child's "constructive" or "physical" removal from the home of his or her specified relative;

(b) For a child previously returned to his or her home from foster care, who has remained in the continuous custody of the Department, the month that a documented request for a judicial review of the child's return to foster care is filed;

(c) The month that the judicial finding is made that results in the court order that gives the Department custody of the child if no documentation of a request for a judicial review is evident; or

(d) The month a voluntary custody or voluntary placement agreement is signed.

(15) "Entitlement": Any benefit to which an individual has a valid claim, or would have a valid claim upon application, including one related to past employment or service, pension, compensation payment, allotment allowance insurance payment, interest in an estate or fund, or of a similar nature.

(16) "Family": For purposes of determining Title IV-E-FC eligibility under these rules, family means the parent or parents, stepparent or step-parents, or relative or relatives from whom the child is removed.

(17) "Foster Home": As defined in ORS 418.625(3), is any home maintained by a person who has under the care of the person in such home any child under the age of 21 not related by blood or marriage and unattended by its parent or guardian, for the purpose of providing such child with care, food, and lodging, but does not include any foster home under the direct supervision of a private child-caring agency or institution certified by the Department, any home under the direct supervision of a custodial parent for the purpose of providing respite care, or any developmental disability child foster home.

(18) "Foster Care": 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(19) "Grant": The actual public assistance payment for the payment month.

(20) "Incapacity": A medical or psychiatric condition that causes unemployability or impairs the individual's ability to perform normal functions.

(21) "Indian Child": A child who a Tribal enrollment committee has verified is an enrolled member of a federally recognized tribe or is eligible for enrollment.

(22) "Initiation of Court Action": The date that the court was petitioned or legal action was taken that resulted in the removal of the child from the specified relative.

(23) "Minor Child": Any person under the age of 18 who has not been emancipated by a court of law, married, or a member of the Armed Forces of the United States.

(24) "Need": The monetary amount by which an individual or family's requirements, using the Department standards, exceeds all of the income and resources available to the individual or family.

(25) "Non-Indian Child": Any child who is not enrolled or eligible for enrollment as a member of a federally recognized tribe.

(26) "Nunc Pro Tunc Orders": Under Oregon law, a nunc pro tunc order is an order that restores to the record an action that actually occurred, but was inadvertently or mistakenly omitted from the record.

(27) "Parent": Under these rules for IV-E eligibility purposes, the birth or legal (step or adoptive) mother or father of a person:

(a) If the mother lives with a male, whom either she or he claims is the father of the child or unborn, and no one else claims to be the father, he

ADMINISTRATIVE RULES

shall be treated as the father even if paternity has not been legally established.

(b) The HS 21 form, jointly signed by the mother and putative father, is a legal document that establishes paternity and allows the father's name to be added to the birth certificate.

(c) A stepparent relationship exists if:

(A) The person is legally married to the child's birth or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(d) The birth parent of an adopted child is considered a parent if:

(A) The child lives with the birth parent; and

(B) The legal parent, the adoptive parent, has given up care, control, and supervision of the child.

(28) "Payment Standard or Needs Standard": The amount set by the Department as the AFDC net income limit. It is used to determine the actual grant amount. This amount refers to the "Payment or Need Standard" in effect on July 16, 1996.

(29) "Personal Property": Everything that a person owns that is not real property, including liquid assets.

(30) "Physical Removal": The removal of a child that occurs when a child is placed in substitute care, who was living with the "specified relative" when the voluntary custody or voluntary placement agreement is signed or court proceedings are initiated.

(31) "Real Property": Land, buildings, and whatever is erected on or affixed to the land or buildings and taxed as real property.

(32) "Reasonable Efforts to Finalize a Permanency Plan":

(a) The Department has made reasonable efforts to make it possible for the child to safely return home; or

(b) The Department has made reasonable efforts to place the child in a timely manner in accordance with the plan and to complete steps necessary to finalize the permanency plan.

(33) "Relieved of Temporary Commitment": The court relieves the Department of responsibility for the child's care and custody.

(34) "Removal Home": The home from which the child was removed as a result of a judicial finding, voluntary custody agreement, or voluntary placement agreement. This term is further described at OAR 413-100-0135(3).

(35) "Resource": Any personal or real property that is or can be made available to meet the need of the assistance unit that the Department does not specifically exclude from consideration.

(36) "Shelter In-Kind": Payment by an agency, other than the Department, or someone other than the client, for the client's rent and utility bills at no cost to the client and the client provides no service in exchange for the payment.

(37) "Specified Relative":

(a) A "parent" as defined in this rule;

(b) Any blood relative or half-blood relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great (Children with one common birth parent are half-blood relatives);

(c) Aunts, uncles, first cousins, and first cousins once removed;

(d) Persons who legally adopt a child and any people related to the child through the adoption who meet the degree of relationship specified in subsection (b) of this section.

(e) A stepmother, stepfather, stepbrother, or stepsister, even after marriage is terminated by death or divorce; or

(f) A spouse of anyone listed in subsections (a) to (e) of this section, even if the marriage has been terminated by death or divorce.

(38) "Standards of Assistance": The consolidated standards for payment specified in OAR 461-155-0030 that were in effect on July 16, 1996. These standards are used to determine income eligibility for AFDC.

(39) "Unearned Income": All income that does not directly result from an individual's employment or self-employment.

(40) "Unrelated Home": One of the following homes:

(a) The home of a person formerly related to the child by marriage when:

(A) The relationship by marriage was terminated by death or divorce; and

(B) The child was not adopted by a step-parent prior to the dissolution of the marriage or the death of the natural or adoptive parent. A child's relationship to his or her step-parent ends 30 days after the entry of a divorce decree.

(b) The home of a person no longer related to the child by blood, with the exception of the birth parent. Blood relationships end when the child is legally adopted by another family. A valid decree of adoption establishes

the adoptive parent or parents as the legal parent or parents and erases the prior blood relationships of siblings, unless the adoptive parents are members of the extended family or the adoptive parents adopt the siblings.

(c) The home of a putative paternal relative. A paternal relationship by blood does not exist when:

(A) No court order establishes paternity or there is no evidence that such an order was submitted to Vital Statistics;

(B) The father's name is not on the birth certificate issued by Vital Statistics; or

(C) The putative father signed relinquishment papers without ever signing a stipulation of paternity. The Division of Child Support does not recognize the signing of a stipulation of paternity without the mother agreeing that the man is indeed the father.

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

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07

413-100-0130

Eligibility Determinations-AFDC Linkage

(1) If the child is determined not to be Title IV-E eligible when the child enters substitute care, the child is not eligible for Title IV-E foster care maintenance payments for the entire duration of that substitute care episode.

(2) The Department reconstructs the facts of the removal home to determine if the child, in the eligibility month, received AFDC or would have been eligible to receive AFDC under rules in effect on July 16, 1996, had an application been made.

(3) AFDC Relatedness. The child meets the "AFDC relatedness" test if the requirements of one of the following subsections are met:

(a) The child received or would have been eligible to receive AFDC in the removal home under the rules in effect on July 16, 1996, in the eligibility month, and the child remains within the resource limits that were in effect prior to the implementation of the Oregon Options Waiver under Section 1115 of the Soc. Sec. Act effective July 1, 1996.

(b) The child:

(A) Lived with the specified relative within six months of removal; and

(B) Would have been eligible to receive AFDC under the rules in effect on July 16, 1996, during the eligibility month, had an application been made.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.163

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07

413-100-0135

Eligibility Determinations - Living with a "Specified Relative" and "Removal"

(1) Specified Relative Requirements. To meet Title IV-E eligibility requirements the child, at the time of the child's removal from his or her home, must have been living with and removed from the same "specified relative", as defined in OAR 413-100-0020. The following situations illustrate the application of this rule:

(a) The child was living with a specified relative and was, under the rules in effect on July 16, 1996, AFDC-eligible in that home in the eligibility month, as defined in OAR 413-100-0020;

(b) The child lived with the parent or specified relative within six months of the eligibility month, and the child would have been eligible for AFDC in that month if he or she had been living in that specified relative's home at the time of removal; or

(c) The child was hospitalized, while in his or her parent's custody and was released in the Department's custody for placement purposes. Such children are considered to have lived with the parent while in the hospital, regardless of the length of the child's hospitalization.

(2) Removal Requirements. To meet Title IV-E eligibility requirements, the child's removal from the home must occur pursuant to:

(a) A voluntary custody or voluntary placement agreement, signed by a parent or specified relative, that results in the "physical" or "constructive" removal of the child from the home; or

(b) A judicial order that requires the child's "physical" or "constructive" removal from the custody of the parent or specified relative.

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(3) For Title IV-E purposes, the following will be designated as "removal homes";

(a) **Physical Removal Home.** The home of a parent or specified relative when the judicial order or the signing of a voluntary custody or voluntary placement agreement results in the removal of the child from the custody of the parent or specified relative.

(b) **Constructive Removal.**

(A) The home of a parent if the child lived in the home of a specified relative and the judicial order or the voluntary custody or voluntary placement agreement results in the removal of the child from the custody of the parent. The child must have lived with the parent within six months of the judicial order or the signing of the voluntary custody or voluntary placement agreement that resulted in the child's removal from the parent's custody.

(B) The home of a parent when the parent and the child reside in a specified relative's home, the parent leaves the home, and the child continues to reside in the home of the specified relative. The child must have lived with the parent within six months of the judicial order or the signing of a voluntary custody or voluntary placement agreement that resulted in the child's removal from the parent's custody.

(C) The specified relative's home in which the child last resided if, at the time of the removal, the child lived with a non-related caretaker or was homeless. The child must have lived with the specified relative within six months of the judicial order or the signing of the voluntary custody or voluntary placement agreement that resulted in the removal and if the child did not, the child is not eligible for Title IV-E foster care maintenance benefits, because the child fails to meet the "specified relative" requirement.

(4) Effective June 9, 2006, if the child's removal did not meet the "removal home" requirements in section (3) of this rule, the child is not eligible for Title IV-E foster care maintenance benefits.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 418.625
Hist.: SOSCF 20-2000(Temp), f. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07

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**Department of Human Services,
Children, Adults and Families Division:
Self-Sufficiency Programs
Chapter 461**

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

Adm. Order No.: SSP 1-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 1-1-07

Rules Amended: 461-155-0180, 461-155-0235

Subject: OAR 461-155-0180 and 461-155-0235 are being amended to reflect the annual increase in the federal poverty levels published in the Federal Register and cross-reference rules that explain technical terms. These rules include income and premium standards based on the federal poverty levels.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0180

Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2007 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2007 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2007 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 185 percent of the 2007 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 200 percent of the 2007 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.816, 418.100
Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07

461-155-0235

OHP Premium Standards

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the filing group (see OAR 461-110-0400):

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The *countable income* of the financial group (see OAR 461-110-0530) is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the *countable income*, the monthly premium for each non-exempt OHP-OPU client in the benefit group (see OAR 461-110-0750) is determined from the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060, 411.598, 411.600
Stats. Implemented: ORS 411.060, 411.070, 411.598, 411.600
Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 1-2007, f. & cert. ef. 1-24-07

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

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

Adm. Order No.: PH 1-2007

Filed with Sec. of State: 1-16-2007

Certified to be Effective: 1-16-07

Notice Publication Date: 12-1-06

Rules Amended: 333-012-0270, 333-018-0005, 333-018-0030

Subject: The Oregon Department of Human Services, Public Health Division is permanently amending:

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

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

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

Rules Coordinator: Christina Hartman—(971) 673-1291

333-012-0270

Confidentiality

(1) General. Pursuant to ORS 433.045(3), no person shall disclose or be compelled to disclose the identity of any individual who has an HIV-positive test result or HIV diagnosis, in a manner which permits identification of the subject of the test, except as required or permitted by the law of this state or any rule, or as authorized by the individual whose blood is tested. For purposes of this rule HIV test result means a positive HIV test result.

(2) Disclosure to or for tested individual. Positive and Negative HIV test results may be disclosed to the tested individual. HIV test results may be disclosed to the person ordering the test and to any other individual authorized by the laws of Oregon to give consent to medical procedures for the individual.

(3) Medical Information. When a licensed physician, other licensed health care provider, or licensed health care facility obtains an HIV test or HIV diagnosis of an individual, the test result, documentation of informed consent, and HIV diagnosis may be entered into the routine medical record of that individual maintained by that licensed physician, other licensed health care provider, or licensed health care facility. The information in the record may be disclosed in a manner consistent with ORS 192.518 to 192.526 to persons who must review the record for the purpose of treat-

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ment, payment or health care operations as those terms are defined in ORS 192.519.

(4) A physician may notify an individual who has had a substantial exposure to another individual whether that individual has been HIV tested, and, if so, what the test results were, provided that:

(a) The individual whose HIV test result is released is notified in writing of this disclosure; and

(b) The identity of the HIV tested person is not explicitly disclosed during the notification process. Any individual who receives an HIV test result about another individual pursuant to this rule shall not disclose the identity of that tested individual, or the results of such a test in a manner which permits identification of that tested individual without that individual's specific written authorization, except as required or permitted by Oregon law.

(5) Reporting HIV test results to public health authorities. Reporting the identity and test result of an individual with a HIV-positive test result to the Local Public Health Authority or Division on a death certificate, or as required or permitted by OAR 333-018-0000 through 333-018-0030 is not a breach of confidentiality.

(6) In the anatomical gift setting, the identity of a HIV tested deceased individual and that individual's HIV test results may be released to licensed physicians, other licensed health care providers, or licensed health care facilities to the minimum extent necessary to prevent contaminated anatomical parts from being transplanted into other individuals.

(7) Disclosure with authorization. Possession of HIV test results or HIV diagnosis does not confer the right to disclose this information to others, except as permitted by this rule and otherwise by Oregon law. HIV test results or HIV diagnosis and the identity of the tested individual may be released to any other party only with the specific written authorization of the tested individual. General consent for release of medical records is not sufficient. If, in the judgment of the attending licensed physician the patient is incapable of making health care decisions, then anyone permitted by the laws of Oregon to give consent to medical procedures for a particular individual may give authorization for release of HIV test results of that individual. The authorization for release of HIV test results and HIV diagnosis must specifically include:

(a) The statement that the HIV test result and HIV diagnosis may be released;

(b) The specific purpose for which the HIV result and HIV diagnosis may be released;

(c) Those to whom the HIV result and HIV diagnosis may be released;

(d) The specific time period during which the release may occur; and

(e) The date of the authorization, and the signature of the individual giving authorization.

Stat. Auth.: ORS 433.045

Stats. Implemented: ORS 433.045 - 433.080

Hist.: HD 5-1988, f. 3-15-88, cert. ef. 3-18-88; HD 6-1990(Temp), f. 2-22-90, cert. ef. 3-1-90; HD 25-1990, f. & cert. ef. 12-17-90; HD 16-1991, f. & cert. ef. 10-10-91; HD 29-1994, f. & cert. ef. 12-2-94; PH 1-2007, f. & cert. ef. 1-16-07

333-018-0005

To Whom Reports Shall Be Made

(1) In general, if the patient is an Oregon resident, reports shall be made to the Local Public Health Authority for the patient's place of residence.

(2) With the consent of the Local Public Health Authority and the Department of Human Services (DHS), reports may be made directly to DHS (e.g., via electronic reporting).

(3) In urgent situations when Local Public Health Authority staff are unavailable, case reports shall be made directly to DHS.

(4) Where the case is not an Oregon resident, reports shall be made either to the patient's Local Public Health Authority (if in another of the United States) or directly to DHS.

(5) Licensed Laboratories shall report directly to the DHS HIV Program:

(a) All tests indicative of and specific for HIV infection as required by OAR 333-018-0015;

(b) All CD4+ T-lymphocyte counts; and

(c) All HIV viral load tests.

Stat. Auth.: ORS 431.110, 433.001, 433.004, 433.006

Stats. Implemented: ORS 431.110, 433.001, 433.004, 433.006, 433.106

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 1-2007, f. & cert. ef. 1-16-07

333-018-0030

Laboratory Reporting of HIV Testing Activity

(1) Licensed laboratories shall report to the Department of Human Services (DHS), on a quarterly basis beginning March 1, 2007, a summary of the number of individuals tested and the number with HIV-positive test results:

(a) Laboratories shall report test results separately for males and females within the following age groups:

(A) < 5 years;

(B) 5-12 years;

(C) 13-19 years;

(D) 20-29 years;

(E) 30-39 years;

(F) 40-49 years;

(G) 50-64 years; and

(H) ≥ 65 years.

(b) This report shall also identify the test type used to identify positives and negatives.

(c) Reports shall be submitted via electronic means in comma separated or other format mutually agreeable to DHS and reporting laboratory.

(d) Such reporting shall be on a statistical basis only and shall not otherwise identify individuals.

(2) Blood banks, plasma centers, sperm banks, anatomical gift services and insurance companies shall report to DHS, on a quarterly basis beginning March 1, 2007, a summary of the number of individuals HIV tested during the three previous months, the number with HIV-positive test results, and the number with negative results:

(a) For insurance companies, this requirement applies to all tests performed at the request of the company for insurance eligibility purposes.

(b) This report shall also identify the test system used to identify positives and negatives.

(c) Such reporting shall be on a statistical basis only and shall not identify individuals.

NOTE: Specific rules regarding informed consent for HIV testing and confidentiality of HIV test results may be found in OAR 333-012-0265 and 333-012-2700.

Stat. Auth.: ORS 431.110, 433.001, 433.004

Stats. Implemented: ORS 431.110, 433.001, 433.004

Hist.: HD 15-1988, f. 7-11-88, cert. ef. 9-1-88; HD 6-1990(Temp), f. 2-22-90, cert. ef. 3-1-90; HD 16-1991, f. & cert. ef. 10-10-91; HD 10-1994(Temp), f. & cert. ef. 4-8-94; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; PH 6-2006, f. & cert. ef. 4-17-06; PH 1-2007, f. & cert. ef. 1-16-07

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

Adm. Order No.: PH 2-2007

Filed with Sec. of State: 2-1-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Amended: 333-250-0000, 333-250-0010, 333-250-0020, 333-250-0030, 333-250-0040, 333-250-0041, 333-250-0042, 333-250-0043, 333-250-0044, 333-250-0045, 333-250-0046, 333-250-0047, 333-250-0048, 333-250-0049, 333-250-0050, 333-250-0060, 333-250-0070, 333-250-0080, 333-250-0100, 333-255-0000, 333-255-0010, 333-255-0020, 333-255-0030, 333-255-0040, 333-255-0050, 333-255-0060, 333-255-0070, 333-255-0071, 333-255-0072, 333-255-0073, 333-255-0079, 333-255-0080, 333-255-0081, 333-255-0082, 333-255-0090, 333-255-0091, 333-255-0092, 333-255-0093, 333-265-0130

Rules Repealed: 333-250-0090

Subject: The Department of Human Services, Public Health Division is permanently amending and repealing Oregon Administrative Rules relating to Ambulance Service Licensing (division 250), Ambulance Licensing (division 255) and Emergency Medical Technicians (EMT) (division 265).

Rules Coordinator: Christina Hartman—(971) 673-1291

333-250-0000

Effective Date and Preemption

(1) No person shall operate an ambulance service unless issued an ambulance service license by the Department of Human Services, Public Health Division.

(2) These rules preempt any local ambulance ordinances and county ambulance service area plans that are in conflict. This rule does not prevent

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a city or county from establishing requirements more stringent than those set forth in these rules.

Stat. Auth.: ORS 682.015 & 682.215

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0010

Definitions

(1) "Advertise" means information communicated to the public, or to any person concerned, by any oral, written, or graphic means including, but not limited to, handbills, newspapers, television, billboards, radio, and telephone directories.

(2) "Ambulance" or "Ambulance Vehicle" means any privately or publicly owned motor vehicle, aircraft, or watercraft that is regularly provided or offered to be provided for the emergency transportation of persons suffering from illness, injury, or disability.

(3) "Ambulance Service" means any person, governmental unit, corporation, partnership, sole proprietorship, or other entity that operates ambulances and that holds itself out as providing prehospital care or medical transportation to sick, injured or disabled persons.

(4) "Ambulance Service Area (ASA)" means a geographic area served by one ground ambulance service provider, and may include all or portion of a county, or all or portions of contiguous counties.

(5) "Business Day" means Monday through Friday when the Division is open for business, this excludes holidays.

(6) "Division" means the Oregon Public Health Division, Emergency Medical Services and Trauma System Section, within the Department of Human Services.

(7) "EMS" means Emergency Medical Services.

(8) "EMS Medical Director" has the same meaning as "Supervising Physician" in ORS 682.025.

(9) "EMS Training Director" means a person who has the responsibility for coordinating EMS training, obtaining qualified instructors and maintaining the personnel training records for a licensed ambulance service.

(10) "Emergency Care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of the ill, injured or disabled; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in prehospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(11) "Emergency Medical Technician (EMT)" means a person who has received formal training in prehospital and emergency care and is state-certified to attend any ill, injured or disabled person. Police officers, fire fighters, funeral home employees and other personnel serving in a dual capacity, one of which meets the definition of "emergency medical technician" are "emergency medical technicians" within the meaning of ORS chapter 682.

(12) "EMT-Basic" means a person who completes an EMT-Basic course as prescribed by OAR 333-265-0010 and is certified by the Division.

(13) "EMT-Intermediate" means a person who completes an EMT-Intermediate course as prescribed by OAR 333-265-0010 and is certified by the Division.

(14) "EMT-Paramedic" means a person who completes an EMT-Paramedic course as prescribed by OAR 333-265-0010 and is certified by the Division.

(15) "Employee" means any full-time paid or part-time paid person acting within the scope of his or her duties and for or on behalf of an ambulance service.

(16) "Fraud or Deception" means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact or any other means by which misinformation or false impression is knowingly given.

(17) "License" means the documents issued by the Division to the owner of an ambulance service when the service and its ambulance are found to be in compliance with ORS chapter 682, OAR chapter 333, division 255 and these rules.

(18) "Non-emergency Care" means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24-hours, including but not limited to observation, care and counsel of a patient and the administration of

medications prescribed by a physician licensed under ORS chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Board of Medical Examiners in the course of providing prehospital care as defined by this rule.

(19) "Owner" means the person having all the incidents of ownership in an ambulance service or an ambulance or, where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of an ambulance or operation of an ambulance service under a security agreement of a lease for a term of ten or more successive days.

(20) "Patient" means an ill, injured or disabled person transported in an ambulance.

(21) "Person" means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose, or organization of any kind and includes any receiver, trustee, assignee, or other similar representative thereof.

(22) "Physician" means a person licensed under ORS chapter 677, actively registered and in good standing with the Board of Medical Examiners as a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO).

(23) "Prehospital Care" means that care rendered by emergency medical technicians as an incident of the operation of an ambulance as defined by ORS chapter 682 and that care rendered by emergency medical technicians as incidents of other public or private safety duties, and includes, but is not limited to "emergency care" as defined by ORS chapter 682.

(24) "Prehospital Care Report Form (PCRF)" means a Division-approved form or electronic field data format that is completed for all patients receiving prehospital assessment, care or transportation to a medical facility.

(25) "Procedure" means a written, dated and signed course of action to carry out a directive. A procedure must be able to answer the questions; who, what, why, when and where.

(26) "Volunteer" means a person who is working without wages and is acting within the scope of his or her duties for an ambulance service, but who may receive reimbursement for personal expenses incurred.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0020

Application Process to Obtain an Ambulance Service License

(1) Every person who furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the provision of ambulance service must apply for and receive an ambulance service license from the Division before offering such service to the public.

(2) The applicant for an ambulance service license must possess at least one ambulance, facilities, equipment, personnel, staffing capabilities, communications system, and services meeting the requirements of ORS chapter 682 and these rules.

(3) An applicant for an ambulance service license must submit an application to the Division on a form specified by the Division. A completed application form must contain, at a minimum:

(a) The name and address of the person or public entity owning the ambulance service;

(b) If other than the applicant's true name, the name under which the applicant is doing business;

(c) If for a corporation, a limited partnership, or a limited liability company, attach to the application:

(A) A written statement from the Oregon Secretary of State's Corporation Division Office that the ambulance service is registered in accordance with the requirements of the Secretary of State's Corporation Division Office and that the ambulance service is in good standing and has filed all its annual reports, together with filing fees;

(B) The name of the registered agent of the ambulance service that is on file with the Secretary of State's Corporation Division Office; and

(C) All trade names recorded with the Secretary of State's Corporation Division Office for this business entity, and if this business entity is a subsidiary, all trade names or names of all other subsidiaries recorded with the Secretary of State's Corporation Division Office.

(d) A copy of a signed signature authorization form or a power of attorney;

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(e) The name of the principal contact person that the ambulance service wants contacted regarding official communications with the Division, if different than identified in section (3)(a) of this rule;

(f) The mailing and actual street address of the principal place of business of the ambulance service and the actual street address of all fixed locations where an ambulance is parked when not in operation;

(g) Proof of financial responsibility as specified in ORS 682.105. Proof must be in the form of a certificate of insurance;

(h) Copies of all licenses issued by the Federal Communications Commission (FCC) for the operation of the ambulance service's communications equipment and radio configuration data as required by the Division or written authorization from a FCC license holder to use the license holder's frequencies;

(i) If laboratory tests are conducted that require a license, a copy of that license;

(j) A copy of the operator's Air Carrier Operating Certificate, if the service will be operating an air ambulance;

(k) A copy of the operator's US Coast Guard Certificate of Compliance, if the service will be operating a marine ambulance;

(l) Copies of all telephone book yellow pages, where ambulance service advertising appears;

(m) A copy of a Prehospital Care Report Form or electronic field data format, which must be approved by the Division, if not using the Division's Prehospital Care Report Form;

(n) A roster in alphabetical order of all personnel in the employ of the ambulance service, at the time application for a license is made, who shall either operate an ambulance or attend to patients, or both, along with the following information for each employee and volunteer:

(A) The full legal name;

(B) The employment status as either full-time paid, part-time paid or volunteer;

(C) The level of EMT certification or other licenses held; and

(D) The certification or other license numbers, including driver and pilot license numbers for those persons operating the ambulance.

(o) A list of all ambulances to be operated by the ambulance service under the ambulance service license along with the information required for an ambulance license pursuant to ORS chapter 682 and these rules;

(p) A statement under the penalties of perjury that certifies the following:

(A) There has been no attempt to knowingly and willfully falsify, conceal, or omit a material fact, or make any false, fictitious, incomplete or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry for the purpose of obtaining or attempting to obtain an ambulance service license to operate in the State of Oregon. Where an applicant relies on documents submitted by employees, volunteers or agents, the applicant has made a reasonable effort to verify the validity of those documents;

(B) The applicant authorizes any persons or entities, including but not limited to hospitals, institutions, organizations, or governmental entities to release to the Division any information, files, or records requested by the Division in connection with the processing of an application; and

(C) Upon receiving an ambulance service license, the licensee authorizes disclosure of information by insurance companies, physicians, health care facilities, including but not limited to hospitals, nursing homes, or free standing medical centers, to the Division relating to service provided by the ambulance service to those facilities or to patients being taken from or to those facilities.

(q) The completed application must contain the signature(s) of the person(s) having the lawful responsibility for the overall operation of an ambulance service or the person having the power of attorney, or the authorized person empowered to sign on behalf of the ambulance service; and

(r) Such other information as the Division may reasonably require.

(4) If the applicant's primary ambulance service business office is located in another state, the applicant must:

(a) Meet requirements listed in sections (1) through (3)(r) of this rule; and

(b) Attach copies of their current ambulance service and ambulance license(s) for that state to the application.

(5) The completed application to license an ambulance service must be accompanied by a nonrefundable licensing fee of:

(a) \$75, when the service has a maximum of four full-time paid positions; or

(b) \$250, when the service has five or more full-time paid positions.

(6) Upon review of the completed initial application and nonrefundable fee, the Division shall schedule an inspection of the applicant's facilities, records and ambulances. The applicant must successfully complete the inspection to be issued an ambulance service license. A license shall be issued within ten business days of successful inspection.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0030

Issuance of License to Operate an Ambulance Service

(1) When the completed ambulance service license application with the appropriate nonrefundable licensing fee has been received by the Division, and if it is found that the submitted data, facilities and records comply with the requirements of ORS chapter 682 and these rules, the Division shall issue an ambulance service license for the specified ambulance service.

(2) The ambulance service license:

(a) Shall be valid until June 30 of each year, unless sooner revoked or suspended. The initial licensing period may not exceed 15 months;

(b) Shall expire on June 30 of the following year, if a license is applied for and issued between April 1 and June 30; and

(c) Must be conspicuously displayed in the main business office of the ambulance service, or otherwise as directed by the Division.

(3) Except when specifically exempted by ORS 682.035, an out-of-state ambulance service that operates or advertises in Oregon must be licensed by the Division. An out-of-state ambulance service is not required to obtain an ambulance service license and ambulance license for the following situations:

(a) Transporting a patient through the state;

(b) Delivering a patient to a medical facility or other location within the state, if the beginning of the transport originated outside of the state;

(c) Picking up a patient at a medical facility or airport within the state for the purpose of transporting the patient to a medical facility or other location outside of the state, unless prohibited by the County's Ambulance Service Area Plan; or

(d) In the event of a man-made or natural disaster declared by federal, state or local officials and resulting in the need to utilize all available resources to provide patient care and transportation in the affected area.

(4) If an ambulance service license becomes lost, damaged or destroyed, the licensee must apply for a replacement license. The licensee must submit, to the Division, the completed application with a \$10 nonrefundable fee for each replacement license.

(5) An ambulance service license is not transferable to a new owner of a purchased ambulance service.

(6) When an ambulance service is found to be in non-compliance with ORS chapter 682 or these rules, the Division may deny, suspend or revoke an ambulance service license or place the ambulance service on probation.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0040

Ambulance Service Operational Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents meet the following:

(a) Complies with all of the requirements of ORS chapter 682, ORS 820.300 through 820.380 and other applicable federal, state and local laws and regulations governing the operation of a licensed ambulance service;

(b) Notifies the Division, upon making initial application or within 14-days of the date of registration, of any new "trading as", "division of", or "doing business as" names utilized by the licensee;

(c) Transports only patients for which it has the resources to provide appropriate medical care and transportation unless in transfers between medical facilities, the sending or receiving facility has provided medically appropriate life support measures, personnel, and equipment to sustain the patient during the transfer; and

(d) When patients are charged for services, will make available to the public, information regarding ambulance service rates charged by the licensee.

(2) The licensee is responsible to provide each employee or volunteer:

(a) An initial orientation program which addresses, at a minimum, the state and county ambulance service and ambulance standards, county ASA plan, area trauma plan, ambulance service policies, patient rights, interfacing with fixed-wing, rotary-wing and marine ambulances when applicable

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and written standing orders. The initial orientation program must be completed prior to the employee or volunteer being allowed to staff an ambulance; and

(b) Access to current copies of these rules, and the documents referred to within these rules that are incorporated by reference.

(3) The licensee must have written procedures to carry out daily ambulance service operations. Procedures must include, but are not limited to:

(a) Bloodborne pathogen procedures that are in compliance with OAR 437-002-1030;

(b) The storage of medications including controlled substances if authorized by the EMS Medical Director. This procedure must meet Oregon Board of Pharmacy requirements in OAR chapter 855 and US Drug Enforcement Administration requirements found in 21 CFR 1301.75(b).

(c) The destruction of outdated medications including controlled substances if authorized by the EMS Medical Director. This procedure must meet Oregon Board of Pharmacy Requirements found in OAR chapter 855 and US Drug Enforcement Administration requirements found in 21 CFR 1307.21.

(d) The notification of management by an employee or volunteer if the employee or volunteer is unable to continue to work because of illness, injury, or lack of rest that would jeopardize patient care;

(e) The reporting of suspected child abuse as required in ORS 419B.005 through 419B.050; and

(f) The reporting of suspected elderly abuse as required in ORS 124.050 through 124.095.

(4) If local governments enter into an intergovernmental agreement to provide or contract for ambulance service as allowed for by ORS 190.003 through 190.010, the local governments must have a signed contract.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0041

Ambulance Service Personnel Educational Requirements and Quality Improvement

(1) The licensee must ensure that the service, employees, volunteers and agents meet the educational requirements by designating an EMS Training Director. The training director must provide or coordinate the following:

(a) A documented orientation program for all new employees and volunteers. The initial orientation program must include the subjects listed in OAR 333-250-0040(2)(a);

(b) The training of all medical personnel on the proper use of any new equipment, procedure or medication prior to being placed on an ambulance;

(c) The training required before a person may independently staff an ambulance, includes initial and refresher training:

(A) Bloodborne pathogen and infectious disease training that meets standards found in OAR 437-002-0360 and 437-002-1030;

(B) Hazardous materials awareness training that meets the Oregon Occupational Safety and Health Division standards found in OAR chapter 437;

(C) Emergency ground ambulance operator's training that meets Division standards when operating a ground ambulance;

(D) Air medical crew training that meets Division standards when operating an air ambulance; and

(E) Marine crew training that meets Division standards when operating a marine ambulance.

(d) If the training courses listed in sections (1)(c)(A) through (1)(c)(E) of this rule are not completed by the licensee, there must be verifiable written documentation placed in employee's or volunteer's training file that the employee or volunteer has completed the training elsewhere; and

(e) Any continuing education provided by the service for the purpose of EMT, air medical crew, and marine crew recertification.

(2) The licensee through the designated training director must document any EMT, air medical crew, and marine crew continuing education conducted through the service. The documentation of the training must be:

(a) In the form of a class roster that contains:

(A) Name of the ambulance service;

(B) Name of the instructor;

(C) Name of the EMT or employee attending the class;

(D) Class date;

(E) Class subject; and

(F) Class length; or

(b) In the form of a computer-generated printout history of an individual EMT's or employee's continuing education record that contains:

(A) The full name of the EMT or employee;

(B) Name of the ambulance service;

(C) Class dates;

(D) Class subjects; and

(E) Class lengths.

(c) Maintained in a secure manner with limited access for a minimum of four years.

(3) The licensee must establish a procedure to release copies of all records of continuing education completed by an EMT or employee through the service in a verifiable format to the requesting EMT or employee within five business days of being requested.

(4) The licensee must have a written quality improvement program that is approved by the EMS Medical Director.

(5) To assist the licensee and the EMS Medical Director in determining if appropriate and timely emergency medical care was rendered, the ambulance service designated official may request the following information from the hospital receiving the patient as authorized by ORS 682.056:

(a) Patient admit status and unit admitted to;

(b) Any procedure listed in section D04_04 of the National Highway Transportation Safety Administration dataset dictionary, version 2.2.1, and performed on the patient within the first hour of being admitted;

(c) Any medication administered to the patient within the first hour of being admitted; and

(d) Trauma system entry by emergency department staff.

(6) Information provided under section (5) of this rule is considered confidential pursuant to ORS 682.056. Any employee or volunteer participating in a quality improvement session, must have a signed confidentiality statement in their personnel file.

(7) If the licensee accepts students for EMT-Paramedic internships from an accredited teaching institution, the licensee must:

(a) Have a signed and dated contract with each teaching institution providing internship students; and

(b) Use qualified preceptors, as defined by OAR 333-265-0000, who will be assigned to supervise, document and evaluate the EMT-Paramedic student.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0042

Ambulance Operational Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents meet the following requirements when providing ground ambulance service:

(a) Complies with all applicable statutes in the 2005 Oregon Motor Vehicle Codes relating to motor vehicle and emergency vehicle operations, ORS 820.300 through 820.380 and ORS chapter 445.

(b) Persons operating an ambulance must successfully complete an emergency vehicle operator's course of instruction prior to independently operating an ambulance. The course must meet or be equivalent to the 2003 National Safety Council for Emergency Vehicle Operators Course.

(c) Have a procedure:

(A) Detailing the operation of an ambulance for both emergency and non-emergency situations;

(B) To remove an ambulance from service when the mechanical condition of an ambulance is sufficiently unreliable so as to endanger or potentially endanger the health, safety, or welfare of a patient or crew member;

(C) To handle a mechanical breakdown and to repair or replace a damaged tire or wheel when the ambulance is in operation; and

(D) Detailing what steps are to be followed when an ambulance is involved in an accident. The procedure must include the submission of a legible copy of the Department of Motor Vehicles Accident Report to the Division within ten business days of the accident.

(2) The licensee must ensure that the service, employees, volunteers and agents meet the following when providing air ambulance service:

(a) Complies with the Federal Acquisition Regulation (FAR), 14 CFR Part 135 of the Operating requirements; Commuter and on demand operations and rules governing persons on board such aircraft; and

(b) Have the medical personnel staffing an air ambulance successfully complete the 2004 Association of Air Medical Services (AAMS) Guidelines or equivalent. There must also be an annual review of the Air Medical Crew course material, the length of which must be established by the EMS Medical Director.

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(3) Utilize only an ambulance for the provision of providing ambulance service that has been issued a license by the Division and that complies with all requirements of ORS chapter 682, OAR chapter 333, division 255, and these rules.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0043 Ambulance Service Personnel Record Keeping and Reporting Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents meet the following:

(a) Maintains a complete and current personnel file, training file, and/or medical file for each employee and volunteer. The files must contain the employee's or volunteer's:

(A) Full name;

(B) Current home mailing address;

(C) Affiliation status, listed as either an employee full-time paid, employee part-time paid, volunteer, or agent;

(D) Copy of current EMT certificate respiratory therapist, registered nurse, physician assistant and/or physician license, when applicable;

(E) Copy of current driver's license and if the employee or volunteer operates an air ambulance, a copy of current pilot license;

(F) Copy of certified court printout of initial driver's license check done through the Oregon Department of Motor Vehicles Automated Reporting System Program or equivalent reporting program as approved by the Division, and any subsequent reported convictions, accidents or license suspensions. If the driver has an out-of-state drivers license, the licensee must participate in a similar program for that state, if available and if not available, conduct an annual driving record check;

(G) Copy of certificate of course completion that EMT-Basics, EMT-Intermediates, and non-EMT drivers have demonstrated knowledge and skills in the performance of one and two-person rescuer cardiopulmonary resuscitation (adult, child and infant) and relief of foreign body airway obstruction. The 2005 standards are set forth by the American Heart Association or equivalent standards approved by the Division.

(H) Copies of current Advanced Cardiac Life Support certificate, Pediatric Advanced Life Support certificate and Trauma Emergency Assessment Management, Trauma Nurse Core Course, Prehospital Trauma Life Support, or Basic Trauma Life Support certificates for RNs and PAs;

(I) Documentation of completing an ambulance service initial orientation program;

(J) Documentation of completing a bloodborne pathogen and infectious disease training course that meets standards found in OAR 437-002-0360 and OAR 437-002-1030 and an annual refresher training course;

(K) Documentation of completing a Hazardous Materials Awareness training course that meets the Oregon Occupational Safety and Health Division standards found in OAR chapter 437 and an annual refresher training course;

(L) Documentation of completing a Division-approved emergency vehicle operator's course for ground ambulance drivers only. The course must meet or be equivalent to the standards of the 2003 National Safety Council for Emergency Vehicle Operators Course, (CEVO II-AMB);

(M) Documentation of completing the US Department of Transportation's Air Medical Crew National Standard Curriculum course or equivalent and annual refresher training for persons staffing air ambulances only;

(N) Dates that Tuberculosis tests were conducted;

(O) Dates of Hepatitis-B immunizations or a signed waiver;

(P) A signed statement by a non-EMT driver, RN and PA that they are not addicted to alcohol or controlled substances and are free from any physical or mental defect that might impair the ability to operate or staff an ambulance; and

(Q) A signed statement by the training director that the non-EMT, RN and PA has demonstrated the ability to properly assist in the extrication, lifting and moving of a patient.

(b) Items listed in sections (1)(a)(A) through (1)(a)(Q) of this rule must be completed prior to the employee or volunteer being allowed to independently staff an ambulance. Note: an employee or volunteer must begin the Hepatitis-B immunization series or have a signed waiver prior to independently staffing an ambulance.

(2) All records relating to an ambulance service's operations must be retained by the licensee or the licensee's successors or assigns for not less than seven years from the date of implementation, purchase, dispatch, etc., or longer if so required by law or regulation. The record keeping mecha-

nism may be in any permanent form including paper or on magnetic media provided that the information can be made readily available for inspection by the Division.

(3) The licensee must promptly submit to the Division such information, including survey information, that the Division may reasonably require.

(4) The licensee must submit a completed Division-approved EMS personnel action report form to the Division, within the times specified, for any of the following actions:

(a) Hiring a new employee or volunteer, within 14 business days;

(b) Terminating or suspending an employee or volunteer for cause, within 14 business days; and

(c) Disciplinary action taken by the licensee or the EMS Medical Director for unprofessional conduct as listed in OAR 333-265-0000, within 14 business days.

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

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0044 Prehospital Care Report Form or Electronic Field Data Format Completion Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents meet the following:

(a) A PCRf must be initiated in each instance where an ambulance arrives on the scene and patient contact is initiated.

(b) A complete PCRf or electronic field data format as specified by the Division must be:

(A) Prepared by ambulance personnel and delivered to appropriate hospital staff at the time patient care is transferred;

(B) Except when providing PCRf via electronic format. Ambulance personnel are to verbally relay pertinent patient care information to hospital staff prior to leaving the hospital. A completed report must be submitted to the hospital at a location designated by the hospital within 12 hours or prior to the crew going off-duty, whichever occurs first.

(c) If the ambulance crew is unable to complete the PCRf at the time patient care is transferred, the ambulance crew may depart after receiving verbal verification from an emergency department employee involved with providing patient care that sufficient patient information has been transferred to support safe and timely continuation of patient care.

(d) The licensee must return the ambulance crew to the hospital when requested by the attending physician for the purpose of obtaining the completed PCRf or additional patient care information. If acceptable to the attending physician, a completed PCRf can be faxed or electronically sent to the hospital;

(e) A PCRf or electronic field data form must contain all data points as defined by version 2.2.1 of the National Highway Transportation Safety Administration Uniform Pre-Hospital Emergency Medical Services Dataset and required by the Oregon Prehospital Care Database.

(2) A completed PCRf or electronic field data form is not required when there is a disaster or a multiple patient incident consisting of more than five patients or the number of patients prescribed in the county's ASA plan, and which results in a single ambulance transporting two stretcher patients at the same time or when an ambulance is required to make more than one trip to and from the incident site. In those situations, a completed triage tag, that includes listing of the trauma systems identification bracelet number, recording of the times and results of all vital signs taken and the times, name and dosage of any medication given is acceptable patient care documentation. However, every reasonable attempt must be made by the ambulance personnel to complete an approved PCRf or electronic field data form for each patient at the conclusion of the incident.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0045 Storage, Release and Destruction of Prehospital Care Report Form Requirements

(1) The licensee is responsible to ensure that the service, employees, volunteers and agents meet the following:

(a) Provide for secure storage of PCRfs, with limited access by office and ambulance personnel;

(b) Provide that the PCRfs are organized in a manner that will allow an authorized ambulance service representative to locate a PCRf within a reasonable amount of time, given a patient's name and the date and time of the ambulance call;

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(c) Establish a procedure for releasing a copy of the PCRf to a medical facility receiving the patient, the patient, the patient's family, the patient's legal guardian, an insurance company, an attorney, a law enforcement officer and a law enforcement agency;

(d) Protect the confidentiality of patient information during quality improvement sessions by limiting access to the PCRf and having all persons having access to PCRfs sign a confidentiality statement; and

(e) Establish a procedure for the method and verification of the destruction of a PCRf. The procedure must include the following:

(A) Except for a minor patient, unless a patient is notified, an ambulance service may not destroy a medical record or report about a patient for ten years after the record or report is made, or longer if so required by law or regulation.

(B) In the case of a minor patient, a medical record or report about a minor patient may not be destroyed until the patient attains the age of majority plus three years or for ten years after the record or report is made, whichever is later, unless the parent or guardian of the minor patient is notified. The notification must:

(i) Be made by first class mail to the last known address of the patient;

(ii) Include the date on which the record of the patient shall be destroyed; and

(iii) Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location within 30-days of the proposed date of destruction.

(2) Under no circumstances shall an employee, volunteer or agent make a copy of a PCRf for their own personal record or remove the original or a copy of a completed PCRf from the licensee's files or facilities without having written approval of the licensee.

(3) All PCRfs must be made available for inspection and duplication when requested by the Division as authorized by ORS 41.675 and 41.685.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0046

Ambulance Service Communications and Dispatching Operational Requirements

(1) The licensee is responsible to ensure that the service, employees, volunteers and agents meet the following:

(a) Have a valid license from the Federal Communications Commission (FCC) to operate an EMS radio on assigned frequencies, or proper authorization from another agency holding a valid FCC license to operate on designated radio frequencies;

(b) Have 24-hour-a-day phone answering and dispatching capabilities or have a signed agreement or contract with a recognized primary or secondary Public Safety Answering Point (PSAP), who will provide telephone answering and emergency dispatching services;

(c) Provide a reliable means of alerting and communicating with an ambulance crew before, during and after an ambulance call;

(d) Immediately route all emergency calls received from the public on any of the licensee's ten digit telephone number to the PSAP, which is a 24-hour communications facility established as an answering location for 9-1-1 calls originating within a given service area. A primary PSAP receives all calls for emergency medical services directly from the public. A secondary PSAP only receives calls from a primary PSAP on a transfer or relay basis. When a licensee receives a request for an emergency ambulance and the licensee is a recognized secondary PSAP, the licensee may dispatch the ambulance and then notify the primary PSAP for coordination of other emergency responder agencies; and

(e) Any request for an ambulance received on the licensee's ten digit telephone number must be answered by a live person or have an answering machine referring the caller to the appropriate emergency telephone number.

(2) Maintains ambulance dispatch records as prescribed in ORS 820.330 and 820.340. The records must be kept by the licensee or the licensee must have a signed agreement with the PSAP, service or agency that provides telephone answering and dispatching services, that they will maintain and make available copies of the official dispatch records for a minimum of seven years.

(3) When the licensee employs dispatchers for the purpose of answering the telephone, taking information regarding the need for an ambulance and dispatching the ambulance, the dispatcher must have written documentation of completing:

(a) The Department of Public Safety Standards and Training's Emergency Medical Dispatcher's Course or equivalent; and

(b) Four hours of annual refresher training for dispatchers that meets the standards set forth by the Department of Public Safety Standards and Training.

(4) Air ambulance must meet Federal Acquisition Regulation (FAR), 14 CFR Part 135 of the Operating requirements; Commuter and on demand operations and rules governing persons on board such aircraft.

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

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0047

Ambulance Service EMS Medical Director Operational Requirements

(1) The licensee must have a single EMS Medical Director, except when the licensee operates in diverse or non-contiguous counties, then the licensee may have one EMS Medical Director in each non-contiguous county of operation, or where a county or regional EMS system prescribes that multiple agencies within a county or region must have a governmentally appointed EMS Medical Director, that agency may have a different EMS Medical Director in contiguous counties. In this event, the signed agreement or contract may be between the EMS Medical Director and the county or regional EMS system. The licensee must ensure that the EMS Medical Director:

(a) Meets the requirements and duties as prescribed in OAR 847-035-0020 through 847-035-0030;

(b) Has a written set of treatment protocols for each level of service offered by the licensee; and

(c) Has a signed and dated agreement or contract with the licensee.

(2) When an EMS Medical Director authorizes the administration of controlled substances, the EMS Medical Director must have on file with the licensee:

(a) A US Drug Enforcement Administration License listing the name of the ambulance service and address where the controlled substances are stored when not on an ambulance; and

(b) A signed and dated procedure as to the amount stored on the ambulance and how controlled substances will be stored, accessed, recorded, administered, destroyed and secured. It is the responsibility of the EMS Medical Director to ensure that the procedure meets the minimum US Drug Enforcement Administration requirements found in 21 CFR 1301.75(b).

(3) If the licensee learns of the following, the licensee must notify the Division, in writing:

(a) Within 72-hours anytime an EMS Medical Director's medical license or US Drug Enforcement Administration license for the licensee has been denied, suspended, revoked or voluntarily surrendered; or

(b) 21-days prior to a change in the EMS Medical Director.

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

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0048

Ambulance Service Ambulance Personnel Operational Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents meet the personnel requirements as prescribed in OAR chapter 333, division 255, the licensing requirements for air, ground or marine ambulances.

(2) The licensee must not schedule or allow an employee or volunteer to serve on an ambulance who is impaired by excessive fatigue, illness, injury or other factors which may reasonably be anticipated to constitute a threat to the health and safety of patients or the public. An employee or volunteer shall not operate an ambulance or render patient care at any time while the employee's or volunteer's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for the employee or volunteer to begin or continue to operate an ambulance or provide patient care. It is the responsibility of the employee or volunteer to immediately notify the employee's or volunteer's supervisor if this occurs for the purpose of being removed from duty until such time that the employee or volunteer is no longer impaired.

(3) The licensee shall require each person staffing an ambulance or providing prehospital emergency or non-emergency care to display his or her level of EMT certification or display that he or she is a respiratory therapist, registered nurse, physician assistant or physician on the outermost garment of his or her usual work uniform at all times while staffing an ambulance or rendering patient care, and shall make reasonable efforts to display this information under other circumstances.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

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Ambulance Service Housing of Personnel, Ambulance and Equipment Operational Requirements

(1) The licensee must ensure that the following are provided:
(a) An area where an employee or volunteer working a 24-hour shift may sleep or rest;

(b) An area equipped with adequate toilet, hand-washing and shower facilities with hot and cold running water, antiseptic soap and clean towels for hand and body drying. If the ambulance service facility does not have shower facilities, the licensee must have a signed agreement or contract with a medical facility or other entity to make available shower facilities to ambulance personnel for the purpose of showering after coming in contact with medical or other biohazardous waste;

(c) Separate areas for clean and soiled linen receptacles in accordance with the applicable Oregon Occupational Safety and Health Administration and other rules governing the handling of special medical wastes;

(d) A designated secure area for storing, or an alternate method and a procedure for identification and storage of, all medications which are deteriorated, outdated, misbranded, adulterated or otherwise unfit for use. This area or procedure must provide for the physical separation of defective supplies so that products are not confused with usable products. Security procedures for unusable medications, fluids and controlled substances must be the same as for usable supplies;

(e) A separate area to place malfunctioning patient care equipment out of service until the equipment has been repaired or replaced or enforces a procedure for an alternate method of identification and storage to assure that defective equipment will not be used;

(f) A reasonable inventory of patient care equipment, supplies and medications, shall be properly secured or have a signed agreement with a medical facility that the medical facility will provide the patient care equipment, supplies, and medications; and

(A) Controlled substances, when authorized by the EMS Medical Director, must be stored, accessed, inventoried, administered, destroyed and secured in a manner established in a signed and dated procedure by the EMS Medical Director. The procedure must be in accordance with the regulations promulgated by the US Drug Enforcement Administration (DEA) found in 21 CFR 1301.75(b).

(B) A copy of the EMS Medical Director's DEA license must be kept at each fixed ambulance location where controlled substances are stored other than in the ambulance.

(C) Pharmacological and medical supplies with expiration dates affixed thereon by the manufacturer or packager shall be removed from service no later than the expiration date. Expired pharmacological and medical supplies must be disposed of in accordance with applicable laws and regulations.

(2) Ambulances available for or subject to a call must be maintained to allow immediate starting of the engine and to prevent medications and medical supplies from becoming environmentally degraded.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0050

Request for Variance from Standards

(1) The licensee may request a variance from the standards established in ORS 820.330 to 820.380, ORS chapter 682 and these rules when:

(a) The licensee believes that compliance with a rule is inappropriate because of special circumstances which would render compliance unreasonable, burdensome, or impractical due to special conditions or causes, or because compliance would result in substantial curtailment of necessary ambulance service; and

(b) A city ordinance or county ASA plan exists, and the licensee has presented his or her request for a variance to the local city or county governing body and that body has given their approval for the proposed variance.

(2) A written request for a variance must be made to the Division. The Division may not grant a variance that may cause danger or harm to the public or to persons operating or staffing the ambulance. A written variance request must include:

(a) Justification for the variance request; and

(b) A detailed and realistic plan to resolve the need for a future variance.

(3) The request for variance may be presented to the State Emergency Medical Service Committee at a regularly scheduled meeting. The Public

Health Director or designee, after considering the Committee's recommendation, when requested, may grant a variance:

(a) A variance shall be granted for a period of time as prescribed by the Division; and

(b) A subsequent variance may only be granted when the licensee has demonstrated to the Division, insofar as possible, adequate progress in resolving the need for the initial variance as described in the plan.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0060

Right of Entry and Inspection of an Ambulance Service and Ambulance

(1) The Division may conduct an inspection for the purpose of evaluating the eligibility of an ambulance service or an ambulance to receive or retain a license and to ensure the health, safety, and welfare of the persons who utilize ambulances. Ambulance services that acquire and maintain current status with a nationally recognized EMS service program accreditation entity that meets or exceeds Oregon requirements may be exempted from the inspection process. A copy of the inspection report from the nationally recognized EMS service program accreditation entity must be filed with the Division for approval.

(2) Routine inspections of an ambulance service or an ambulance must be scheduled with the management of the ambulance service at least 72-hours in advance of the inspection unless otherwise mutually agreed upon by the Division and the ambulance service representative.

(3) Investigative inspections for the purpose of ensuring continued compliance with ORS chapter 682 and these rules do not require giving advanced notice to the licensee.

(4) In conducting an inspection or interview, the Division representative must:

(a) Identify him or herself by presenting the Division identification to the owner, manager, or ranking employee or volunteer present at the site of an inspection or interview;

(b) Inform the ambulance service representative of the purpose for the inspection or interview; and

(c) Inform the ambulance service representative when the inspection or interview has been completed and the results of the inspection only.

(5) The Division may make photographic or video-graphic documentation as part of an inspection for or an investigation of non-compliance with ORS chapter 682 and these rules.

(6) Failure of the licensee to produce records for inspection or to permit examination of equipment and facilities by the Division shall be grounds for the denial, suspension or revocation of an ambulance service or ambulance license.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0070

Denial, Suspension, or Revocation of an Ambulance Service License or Placing an Ambulance Service on Probation

(1) Conduct subjecting an ambulance service to discipline means conduct unbecoming a person who is either applying for or holds an ambulance service license and is detrimental to the best interest of the public and includes, but is not limited to the conduct listed in this rule.

(2) The Division may, in accordance with the provisions of ORS chapter 183, deny, suspend, or revoke an ambulance service license or ambulance license. The Division may also place an ambulance service on probation, the terms of which shall be established by the Division. In addition to or in lieu of probation, suspension or revocation, the Division may cite an ambulance service for a violation and request corrective action.

(3) An individual, firm, partnership, limited liability company, corporation, association, or organization shall be considered in violation of ORS chapter 682 and these rules if the Division determines that the individual, firm, partnership, limited liability company, corporation, association, or organization has done any of the following:

(a) Been convicted of a crime, including conviction of Medicare or Medicaid fraud, relating adversely to the person's capability of owning or operating an ambulance service;

(b) Violated ORS chapter 682 or any of these rules which poses a significant threat to the health and safety of the public;

(c) Made a material omission or misrepresentation of facts on an application for a license or waiver, or in response to an inquiry or investi-

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gation. This includes fraud or deceit in obtaining or attempting to obtain a license or waiver or in any other transaction with the Division;

(d) Failed to employ or contract for an approved EMS Medical Director, or to operate under the direction of an EMS Medical Director appointed by an appropriate governmental authority;

(e) Failed to have medical equipment and supplies required for operation at the highest level of service provided;

(f) Lent a license or borrowed or used the license of another, or knowingly aided or abetted the improper granting of a license;

(g) Defaced, altered, removed or obliterated any portion of any official entry upon a license, licensing decal, or waiver issued by the Division;

(h) Refused to respond to or render prehospital emergency care as required by protocol because of a patient's race, sex, creed, national origin, sexual preference, age, handicap, medical problem, or financial inability to pay;

(i) Failed to promptly notify the Division of a change of ownership, or to report any matter the reporting of which is required by ORS 682.220(4);

(j) Disclosed medical or other confidential information;

(k) Altered or inappropriately destroyed medical records;

(l) Willfully prepared or filed false reports or records, or induced another to do so;

(m) Engaged in a pattern of any of the following:

(A) Incompetence, negligence or misconduct in operating the ambulance service or in providing emergency medical care and transportation to patients;

(B) Abuse or abandonment of patients;

(C) Failure to comply with the county ASA plan, area trauma plan, or other lawfully promulgated policies, plans, or procedures;

(D) Failure to meet response time standards as prescribed by the county ASA plan or if no ASA plan is in effect, the area trauma plan;

(E) Misuse or misappropriation of medications or medical materials; and

(F) Other conduct determined by the Division to pose a significant threat to the public health and safety and the well being of ambulance patients.

(n) Failed to comply with the minimum personnel requirements or failed to have the required equipment in working order on an ambulance as prescribed in these rules;

(o) Had a continuing pattern of violations over a period of two or more years;

(p) Failed to submit a reasonable timetable to correct the violations cited by the Division;

(q) Interfered with the performance of the Division's duties; and

(r) Failed to pay all applicable licensing fees or civil penalties set by the Division.

(4) Upon receipt of a sufficient written or verbal complaint describing specific violations of ORS chapter 682 or any other relevant statute or rule, the Division shall initiate an investigation of the allegations. The Division does not have jurisdiction over and shall not take action on complaints that relate solely to rates charged a patient by an ambulance service.

(5) When an ambulance, upon inspection by the Division, manifests evidence of a mechanical or equipment deficiency which poses a significant threat to the health or safety of patients or crew, the Division shall immediately suspend that ambulance from operation. No ambulance which has been suspended from operation may be operated until the licensee has certified and the Division has confirmed that all of the violations have been corrected.

(6) The Division shall confirm by inspection or other appropriate means that all violations have been corrected within 48-hours of notification by the licensee. The licensee must notify the Division of corrections by personal telephone contact (voice mail messages will suffice), or telecopy, or in person during normal business hours. Notifications received by telecopy after 4:30 p.m. on a weekday or at any time on a weekend will be deemed received at 8 a.m. on the next workday. Telephonic notifications shall be deemed received at the time actual voice contact between the licensee and the Division's ambulance service licensing program representative or designee is established.

(7) In the event that a license is suspended or revoked, the licensee must cease ambulance service operations and no person except the Division may permit or cause the service to continue.

(8) The licensee must return all indications of licensing, including certificates and the remains of ambulance license decals to the Division by registered mail, posted within 48-hours of either receipt of notification of

suspension or revocation or the effective date of revocation, whichever is later.

(9) The Division shall provide appropriate public notification of the suspension or revocation of an ambulance service license, or the placing of a service on probation.

(10) The Division may impose a fine not to exceed \$5000 and recover the cost incurred from an ambulance service owner who either has admitted to the facts of the complaint or has been found, through a formal contested case proceeding, to have committed one or more violations of the regulatory statutes or rules.

(11) If a principal owner of an ambulance service has had its ambulance service license revoked, following the opportunity for a hearing as provided by ORS chapter 183, that person shall not be eligible to apply for or hold an ambulance service license for a period of two years from the date of revocation as specified in ORS chapter 682.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0080

Surrender of License to Operate an Ambulance Service

(1) An ambulance service license is non-transferable.

(2) When the owner sells or closes an ambulance service, the owner must:

(a) Provide a minimum 30-days written notice of the intent to cease operation to the Division;

(b) Provide the required notice as prescribed in the county ASA plan to the county health department and the ASA authority in which the ambulance service operates; and

(c) Take such other actions as may be determined to be necessary by the Division or the county health or ASA authority to assure the smooth transition to a new ambulance service provider, including but not limited to permitting the continued operation of the existing provider for more than the required period of legal notice or making equipment and supplies available to an interim ambulance service provider.

(3) Within 10-days of final closing of the ambulance service sale, the owner must return the ambulance service license to the Division.

(4) An owner may not terminate the ambulance service business or otherwise cease operations in contravention of any provisions, rules or ordinances established under the provision of ORS chapter 682.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-250-0100

Advertising of an Ambulance Service

(1) The licensee may advertise only when the ambulance service and ambulance meets the requirements of ORS chapter 682 and these rules.

(2) If the licensee does not provide the level of service advertised, the license may be denied, suspended or revoked in accordance with the provisions of ORS chapter 183 for failure to comply.

(3) No licensee shall advertise or promote the use of any telephone number other than "9-1-1" for emergency ambulance service.

(4) A licensee which offers non-emergency service may advertise its non-emergency or business telephone number for other than emergency use, provided that in any print, audio or video advertising the phrase "FOR EMERGENCIES — CALL 9-1-1" is provided. When using the phrase "FOR EMERGENCIES — CALL 9-1-1" in print, it must be in bold-faced type at least one and one-half times the point size in which the non-emergency or business telephone number is displayed.

(5) Contents of ambulance service advertising must include:

(a) The legal name of the ambulance service indicated on the license issued by the Division;

(b) If the licensee advertises 24-hours-a-day operation, the ambulance service must provide uninterrupted service 24-hours-a-day, 7 days-a-week, 365 days-a-year;

(c) If the licensee provides service for only a portion of a 24-hour day or week, any advertising must specify the hours and days of operation; and

(d) Non-recallable advertisements initiated before the effective date of these rules does not constitute a violation of this rule.

(6) Advertising materials disclosure upon request. The licensee must maintain copies of all print, audio, video, and all other types of advertisements for one year after use and distribution have ceased, and must make those copies available to the Division upon request.

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(7) Novelty or promotional items which are not distributed to the general public do not meet the definition of advertisement.

Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-9; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0000

Definitions

(1) "Ambulance" or "Ambulance Vehicle" means any privately or publicly owned motor vehicle, aircraft, or watercraft that is regularly provided or offered to be provided for the emergency transportation of persons suffering from illness, injury, or disability.

(2) "Ambulance Service" means any person, governmental unit, corporation, partnership, sole proprietorship, or other entity that operates ambulances and that holds itself out as providing prehospital or medical transportation to sick, injured or disabled persons.

(3) "Ambulance Service Area (ASA)" means a geographic area served by one ground ambulance service provider, and may include all or portion of a county, or all or portions of contiguous counties.

(4) "Business day" means Monday through Friday when the Division is open for business, this excludes holidays.

(5) "Division" means the Oregon Public Health Division, Emergency Medical Services and Trauma System Section, within the Department of Human Services.

(6) "Emergency Care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of the ill, injured or disabled; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in prehospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(7) "EMS" means Emergency Medical Services.

(8) "EMS Medical Director" has the same meaning as "Supervising Physician" in ORS 682.025.

(9) "Emergency Medical Technician (EMT)" means a person who has received formal training in prehospital emergency and non-emergency care and is state-certified to attend any ill, injured or disabled person. Police officers, firefighters, funeral home employees and other personnel serving in a dual capacity, one of which meets the definition of "emergency medical technician" are "emergency medical technicians" within the meaning of ORS chapter 682.

(10) "EMT-Basic" means a person who completes an EMT-Basic course as prescribed by OAR 333-265-0010 and is certified by the Division.

(11) "EMT-Intermediate" means a person who completes an EMT-Intermediate course as prescribed by OAR 333-265-0010 and is certified by the Division.

(12) "EMT-Paramedic" means a person who completes an EMT-Paramedic course as prescribed by OAR 333-265-0010 and is certified by the Division.

(13) "In Operation" means the time beginning with the initial response of the ambulance and ending when the ambulance is available to respond to another request for service. An ambulance which transports a patient becomes available to respond when the care of the patient has been transferred to the staff of a hospital or other health care facility.

(14) "License" means the documents issued by the Division to the owner of an ambulance service when the service and its ambulances are found to be in compliance with ORS chapter 682, OAR chapter 333, division 250 and these rules.

(15) "Non-emergency Care" means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24-hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Board of Medical Examiners in the course of providing prehospital care as defined by this rule.

(16) "Owner" means the person having all the incidents of ownership in an ambulance service or an ambulance or, where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of an ambulance or operation of an

ambulance service under a security agreement of a lease for a term of ten or more successive days.

(17) "Patient" means an ill, injured or disabled person transported in an ambulance.

(18) "Person" means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose, or organization of any kind and includes any receiver, trustee, assignee, or other similar representatives thereof.

(19) "Physician" means a person licensed under ORS chapter 677, actively registered and in good standing with the Board of Medical Examiners as a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO).

(20) "Physician Assistant (PA)" means a person licensed under ORS chapter 677, actively registered and in good standing with the Board of Medical Examiners.

(21) "Prehospital Care" means that care rendered by emergency medical technicians as an incident of the operation of an ambulance as defined by ORS chapter 682 and that care rendered by emergency medical technicians as incidents of other public or private safety duties, and includes, but is not limited to "emergency care" as defined by ORS chapter 682.

(22) "Prehospital Care Report Form (PCRFR)" means a Division-approved form or electronic field data format that is completed for all patients receiving prehospital assessment, care or transportation to a medical facility.

(23) "Registered Nurse (RN)" means a person licensed under ORS chapter 678, actively registered and in good standing with the Oregon Board of Nursing.

(24) "Sanitary" means being free from all body fluids, dirt, dust, grease or other extraneous matter.

(25) "Scope of Practice" means the maximum level of emergency or non-emergency care that an emergency medical technician may provide.

(26) "Specialty Care Transport (SCT)" means interfacility transportation of a critically injured or ill beneficiary by a ground ambulance vehicle, including medically necessary supplies and service, at a level of service beyond the scope of the EMT-Paramedic. SCT is necessary when a beneficiary's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area, for example nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training. Any skill or medication in addition to or not found in the Department of Transportation curriculum for EMT-Paramedics would be defined as additional training and is defined by the EMS Medical Director.

(27) "Standing Orders" means the written detailed procedures for medical or trauma emergencies issued by the EMS Medical Director to be performed by appropriate certificate holders or licensees in conformance with the scope of practice and level of certification.

Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0600; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 9-1987, f. & ef. 7-21-87; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0000; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0010

Application Process to Obtain an Ambulance License

(1) An ambulance service owner that wishes to obtain an ambulance license must apply for and receive an ambulance license from the Division before placing an ambulance into operation.

(2) The Division shall issue an ambulance license to the owner of an ambulance service that is not subject to disqualification from licensure for any reason specified in ORS chapter 682, OAR chapter 333, division 250 or these rules. The ambulance service owner must:

- Have a current ambulance service license;
- Have paid the fees required by ORS chapter 682 and these rules;
- Agree to comply with all applicable federal, state and local laws and regulations governing the operation of a licensed ambulance; and
- Submit a completed application in a form specified by the Division in accordance with ORS 682.045 and these rules.

(3) A completed application form for the licensing of an air ambulance must contain, at a minimum:

- The name and address of the person or public entity owning the aircraft;
- If other than the applicant's true name, the name under which the applicant is doing business;
- The description of the ambulance:

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(A) Indication if the aircraft was purchased from an ambulance service in Oregon;

(B) Type of aircraft:

(i) Fixed-wing; or

(ii) Rotary-wing.

(C) Number of engines:

(i) One;

(ii) Two; or

(iii) Three or more.

(D) Make of aircraft;

(E) Model of aircraft;

(F) Year of manufacture;

(G) Federal Aviation Authority (FAA) registration number;

(H) Indication if a major repair and alteration has been made to the aircraft. If so, a FAA Form 337 must be on file in the licensee's office for each repair or alteration made;

(I) Aircraft colors:

(i) Fuselage;

(ii) Stripe; and

(iii) Lettering.

(J) Insigne name, monogram or other distinguishing characteristics. A photo of the air ambulance may be submitted to show these characteristics.

(d) A signed and dated statement that the application contains truthful information.

(4) A completed application form for the licensing of a ground ambulance must contain, at a minimum:

(a) The name and address of the person or public entity owning the ambulance;

(b) If other than the applicant's true name, the name under which the applicant is doing business;

(c) The description of the ambulance:

(A) Indication if the ground ambulance was purchased from an ambulance service in Oregon;

(B) Make of vehicle;

(C) Model type of vehicle;

(D) Year of manufacture;

(E) Indication if the vehicle is a remounted chassis;

(F) Conversion manufacturer;

(G) Vehicle Identification Number;

(H) Vehicle license plate number;

(I) Mileage at the time of licensing;

(J) Ambulance colors:

(i) Body;

(ii) Stripe; and

(iii) Lettering.

(K) Insigne name, monogram or other distinguishing characteristics.

A photo of the ground ambulance may be submitted to show these characteristics.

(d) A copy of the ground ambulance manufacturers authenticated Star-of-Life certificate or Final Stage Vehicle Manufacturing Certification of compliance;

(A) A previously owned ambulance must have, at a minimum, a January 1, 1995, Star-of-Life certificate; or

(B) A newly constructed ambulance must have at a minimum a Star-of-Life certificate or a Final Stage Vehicle Manufacturing Certificate of compliance.

(e) A signed and dated statement that the application contains truthful information.

(5) A completed application for the licensing of a marine ambulance must contain, at a minimum:

(a) The name and address of the person or public entity owning the ambulance;

(b) If other than the applicant's true name, the name under which the applicant is doing business;

(c) The description of the ambulance:

(A) Indication if the marine craft was purchased from an ambulance service in Oregon;

(B) Indication if the patient-care area is covered or uncovered;

(C) Number of engines:

(i) One;

(ii) Two; or

(iii) Three or more.

(D) Type of engines:

(i) Inboard;

(ii) Outboard; or

(iii) Both inboard and outboard.

(E) Make of marine craft;

(F) Model of marine craft;

(G) Year of manufacture;

(H) Marine craft registration number;

(I) Marine craft license plate number;

(J) Ambulance colors:

(i) Hull;

(ii) Stripe; and

(iii) Lettering.

(K) Insigne name, monogram or other distinguishing characteristics.

A photo of the marine ambulance may be submitted to show these characteristics.

(d) A signed and dated statement that the application contains truthful information.

(6) The completed ambulance license application must be submitted to the Division with a nonrefundable ambulance licensing fee of:

(a) \$45, when the service has a maximum of four full-time paid positions; and

(b) \$80, when the service has five or more full-time paid positions.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0020

Issuance of License to Operate an Ambulance

(1) When the completed ambulance license application with a nonrefundable ambulance license fee as specified in OAR 333-255-0010(6)(a) or (6)(b) has been received by the Division and if it is found that the submitted data complies with the requirements of ORS chapter 682 and these rules, the Division shall issue an ambulance license for the specified ambulance within 10 business days.

(2) The ambulance license:

(a) Shall be valid until June 30 of each year, unless sooner revoked or suspended. The initial licensing period may not exceed 15 months;

(b) If issued between April 1 and June 30, shall expire on June 30 of the following year; and

(c) Must be conspicuously displayed in the operator's or patient compartment of the ambulance, or otherwise as directed by the Division.

(3) Except when specifically exempted by ORS 682.035 and OAR 333-250-0030(3)(a) through (3)(d), an out-of-state licensed ambulance that operates in Oregon must be licensed by the Division:

(a) An ambulance license shall be granted when the ambulance is currently licensed in another state, the standards of which meet or exceed those of Oregon; and

(b) The owner submits to the Division:

(A) A completed Oregon ambulance license application;

(B) A non-refundable ambulance licensing fee as specified in OAR 333-255-0010(6)(a) or (6)(b); and

(C) A copy of the current home-state ambulance license.

(4) An ambulance license is not transferable to a replacement ambulance or to a new owner.

(5) An ambulance license shall be issued to an owner of an ambulance used as a reserve, so long as the ambulance meets all construction and mechanical requirements at the time of manufacture. A reserve ambulance shall not be required to have patient care equipment on-board at all times. However, when the ambulance is placed in operation, it must meet all ambulance licensing requirements.

(6) If an ambulance license becomes lost, damaged or destroyed, the licensee must obtain an application for a replacement license from the Division. The licensee must submit the completed application with a non-refundable fee of \$10 to the Division for each replacement license and shall receive a replacement license within ten business days.

(7) When an ambulance is found to be in non-compliance with ORS chapter 682 or these rules, the Division may deny, suspend or revoke the ambulance license as authorized by ORS 682.220.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0605; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0005; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0030

Denial, Suspension or Revocation of an Ambulance License

(1) The Division may, in compliance with proper administrative procedures as prescribed in ORS chapter 183, deny, suspend, or revoke an

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ambulance license issued under these rules, or an ambulance service license issued under OAR 333-250-0030, if the Division determines:

(a) A violation of ORS chapter 682 or of these rules has occurred which poses a significant threat to the health and safety of the public;

(b) The ambulance owner makes a material omission or misrepresentation of facts on an application for a license or waiver, or in response to an inquiry or investigation. This includes the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact or any other means by which misinformation or false impression is knowingly given or deceit in obtaining or attempting to obtain a license or waiver or in any other transaction with the Division;

(c) Defacing, altering, removing or obliterating any portion of any official entry upon a license, licensing decal, or waiver issued by the Division;

(d) Failure to have the appropriate personnel, medical equipment and supplies required for operation at the highest level of service provided when the ambulance is in operation as prescribed by these rules;

(e) When an ambulance, upon inspection by the Division, manifests evidence of a mechanical or equipment deficiency which poses a significant threat to the health or safety of patients or crew, the Division shall immediately suspend that ambulance from operation. No ambulance which has been suspended from operation may be operated as an ambulance until the licensee has certified and the Division has confirmed that the deficiency has been corrected; and

(f) Other reasons determined by the Division to pose a significant threat to the Division and safety and the well being of patients.

(2) The licensee must return all indications of licensing, including certificates and the remains of ambulance license decals to the Division by registered mail, posted within 48-hours of either receipt of notification of suspension or revocation or the effective date of revocation, whichever is later.

(3) The Division must provide appropriate public notification of the suspension or revocation of an ambulance license.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0006; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0040

Surrender of License to Operate an Ambulance

(1) The ambulance license in the owner's possession must be surrendered to the Division immediately upon notification by the Division of the suspension or revocation of an ambulance service or ambulance license, or upon the sale of an ambulance, or upon the termination of operations.

(2) An ambulance license is non-transferable. When the owner sells, trades, or donates an ambulance, or terminates the business, the licensee must notify the Division within ten days of the transaction by listing the date that the sale was completed and the full name and address of the purchaser of the ambulance on the back of the ambulance license and surrendering all ambulance licenses for that ambulance to the Division.

(3) When an ambulance is decommissioned and not sold to another licensed ambulance service, the owner of the ambulance shall be responsible for the removal of the ambulance license decals. Ambulance license decals shall be returned to the Division within ten business days. In addition to the removal of the ambulance license decals, the owner of the vehicle shall remove any emblems or markings as defined in OAR 333-255-0060(5) identifying the vehicle as an ambulance.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0610; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0010; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0050

Right of Entry and Inspection of an Ambulance

(1) The Division may conduct an inspection for the purpose of evaluating the eligibility of an ambulance service to receive or retain an ambulance license and to ensure the health, safety, and welfare of the persons who utilize ambulances. Ambulance services that are accredited by a nationally recognized EMS service program accreditation entity that meets or exceeds Oregon requirements may be exempted from the inspection process. A copy of the inspection report from the nationally recognized EMS service program accreditation entity must be filed with the Division for approval.

(2) Initial and routine inspections of an ambulance must be scheduled with the management of the ambulance service at least 72 hours in advance

of the inspection unless otherwise mutually agreed upon by the Division and ambulance service representative.

(3) Inspections for the purpose of investigating a complaint do not require giving advanced notice to the licensee. Unless the Division gives written approval, no person may give advanced notice of an unannounced inspection.

(4) Upon request of the Division, an ambulance service owner, manager, employee, volunteer or agent must, at a reasonable time and without delay, permit entry by the Division onto all premises housing an ambulance for the purpose of an ambulance inspection. No one, including but not limited to, the owner, the manager, employees, volunteers, and agents, may impede the Division in conducting a lawful inspection of an ambulance to evaluate compliance with ORS chapter 682 and these rules.

(5) In conducting an inspection, the Division must:

(a) Identify him or herself by presenting Division identification to the owner, manager, ranking employee, or volunteer present at the site of an inspection;

(b) Inform the ambulance service representative of the purpose for the inspection; and

(c) Inform the ambulance service representative when the inspection has been completed and the results of the inspection.

(6) The Division may inspect an ambulance at any reasonable time including, but not limited to, whenever the ambulance is present at the ambulance service office or any satellite-office location.

(7) The Division shall conduct an inspection without impeding patient care or unreasonably delaying patient transport unless, in the judgment of the Division, the lack of properly operating patient care equipment, the safety condition of the ambulance, or the patient care being rendered is detrimental or is reasonably likely to be detrimental to the patient's health, safety, or welfare.

(8) When an ambulance is found to be in violation with ORS chapter 682 or these rules, and requires a second or subsequent on-site inspection, the Division may impose a civil penalty as authorized in ORS 682.224:

(a) A subsequent on-site inspection must be conducted and passed on the same day as the initial inspection if the ambulance is to remain available for operation;

(b) If the subsequent on-site inspection reveals that all violations have not been corrected and those violations constitute an immediate danger or threat to the public, the Division may immediately suspend the ambulance license. The suspension shall remain in force until all violations have been corrected;

(c) The Division shall immediately notify the county health department and the administrator of the county ASA plan of any ambulance license suspension; and

(d) A copy of the completed inspection form shall be given to a representative of the ambulance service and one copy each shall be sent to the county health department and administrator of the county ASA plan.

(9) A Division representative may accompany an ambulance crew on a call for the purpose of evaluating compliance with the requirements of ORS chapter 682 and these rules.

(10) The Division shall have the authority to make photographic or video-graphic documentation as part of an inspection for or investigation of non-compliance with ORS chapter 682 and these rules.

(11) Failure of the licensee to produce records for inspection or to permit examination of an ambulance or patient care equipment by the Division shall be grounds for the denial, suspension or revocation of an ambulance license.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0060

Ground Ambulance Construction Criteria

(1) The construction criteria for a new ground ambulance shall comply with June 1, 2002 Federal Specifications for the Star-of-Life Ambulance Certification or the Final Stage Vehicle Manufacturing Certification of compliance. Copies of the specifications are available through the Division.

(2) The construction criteria for a previously owned ambulance must comply with the November 1, 1994 Federal Specifications for the Star-of-Life Ambulance Certification, or standards as defined by the Final Stage Vehicle Manufacturing Certification of compliance. Copies of the specifications are available through the Division.

(3) The construction criteria for remounting a Type I or Type III ambulance is:

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(a) The patient compartment must have been built after November 1, 1994; and

(b) The remounting must be done by a recognized ambulance manufacturer, a recognized vehicle modifier, a remount center, or licensee with an established in-house remount program. The agency doing the remounting must utilize current nationally recognized vehicle modification techniques and industry standard parts and components. The agency doing remounting shall provide a notarized statement that the structural integrity of the specific patient compartment was not compromised during the remounting, and the remounting has not invalidated the Star-of-Life Certification or Final Stage Vehicle Manufacturing Certificate of compliance.

(4) A licensee may establish an in-house remount program by obtaining the necessary training, appropriate equipment and facilities to remount a vehicle to the described standard.

(5) The owner of an ambulance must select an exterior color, emblems, and markings for the ambulance that will ensure the prompt recognition of that vehicle as an ambulance. All ambulance vehicles shall be clearly identified by appropriate emblems and markings on the front, side, roof, and rear of the vehicle.

(a) The size, number and locations of the "Star-of-Life" emblems are:

(A) Sides — a 12 to 16-inch emblem must be located on the left and right side panels.

(B) Roof — a 32-inch emblem must be located on the roof.

(b) The size, number and locations of the word "AMBULANCE" are:

(A) Front — centered, in block letters, not less than four inches high, must be in mirror image and centered above the grille;

(B) Rear — in block letters of not less than six-inches in height and centered on the rear door panels or an approved alternative; and

(C) Acceptable alternatives for the word "AMBULANCE" includes generic terms that do not connote any particular level of service, limited to "MEDIC UNIT", "FIRE MEDIC UNIT", "EMERGENCY MEDICAL SERVICES", "EMS UNIT" or other phrases as the Division, in its sole discretion, may permit.

(c) The locations of additional markings are:

(A) An ambulance shall display the service or organization name or logo on the vehicle;

(B) An ambulance may not display on its exterior any level of service which is not provided at all times when that ambulance is in operation.

(6) An ambulance in operation and a reserve ambulance must be reasonably equipped and maintained, and maintenance records must be kept and made available for inspection by the Division. An ambulance must be equipped with the following items in satisfactory working condition:

(a) Audio/visual devices must be in compliance with the Star-of-Life Certification or the Final Stage Vehicle Manufacturing Certificate of compliance;

(b) An ambulance shall comply with Federal Motor Vehicle Safety Standards (FMVSS) and Department of Transportation (DOT) vehicle equipment standards for the ambulance at the time of manufacture;

(c) In case of dual batteries, batteries located in the engine compartment must have heat shields. If the batteries are located elsewhere, they must be sealed off from the occupants' compartment in a ventilated area.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0655; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0055; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0070

Ground Ambulance Operating Requirements

(1) A ground ambulance in operation and providing basic level care must have a staff of at least two persons:

(a) A driver, 18 years of age or older, who:

(A) Has a valid driver's license;

(B) Operates the ambulance in compliance with ORS 820.300 through 820.380 and any other applicable motor vehicle statutes;

(C) Has completed a Division-approved emergency vehicle operators course of instruction. The course must meet or be equivalent to the 2003 standards of the National Safety Council for Emergency Vehicle Operators Course, (CEVO II-AMB).

(D) Has not had his or her EMT certification denied, suspended or revoked for any of the reasons specified in ORS 682.220 within the last ten years;

(E) Has not been convicted of a felony within the past ten years;

(F) Has not been convicted of driving under the influence of intoxicants or impaired in the past three years;

(G) Has not consumed any alcoholic beverages in the eight hours prior to operating an ambulance; and

(H) Is not taking any medications that could impair the safe operation of the ambulance.

(b) A person who is at or above the EMT-Basic certification level and who must be in the patient compartment when a patient is being transported. The person attending the patient must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(c) If the driver is not a certified EMT, the driver must meet the requirements specified in section (1)(a)(A) through (1)(a)(C) and (1)(a)(E) through (1)(a)(H) of this rule and have:

(A) A copy of certificate of course completion that the driver has demonstrated knowledge and skills in the performance of one and two-person rescuer cardiopulmonary resuscitation (adult, child and infant) and relief of foreign body airway obstruction. The course must meet the 2005 American Heart Association or equivalent standards and guidelines for cardiopulmonary resuscitation and emergency cardiac care;

(B) A signed statement by the driver that he or she is not addicted to alcohol or controlled substances;

(C) A signed statement by the driver that he or she is free from any physical or mental defect that could impair the ability to operate an ambulance; and

(D) A signed statement by the training director that the driver has demonstrated the ability to properly assist in the extrication, lifting and moving of a patient.

(2) To assure basic life support patient care equipment is available, a ground ambulance in operation and providing basic level care must have the following patient care equipment in a satisfactory working condition, stored in a sanitary and secure manner, and be readily accessible to the medical personnel:

(a) Medical oxygen cylinders and regulators:

(A) Installed medical oxygen cylinder with a capacity of at least 3,000 liters and having not less than 500 psi:

(i) The installed medical oxygen cylinder must be located in a vented compartment; and

(ii) The compartment shall not be utilized for storage of any non-secured equipment. No combustible items shall be stored in the oxygen compartment.

(B) Oxygen pressure regulator:

(i) The oxygen must be delivered by a single-stage regulator which is set to at least 50 psi;

(ii) The pressure regulator controls must be accessible from inside the patient compartment; and

(iii) The pressure regulator or other display must be visible from inside the patient compartment.

(C) Oxygen flow meter, mounted -2:

(i) The flow meter must be readable from the EMT seat and squad bench; and

(ii) The flow meter must be adjustable over a minimum range of 0 to 15 liters per minute.

(D) Portable medical oxygen cylinder with a capacity of at least 300 liters and having not less than 500 psi;

(i) The oxygen must be delivered by a yoke regulator with a pressure gauge and non-gravity-dependent flow meter that is visible and accessible to the medical personnel; and

(ii) The flow meter must be adjustable over a minimum range of 0 to 15 liters per minute.

(E) Spare portable oxygen cylinder that is full, tagged, sealed and securely mounted.

(b) Medical oxygen administration equipment:

(A) Oxygen non-rebreathing masks with tubing:

(i) Pediatric -3; and

(ii) Adult -3.

(B) Oxygen nasal cannula with tubing that are transparent and disposable, adult -3;

(C) Bag-valve-mask ventilation device with reservoir. The device must:

(i) Have a standard universal adapter;

(ii) Be operable with or without an oxygen supply;

(iii) Be manually operated and self-refilling;

(iv) Have valves that operate effectively at temperatures down to 0° F; and

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(v) Have bag-valve-mask ventilation devices with reservoir that are transparent and semi-rigid in assorted sizes to include adult, child, and newborn/infant.

(c) Airway maintenance devices:

(A) Pharyngeal esophageal airway devices in assorted sizes if the agency EMS Medical Director approved use;

(B) Endtidal CO₂ detection device in assorted sizes;

(C) Oropharyngeal airways in assorted sizes to include adult, child, and newborn/infant; and

(D) Nasal airways in assorted sizes.

(d) Suction equipment:

(A) The onboard suction system may be an electrically operated portable unit in addition to the portable unit required below.

(i) The mounted or portable, engine-vacuum operated or electrically powered complete suction aspirator system must have two sealable and disposable collection bottles or sealable liners;

(ii) The unit must be capable of developing a minimum vacuum of 300 mm Hg within four seconds after the suction tube is closed;

(iii) The unit must provide a free air flow of at least 20 liters per minute;

(iv) The unit must be adjustable for use on children and intubated patients; and

(v) Clean, clear liquid for rinsing the suction tubing.

(B) Portable suction aspirator. Note: In addition to the mounted or portable unit required above on the ambulance.

(i) The unit must be capable of being operated from either the vehicle's 12 volt DC electrical system, an independent battery supply which can operate continuously for 20 minutes and is rechargeable, or be a manually-powered unit;

(ii) The unit must be capable of developing a minimum vacuum of 300 mm Hg within four seconds after the suction tube is closed;

(iii) The unit must provide a free air flow of at least 20 liters per minute;

(iv) The unit must be adjustable for use on children and intubated patient; and

(v) The unit must include at least a 300 ml collection bottle.

(C) Suction connecting tubing and catheters:

(i) Suction connecting tubing that is at least 1/4 inch in diameter, translucent and must not kink or collapse under high suction -4; and

(ii) Suction catheters in assorted sizes and types for adult, child, and newborn/infant.

(e) Cardiac Monitoring equipment. Automatic or semi-automatic defibrillator. The portable unit must be capable of operating independently of an electrical outlet and delivering a total defibrillation energy sufficient to meet the number of shocks and power settings prescribed in the EMS Medical Director's standing orders and be inclusive of the 2005 American Heart Association or equivalent standards and guidelines for emergency cardiac care;

(f) Stretchers:

(A) Wheeled stretcher:

(i) Be capable of securely fastening to the ambulance body;

(ii) Have a minimum of three restraining devices and an upper torso (over the shoulder) restraint;

(iii) Contain a standard size waterproof foam mattress; and

(iv) Be capable of having the head of the stretcher tilted upwards to a 60-degree semi-sitting position.

(B) Folding stretcher. The number required is based on the stretcher-carrying capacity of the ambulance. An additional long backboard may be substituted for a folding stretcher.

(i) Be capable of securely fastening to the squad bench when carrying a patient; and

(ii) Have a minimum of three restraining devices and an upper torso (over the shoulder) restraint.

(g) Fracture immobilization equipment:

(A) Traction splints in assorted adult sizes and/or adult child combination;

(B) Extremity splints in assorted sizes;

(C) Extrication collars in assorted pediatric through adult sizes;

(D) Scoop stretcher, folding or non-folding type with necessary restraining devices with sufficient supplies for head immobilization;

(E) Short backboard or equivalent with necessary restraining devices with sufficient supplies for head immobilization;

(F) Long backboard with necessary restraining devices with sufficient supplies for head immobilization; and

(G) Pediatric backboard with necessary restraining straps with sufficient supplies for head immobilization.

(h) Bandages and dressings in assorted sizes, sterile and non-sterile.

(i) Adhesive or hypo-allergenic tape in assorted sizes;

(j) Miscellaneous equipment:

(A) Emesis containers;

(B) Stethoscope, pediatric and adult;

(C) Aneroid sphygmomanometer in assorted sizes;

(D) Bandage shears;

(E) Hypothermia thermometer;

(F) Disposable obstetrical kit;

(G) Chemical heat and cold packs assorted;

(H) Urinals, female and male, one each;

(I) Bedpan;

(J) Set of extremity restraining devices;

(K) Blood glucose level testing kit or blood glucose level test strips;

(l) Personal protection equipment sufficient for crew and patient(s) including:

(A) Disposable gloves;

(B) Disposable face masks;

(C) Protective eyewear;

(D) Disposable isolation gowns;

(E) Hand cleaning solution or foam;

(F) Surface cleaning disinfectant;

(G) Sharps container for the patient care compartment and a separate container for each kit that contains needles; and

(H) Infectious waste disposal bags.

(l) Medications and fluids authorized for use by an EMT-Basic as required by the EMS Medical Director;

(m) Linen supplies and replacements sufficient to cover wheeled stretcher;

(n) Security and rescue equipment:

(A) Fire extinguisher, 5lb. (2A-10BC type) - mounted and readily accessible in either the driver's or patient compartment;

(B) Road flares, red colored chemical lights, the number and burning time to equal at least 180 minutes, or a minimum of six reflective triangles;

(C) Flashlight; and

(D) Leather gloves sufficient for crew;

(E) 24" crowbar -1; and

(F) 51" wrecking bar -1.

(o) The 2004 Department of Transportation Emergency Response Guidebook, (Initial Response to Hazardous Materials Incidents);

(p) Triage tags — 25;

(q) Oregon Trauma Systems Identification Bracelets — 5;

(r) Communication equipment. An ambulance must contain two-way radio communication equipment which shall provide reliable contact between the ambulance and central dispatch, the receiving hospital, and on-line medical direction;

(s) Prehospital Care Report Forms or electronic field data form;

(t) A copy of standing orders for EMT-Basics dated within one year and signed by the EMS Medical Director; and

(u) A universal "No Smoking" sign conspicuously displayed in the driver's and patient compartment.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0650; HD 14-1981(Temp), f. & ef. 8-7-81; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 9-1987, f. & ef. 7-21-87; HD 19-1991, f. & cert. ef. 10-18-91, Former 333-028-0050(3) Renumbered to 333-028-0051, former 333-028-0050(4) & (5) Renumbered to 333-028-0052; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0050; OHD 5-2001, f. & cert. ef. 2-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0071

Ground Ambulance Operating Requirements When Providing Intermediate Level Care

(1) A ground ambulance in operation and providing intermediate life support care must have a minimum staff of two certified EMTs:

(a) A driver who complies with the requirements specified in OAR 333-255-0070(1)(a)(A) through (1)(a)(H) or (1)(c)(A) through (1)(c)(D);

(b) A person who is at or above the EMT-Intermediate certification level must be in the patient compartment when a patient is receiving intermediate level life support care. If the driver is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the ambulance and on scene; and

(c) The EMTs must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

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(B) Not be taking any medications that could impair the giving of proper patient care.

(2) A ground ambulance in operation and providing intermediate level care must have the following items in satisfactory working condition; kept in a sanitary manner, stored in a secure manner and be readily accessible to the medical personnel;

(a) All items specified in OAR 333-255-0070(2)(a) through (2)(u);

(b) Cardiac Monitoring Equipment;

(A) Manual monitor/defibrillator; The portable unit must be capable of operating independently of an electrical outlet and be capable of delivering a total defibrillation energy sufficient to meet the number of shocks and power settings prescribed in the EMS Medical Directors standing orders and be inclusive of the 2005 American Heart Association guidelines for emergency cardiac care or equivalent standards:

(B) Defibrillator paddle sizes – Pediatric and Adult

(C) Contact gel — 1 tube; or

(D) 3 sets of pre-gelled defibrillator pads — Pediatric and Adult;

(E) Monitoring electrodes; infant and adult;

(F) Patient cables — 2; and

(G) ECG paper.

(c) Any physiologic isotonic crystalloid solution or combinations thereof — 6000 cc in any size containers;

(d) Medications and fluids authorized for use by an EMT-Intermediate as required by the EMS Medical Director. Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(2)(a) and (b);

(e) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles for intraosseous infusions.

(f) A copy of standing orders for EMT-Intermediates dated within one year and signed by the EMS Medical Director.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0072

Ground Ambulance Operating Requirements When Providing Advanced Level Care

(1) A ground ambulance in operation and providing advanced life support level care must have a minimum staff of two persons:

(a) A driver who complies with the requirements specified in OAR 333-255-0070(1)(a)(A) through (1)(a)(H) or (1)(c)(A) through (1)(c)(D); and

(b) A person who is at the EMT-Paramedic certification level, or an RN, PA or physician who is trained in prehospital emergency medical care must be in the patient compartment when a patient is receiving advanced life support care. If the driver is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the ambulance and on scene. The EMT, RN, PA or physician must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(c) When a RN, PA or physician is staffing an ambulance in lieu of an EMT-Paramedic and providing advanced level life support care he or she must have:

(A) A current American Heart Association "Health Care Provider", American Red Cross "Basic Life Support for the Professional Rescuer" or other Division-approved equivalent CPR course completion document;

(B) A current Advanced Cardiac Life Support course or other Division-approved equivalent completion document;

(C) A pediatric advanced life support course or other Division-approved equivalent completion document;

(D) A Prehospital Trauma Life Support, Basic Trauma Life Support, Trauma Emergency Assessment Management or Trauma Nurse Core Course completion document. The Trauma Emergency Assessment Management and Trauma Nurse Core Course must include a supplemental prehospital rapid extrication training session;

(E) The ability to properly assist in extricating, lifting and moving a patient; and

(F) The knowledge to properly operate all patient care equipment carried on an ambulance.

(2) Advanced life support patient care equipment. A ground ambulance in operation and providing advanced level care must have the following advanced life support equipment in satisfactory working condition,

kept in a sanitary manner and which is readily accessible to medical personnel:

(a) All items specified in OAR 333-255-0070(2)(a) through (2)(u);

(b) Nasogastric tubes in assorted sizes;

(c) Cardiac monitoring equipment;

(d) Advanced airway care equipment;

(A) Laryngoscope handle and assorted blade sizes, adult and pediatric;

(B) Spare dated batteries for the laryngoscope handle;

(C) Spare bulbs for the laryngoscope blades;

(D) Endotracheal tubes in assorted sizes, adult and pediatric;

(E) Magill Forceps — adult and child;

(F) Intubation stylettes — adult and child;

(G) Endtidal CO2 detection device;

(H) Oxygen saturation monitor; and

(I) Chest decompression equipment.

(e) Sterile intravenous agents and medications authorized by the EMS Medical Director:

(f) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles for intraosseous infusions.

(g) Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(2)(a) and (b); and

(h) A copy of standing orders for EMT-Paramedics, RNs and PAs dated within one year and signed by the EMS Medical Director.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0073

Ground Ambulance Operating Requirements When Providing Only Specialty Level Care

(1) A ground ambulance in operation and providing only specialty level care during inter-facility transfers must have a minimum staff of two qualified persons as defined by the Center for Medicare Services or additional staff, the number and type, requested by the transferring physician:

(a) A driver who complies with the requirements specified in OAR 333-255-0070(1)(a)(A) through (1)(a)(H) or (1)(c)(A) through (1)(c)(D); and

(b) A person who is at the EMT-Paramedic certification level, RN, PA, physician or other qualified persons who have additional specialty care training and who must be in the patient compartment when a patient is receiving specialty level care.

(2) The EMT-Paramedics, RNs, PAs, physicians or other qualified persons must have the:

(a) Training to properly operate all patient care equipment carried on an ambulance, including specialty care equipment necessary to care for the patient during the transfer;

(b) Training to do titration of intravenous medications necessary to care for the patient during transfer; and

(c) Ability to properly assist in lifting and moving a patient.

(3) The personnel staffing an ambulance must not:

(a) Have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(b) Be taking any medications that could impair the giving of proper patient care.

(4) A ground ambulance in operation and providing only specialty level care must have the following patient care equipment in a satisfactory working condition, stored in a sanitary and secure manner, and be readily accessible to the medical personnel:

(a) All patient care equipment specified in OAR 333-255-0072(2)(a) through (2)(h); and

(b) Any other patient care equipment or supplies anticipated or required for patient care.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0079

Exception to the Two Person Staffing Requirement

(1) The Division may, on application from any full volunteer or part volunteer ambulance service, authorize an exception to the two-person requirement as prescribed by ORS 682.068 and OAR 333-255-0070(1), 333-255-0071(1) or 333-255-0072(1) if provisions acceptable to the Division have been made to assure timely arrival of the two-person crew as

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required by ORS 682.068 and OAR 333-255-0070(1), 333-255-0071(1) or 333-255-0072(1).

(2) A full volunteer or part volunteer ambulance service making application for an exception under this rule must submit an application to the Division in a format prescribed by the Division:

(a) The application must be approved by the EMS Medical Director of the ambulance service, the governing body of each municipality for which the exception is being requested and by the county ambulance service planning authority. The application must contain written approval of all such bodies prior to submission to the Division;

(b) An application for an exception to this provision must provide for and include a description of:

(A) An alerting system which shall make known to the intended responders the location of the emergency and either two-way radio communication between responders such that response can be coordinated by responding personnel, or a fixed schedule of assigned personnel, with designation of the parties who are to respond directly to the scene of an emergency and parties who are to operate the ambulance;

(B) Personnel who respond directly to the scene of an emergency must be individually equipped with equipment necessary to provide initial patient care, including uniform or personal protective clothing, disposable gloves and a pocket ventilation mask or other appropriate ventilatory adjuncts;

(C) Copies of approved standard operating procedures or general orders which address the number of personnel to respond to the scene, organizational policies regarding the operation of motor vehicles by personnel responding to the scene and prohibiting entry into dangerous scenes; and

(D) A method of assuring that neither of the following shall be permitted to occur:

(i) An ambulance driven by a person not certified as an EMT arrives at an emergency scene but an EMT fails to arrive or arrives substantially later than the responding ambulance; or

(ii) An ambulance driven by an EMT arrives at the scene but no other qualified driver, as specified by these rules, arrives at the scene to operate the ambulance.

(c) Wherever possible, an agency operating under an exception to the general rule granted pursuant to this rule must endeavor to assure that an ambulance driver who is not certified at least to the EMT-Basic level is trained to the First Responder level and meets the requirements for a non-EMT driver as specified in OAR 333-255-0070(1)(c)(A) through (1)(c)(D).

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0080

Air Ambulance Configuration and Survival Equipment Requirements

(1) An air ambulance in operation must be in compliance with all Federal Aviation Administration (FAA) contained in Part 135, and ORS chapter 682, and must be maintained and maintenance records must be kept and made available for inspection by the Division:

(a) The aircraft must have:

(A) A climate control system to prevent temperature extreme that would adversely affect patient care;

(B) Interior lighting, so that patient care can be given and patient status monitored without interfering with the pilot's vision. The cockpit must be sufficiently isolated, by protective barrier, to minimize in-flight distraction or interference;

(C) At least one outlet per patient and current for 110 volts (50/60 cycle) alternating current or other current which is capable of operating all electrically-powered medical equipment;

(D) A back-up source of electric current or batteries capable of operating all electrically-powered life support equipment for one-hour;

(E) An adequate door to allow loading and unloading of a patient without rotating the patient and stretcher more than 30 degrees about the longitudinal (roll) axis or 45 degrees about the lateral (pitch) axis;

(F) A configuration that allows the medical personnel access to the patient in order to begin and maintain treatment modalities. There must always be complete access to the patient's head and upper body for effective airway management;

(G) The stretcher and medical equipment placed in a manner that shall not impede rapid egress by personnel or patient from the aircraft;

(H) Communications equipment to ensure both internal crew and air-ground exchange of information between individuals and agencies appropriate to the mission. Scene response aircraft must be able to communicate with EMS and law enforcement personnel at the scene; and

(I) An installed self-activating emergency locator transmitter.

(b) The aircraft must have survival equipment for crew members and patient consisting of:

(A) Clothes for the season and area to be served;

(B) Thermal (space) blanket;

(C) Plastic tarp, at least 5' x 7';

(D) Signal mirror;

(E) Compass;

(F) Canned smoke signal, or flare pistol and flares or pencil-flares;

(G) Large flashlight;

(H) Orange signal banner;

(I) Noise maker (whistle);

(J) Drinkable water or intravenous fluid;

(K) Tea;

(L) Salt and sugar;

(M) Beef jerky or granola bars;

(N) Waterproof matches; and

(O) Fire extinguisher (ABC rating).

(2) The aircraft owner who does not own their medical equipment or employ their medical personnel, must have on file with the Division a copy of the signed and dated agreement or contract with the agency that does provide either the medical personnel or medical equipment to be used on the air ambulance. The signed and dated agreement or contract must be filed annually or whenever substantive changes are made, whichever is more frequent.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0650; HD 14-1981(Temp), f. & ef. 8-7-81; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 9-1987, f. & ef. 7-21-87; HD 19-1991, f. & cert. ef. 10-18-91, Renumbered from 333-028-0050(3); HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0051; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0081

Air Ambulance Operating Requirements for Prearranged Inter-Facility Transfers

(1) Fixed-wing aircraft in operation and providing pre-arranged inter-facility transfers requiring basic level care must have a minimum staff of two persons:

(a) A pilot adhering to all regulations set forth in FAA Part 135 for air medical transport; and

(b) One EMT-Paramedic, RN, PA or physician having:

(A) Documentation that at least one member of the medical crew has successfully completed the 2004 Association of Air Medical Services (AAMS) Curriculum Guidelines or equivalent. The curriculum must include emergency care procedures, aircraft safety and altitude physiology. There must be written documentation of an annual review of the Air Medical Crew course material. The length and content of the review must be established by the EMS Medical Director and be kept on file with the ambulance service;

(B) A current American Heart Association "Health Care Provider", American Red Cross "Basic Life Support for the Professional Rescuer" or other Division-approved equivalent CPR course completion document;

(C) The ability to properly assist in lifting and moving a patient; and

(D) The knowledge to properly operate all patient care equipment that may be used.

(2) Fixed or rotary-wing aircraft in operation and providing pre-arranged inter-facility transfers requiring advanced life support care must have a minimum staff of two persons:

(a) A pilot adhering to all regulations set forth in FAA Part 135 for air medical transport; and

(b) One EMT-Paramedic, RN, PA or physician meeting the requirements specified in section (1)(b)(A) through (1)(b)(D) of this rule.

(3) Fixed or rotary-wing aircraft in operation and providing pre-arranged inter-facility transfers requiring specialty level care must have a minimum staff of two persons:

(a) A pilot adhering to all regulations set forth in FAA Part 135; and

(b) One EMT-Paramedic, RN, PA, physician or other qualified person(s), who must:

(A) Meet the requirements specified in section (1)(b)(A) through (1)(b)(D) of this rule;

(B) Have documentation of completing additional specialty care training as defined by the EMS Medical Director;

(C) Have training to properly operate specialty care equipment necessary to care for the patient during the transfer; and

(D) Have training to do titration of intravenous medications necessary to care for the patient during the transfer.

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(4) An air ambulance in operation and providing specialty level care must have the following patient care equipment in a satisfactory working condition, stored in a sanitary and secure manner, and be readily accessible to the medical personnel:

(a) All patient care equipment specified in section (7)(a) through (7)(k) of this rule;

(b) All patient care equipment specified in OAR 333-255-0082(3)(d) through (3)(i); and

(c) Any other patient care equipment required during the transfer.

(5) Any pilot, EMT, Respiratory Therapist, RN, PA, physician or qualified person staffing an air ambulance, must not:

(a) Have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(b) Be taking any medications that could impair the giving of proper patient care or the safe operation of the air ambulance.

(6) When an inter-facility transfer is requested, a representative from the ambulance service must contact the attending physician at the sending facility, prior to the transfer, to determine which type of aircraft; fixed-wing, rotary-wing, pressurized or non-pressurized, is needed based on the patient's medical condition and which additional equipment and personnel are required.

(7) Patient Care Equipment. The following patient care equipment, in satisfactory working condition and kept in a sanitary manner, is required on all air ambulance flights. The equipment may be kept separate from the aircraft in modular pre-packaged form, so as to be available for rapid loading, easy securing and easy access aboard the aircraft:

(a) Medical oxygen cylinders and regulators:

(A) Medical oxygen cylinder with a capability of at least 600 liters and having not less than 500psi:

(i) The oxygen cylinder(s) must be securely fastened to the aircraft while in flight;

(ii) The oxygen must be delivered by a yoke regulator with a pressure gauge and a non-gravity-dependent flowmeter that is visible and accessible to the medical personnel; and

(iii) The flowmeter must be adjustable over a minimum range of 0 to 15 liters per minute.

(B) A spare portable oxygen cylinder that is full, tagged, sealed, and securely mounted.

(b) Medical oxygen administration equipment:

(A) Oxygen non-rebreathing masks with tubing:

(i) Pediatric — 2; and

(ii) Adult — 2.

(B) Oxygen nasal cannula with tubing that are transparent and disposable, adult -2;

(C) Bag-valve-mask ventilation device with reservoir. The device must:

(i) Have a standard universal adapter (15 mm tracheal tube/22 mm mask);

(ii) Be operable with or without an oxygen supply;

(iii) Be manually operated and self-refilling;

(iv) Have valves that operate effectively at temperatures down to 0°

F;

(v) Have bag-valve-mask ventilation devices with reservoir that are transparent and semi-rigid in assorted sizes to include adult, child, and newborn/infant.

(c) Airway maintenance devices:

(A) Pharyngeal esophageal airway devices in assorted sizes;

(B) Endtidal CO2 detection device in assorted sizes;

(C) Oropharyngeal airways in assorted sizes to include adult, child, and newborn/infant; and:

(D) Nasal airways in assorted sizes.

(d) Suction equipment:

(A) Portable suction aspirator:

(i) The unit must be either a self-contained battery or oxygen-powered unit that can operate continuously for 20 minutes and is rechargeable or be a manually-powered unit;

(ii) The unit must be capable of developing a minimum vacuum of 300 mm Hg within four seconds after the suction tube is closed;

(iii) The unit must provide a free air flow of at least 20 liters per minute;

(iv) The unit must be adjustable for use on children and intubated patients;

(v) The unit must include at least a 300 ml collection bottle; and

(vi) A secondary suction apparatus.

(B) Suction connecting tubing and catheters:

(i) Suction connecting tubing that is at least 1/4 inch in diameter, translucent and will not kink or collapse under high suction -2; and

(ii) Suction catheters in assorted sizes and types for adult, child, and newborn/infant.

(e) Stretcher. The stretcher must:

(A) Be securely fastened to the aircraft in accordance with FAA Part 135; and

(B) Have a minimum of three restraining devices and an upper torso (over the shoulder) restraint.

(f) Miscellaneous equipment:

(A) Emesis containers;

(B) Stethoscope, adult and pediatric;

(C) Aneroid sphygmomanometer in assorted sizes;

(D) Bandage shears;

(E) Hypothermia thermometer;

(F) Chemical heat and cold packs, assorted;

(G) Blood glucose level testing kit or blood glucose level test strips;

(H) Urinals, female and male, one each;

(I) Bed pan (Exempt from rotary-wing aircraft); and

(J) Set of extremity restraining devices.

(g) Personal protection equipment sufficient for crew and patient(s) including:

(A) Disposable gloves;

(B) Disposable face masks;

(C) Protective eyewear;

(D) Disposable isolation gowns;

(E) Hand cleaning solution or foam;

(F) Surface cleaning disinfectant;

(G) Sharps container for each kit that contains needles; and

(H) Infectious waste disposal bags.

(h) Linen supplies and replacements to cover stretcher;

(i) Prehospital Care Report Form or electronic field data form;

(j) A copy of standing orders for EMTs, RNs and PAs dated within one year and signed by the EMS Medical Director; and

(k) A universal "No Smoking" sign must be conspicuously displayed in the cockpit and patient compartment.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0082

Air Ambulance Operating Requirements for Scene Response

(1) Rotary-wing aircraft in operation and providing scene response care must have a minimum staff of two persons:

(a) A pilot adhering to all regulations set forth in FAA Part 135; and

(b) One EMT-Paramedic, RN, PA, or physician having:

(A) Documentation that at least one member of the medical crew successfully completed the 2004 Association of Air Medical Services (AAMS) Curriculum Guidelines or equivalent. The curriculum must include emergency care procedures, aircraft safety and altitude physiology. There must be written documentation of an annual review of the Air Medical Crew course material. The length and content of the review must be established by the EMS Medical Director and be kept on file with the ambulance service;

(B) The ability to properly assist in extricating, lifting and moving a patient; and

(C) The knowledge to properly operate all patient care equipment that may be used.

(c) When a RN, PA or physician is staffing an air ambulance in lieu of an EMT-Paramedic and is providing advanced level life support care, he or she must also have:

(A) A current Advanced Cardiac Life Support course or other Division-approved equivalent completion document;

(B) A pediatric advanced life support course or other Division - approved equivalent completion document; and

(C) A Trauma Emergency Assessment Management, Trauma Nurse Core Course, Prehospital Trauma Life Support or Basic Trauma Life Support course completion document. The Trauma Emergency Assessment Management or Trauma Nurse Core Course must include a supplemental prehospital rapid extrication training session.

(2) Any pilot, EMT, Respiratory Therapist, RN, PA, physician, or other qualified personnel staffing an air ambulance must:

(a) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(b) Not be taking any medications that could impair the giving of proper patient care or the safe operation of the air ambulance.

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(3) The following prehospital scene patient care equipment is required on all prehospital scene responses:

(a) All patient care equipment specified in OAR 333-255-0081(7)(a) through (7)(k);

(b) Fracture immobilization equipment:

(A) Traction splints in assorted adult and/or adult-child combination;

(B) Extremity splints in assorted sizes;

(C) Extrication collars in assorted pediatric through adult sizes;

(D) Short backboard or equivalent with necessary restraining devices with sufficient supplies for head immobilization;

(E) Long backboard with necessary restraining devices with sufficient supplies for head immobilization;

(F) Scoop stretcher with necessary restraining devices with sufficient supplies for head immobilization; and

(G) Pediatric backboard with necessary restraining devices with sufficient supplies for head immobilization.

(c) Bandages and dressings in assorted sizes, sterile and non-sterile.

(d) Adhesive or hypo-allergenic tape in assorted sizes;

(e) Cardiac monitoring equipment:

(A) Manual monitor/defibrillator;

(B) Monitoring electrodes, infant and adult;

(C) Patient cables — 2; and

(D) ECG paper.

(f) Advanced airway care equipment:

(A) Laryngoscope handle and assorted blade sizes, adult and pediatric;

(B) Spare dated batteries for the laryngoscope handle;

(C) Spare bulbs for the laryngoscope blades;

(D) Endotracheal tubes in assorted sizes, adult and pediatric;

(E) Magill Forceps, child and adult;

(F) Intubation stylettes, child and adult;

(G) Endtidal CO₂ detection device;

(H) Oxygen saturation monitor; and

(I) Chest decompression kit;

(g) Sterile intravenous agents and medications authorized by the EMS Medical Director;

(h) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles for intraosseous infusions.

(i) Nasogastric tubes in assorted sizes;

(j) Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(2)(a) and (2)(b);

(k) Oregon Trauma System's Identification Bracelets — 5;

(l) Miscellaneous equipment:

(m) The 2004 Department of Transportation Emergency Response Guidebook (Initial Response to Hazardous Materials Incidents); and

(n) A copy of standing orders for EMT-Paramedics, RNs and PAs dated within one year and signed by the EMS Medical Director.

(4) In a prehospital resuscitation, when no other practical means of transportation, including any other properly equipped license-holder, is reasonably available, a license-holder may deviate from the rules to the extent necessary to meet the rescue situation.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0090

Marine Ambulance Configuration and Survival/Rescue Equipment Requirements

(1) A marine ambulance in operation must be in compliance with all the requirements which relate to marine ambulances, any applicable federal navigation regulations, ORS chapter 682, and these rules. Maintenance records must be kept and made available for inspection by the Division:

(2) Marine craft size and configuration. The marine craft must be of sufficient size to accommodate, at a minimum, the operator, two EMTs, one patient, and the required supplies and equipment and be configured to allow full access to the patient. The marine craft must have:

(a) Adequate lighting, so that patient care can be given and patient status be monitored;

(b) At least one outlet per patient and current for 110 volts (50/60 cycle) alternating current or other current which is capable of operating all electrically-powered medical equipment;

(c) An adequate door or opening to allow loading and unloading of the patient without rotating the patient and stretcher more than 30 degrees about the longitudinal (roll) axis or 45 degrees about the lateral (pitch) axis;

(d) A configuration that allows the medical personnel access to the patient in order to begin and maintain treatment modalities. There must always be complete access to the patient's head and upper body for effective airway management; and

(e) The stretcher or litter and medical equipment placed in a manner that must not impede rapid egress by personnel or patient from the marine craft.

(3) Marine craft equipment. A marine craft ambulance must have the following items in good working condition:

(a) Anchor with line that is three times the maximum depth of water in areas of usual operation;

(b) Docking fenders — 2;

(c) Mooring lines — 2;

(d) Self or mechanical bailer;

(e) Search light with a minimum of 200,000 candle power of illumination;

(f) Swim harness and 75-foot tethering line;

(g) Waterproof flashlight, six volt minimum;

(h) Navigational charts for service area and navigational aids, including a compass;

(i) A cold water protection device for each crew member;

(j) Life jackets — 2 adult and 2 child; and

(k) Boat hook with minimum of 10 foot capability.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0650; HD 14-1981(Temp), f. & ef. 8-7-81; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 9-1987, f. & ef. 7-21-87; HD 19-1991, f. & cert. ef. 10-18-91, Renumbered from 333-028-0050(4) & (5); HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0052; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0091

Marine Ambulance Operating Requirements When Providing Basic Level Care

(1) A marine ambulance in operation and providing basic level care must have a staff of at least two persons:

(a) An operator, who:

(A) Has a valid US Coast Guard pilot's license;

(B) Operates the marine ambulance in compliance with any applicable marine craft statutes;

(C) Has not consumed any alcoholic beverages in the eight hours prior to operating an ambulance; and

(D) Is not taking any medications that could impair the safe operation of the ambulance.

(b) A person who is at or above the EMT-Basic certification level who must be with the patient at all times. The EMT attending the patient must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(c) If the operator is not a certified EMT, the operator must meet the requirements specified in sections (1)(a)(A) through (1)(a)(D) of this rule and have:

(A) A copy of certificate of course completion that the non-EMT operator has demonstrated knowledge and skills in the performance of one and two-person rescuer cardiopulmonary resuscitation (adult, child and infant) and relief of foreign body airway obstruction. The course must meet the 2005 American Heart Association guidelines for cardiopulmonary resuscitation and emergency cardiac care or equivalent standards approved by the Division.

(B) A signed statement by the operator that he or she is not addicted to alcohol or controlled substances;

(C) A signed statement by the operator that he or she is free from any physical or mental defect that could impair the ability to operate an ambulance; and

(D) A signed statement by the training officer that the operator has the ability to properly assist in extricating, lifting and moving a patient.

(2) Basic life support care equipment. A marine ambulance in operation and providing basic level care must have the following patient care equipment in a satisfactory working condition, kept in a sanitary manner, stored in a secure manner and be readily accessible to the medical personnel:

(a) Medical oxygen cylinders and regulators;

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(A) Medical oxygen cylinder with a minimum capacity of 600 liters;
(i) The oxygen must be delivered by a yoke regulator with a pressure gauge and a non-gravity-dependent flowmeter that is visible and accessible to the medical personnel; and

(ii) The flowmeter must be adjustable over a minimum range of 0 to 15 liters per minute.

(B) A spare portable oxygen cylinder that is full, tagged, sealed and securely mounted.

(b) Medical oxygen administration equipment:

(A) Oxygen non-rebreathing masks with tubing.

(i) Pediatric - 2; and

(ii) Adult - 2.

(B) Oxygen nasal cannulas with tubing that are transparent and disposable, adult -2;

(C) Bag-valve-mask ventilation device with reservoir. The device must:

(i) Have a standard universal adapter (15 mm tracheal tube/22 mm mask);

(ii) Be operable with or without an oxygen supply;

(iii) Be manually operated and self-refilling;

(iv) Have valves that operate effectively at temperatures down to 0° F; and

(v) Have bag-valve-mask ventilation devices with reservoir that are transparent and semi-rigid in assorted sizes to include adult, child, and newborn/infant.

(c) Airway maintenance devices:

(A) Pharyngeal esophageal airway devices in assorted sizes if the EMS Medical Director approved use;

(B) Endtidal CO2 detection device in assorted sizes;

(C) Oropharyngeal airways in assorted sizes to include adult, child and newborn/infant; and

(D) Nasal airways in assorted sizes.

(d) Suction equipment:

(A) Portable suction aspirator:

(i) The unit must be either a self-contained battery or oxygen-powered unit that can operate continuously for 20 minutes and is rechargeable or be a manually-powered unit;

(ii) The unit must be capable of developing a minimum vacuum of 300 mm Hg within four seconds after the suction tube is closed;

(iii) The unit must provide a free air flow of at least 20 liters per minute;

(iv) The unit must be adjustable for use on children and intubated patients;

(v) The unit, including at least a 300 ml collection bottle; and

(vi) A secondary suction apparatus.

(B) Suction connecting tubing and catheters:

(i) Suction connecting tubing that is at least 1/4 inch in diameter, translucent and will not kink or collapse under high suction - 2; and

(ii) Suction catheters that are in assorted sizes and types for adult, child and newborn/infant.

(e) Cardiac monitoring equipment: Automatic or semi-automatic defibrillator. The unit must be capable of operating independently of an electrical outlet, and delivering a total defibrillation energy sufficient to meet the number of shocks and power settings prescribed in the EMS Medical Director 's standing orders and be inclusive of the 2005 American Heart Association guidelines for emergency cardiac care or equivalent standards as approved by the Division.

(f) Stretcher. The stretcher must:

(A) Be a plastic or metal basket stretcher with a four-point bridle;

(B) Have a locking mechanism which can be securely fastened to the craft below the gunwale level; and

(C) Have a minimum of four restraining devices, one of which shall be a torso (over the shoulder) restraint.

(g) Fracture immobilization equipment:

(A) Traction splints in assorted adult sizes and/or adult/child combination;

(B) Extremity splints in assorted sizes.

(C) Extrication collars in assorted pediatric through adult sizes.

(D) Short backboard or equivalent with necessary restraining devices with sufficient supplies for head immobilization;

(E) Long backboard with necessary restraining devices with sufficient supplies for head immobilization; and

(F) Pediatric backboard with necessary restraining devices with sufficient supplies for head immobilization.

(h) Bandages and dressings in assorted sizes, sterile and non-sterile.

(i) Adhesive or hypo-allergenic tape in assorted sizes;

(j) Miscellaneous equipment:

(A) Emesis containers;

(B) Stethoscope, pediatric and adult;

(C) Aneroid sphygmomanometer in assorted sizes;

(D) Bandage shears;

(E) Hypothermia thermometer;

(F) Disposable obstetrical kit;

(G) Chemical heat and cold packs assorted;

(H) Urinals, female and male, one each;

(I) Bed pan;

(J) Set of extremity restraining devices; and

(K) Blood glucose level testing kit or blood glucose level testing strips.

(k) Personal protection equipment sufficient for crew and patient(s) including:

(A) Disposable gloves;

(B) Disposable face masks;

(C) Protective eyewear;

(D) Disposable isolation gowns;

(E) Hand cleaning solution or foam;

(F) Surface cleaning disinfectant;

(G) Sharps container for the patient compartment and a separate container for each kit that contains needles;

(H) Infectious waste disposal bags; and

(I) The 2004 Department of Transportation - Emergency Response Guidebook (Initial Response to Hazardous Materials Incidents.)

(l) Medications and fluids authorized for use by an EMT-Basic as required by the EMS Medical Director;

(m) Linen supplies and replacements sufficient to cover stretchers;

(n) Communication equipment. Communications equipment must consist of a VHF/FM marine radio with at least 25 watts of power. In addition, the radio must have the capability to have reliable contact between the marine ambulance and a ground or air ambulance and with a hospital having on-line medical direction;

(o) Prehospital Care Report Form or electronic field data;

(p) Oregon Trauma System Identification Bracelets - 5;

(q) A copy of standing orders for EMT-Basics dated within one year and signed by the EMS Medical Director; and

(r) A universal "No Smoking" sign conspicuously displayed in the pilot's and patient area.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OH 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0092

Marine Ambulance Operating Requirements When Providing Intermediate Level Care

(1) A marine ambulance in operation and providing intermediate life support care must have a minimum staff of two persons:

(a) An operator who complies with the requirements specified in OAR 333-255-0091(1)(a)(A) through (1)(a)(D) or (1)(c)(A) through (1)(c)(D); and

(b) A person who is at or above the EMT-Intermediate certification level and who must be with the patient at all times. If the operator is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the marine ambulance or on scene; and

(c) The EMTs attending the patient must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(2) Intermediate life support care equipment. A marine ambulance in operation and providing intermediate level care must have the following patient care equipment in a satisfactory working condition, kept in a sanitary manner, stored in a secure manner and be readily accessible to the medical personnel:

(a) All of the items specified in OAR 333-255-0091(2)(a) through (2)(r);

(b) Any physiologic isotonic crystalloid solution or combinations thereof - 6000 cc in any size containers;

(c) Medications and fluids authorized for use by an EMT-Intermediate as required by the EMS Medical Director;

(d) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24 gauge through 14 gauge; and

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(B) Specifically-designed needles for intraosseous infusions.

(e) A copy of standing orders for EMT-Intermediates dated within one year and signed by the EMS Medical Director.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-255-0093

Marine Ambulance Operating Requirements When Providing Advanced Level Care

(1) A marine ambulance in operation and providing advanced level care must have a minimum staff of two persons:

(a) An operator who complies with the requirements specified in OAR 333-255-0091(1)(a)(A) through (1)(a)(D) or (1)(c)(A) through (1)(c)(D); and

(b) A person who is at the EMT-Paramedic certification level or an RN, PA or physician who is trained in prehospital emergency medical care must be attending to the patient when a patient is receiving advanced life support care. If the operator is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both on the marine ambulance and on scene. The EMT-Paramedic, Respiratory Therapist, RN, PA, physician, or other qualified personnel must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(c) When a RN, PA or physician is staffing an ambulance in lieu of an EMT-Paramedic and is providing advanced level care he or she must have:

(A) A current American Heart Association "Health Care Provider", American Red Cross "Basic Life Support for the Professional Rescuer" or other Division-approved equivalent CPR course completion document;

(B) A current Advanced Cardiac Life Support course or other Division-approved equivalent completion document;

(C) A pediatric advanced life support course or other Division-approved equivalent completion document;

(D) A Prehospital Trauma Life Support, Basic Trauma Life Support, Trauma Emergency Assessment Management or Trauma Nurse Core Course completion document. The Trauma Emergency Assessment Management and Trauma Nurse Core Course must include a supplemental prehospital rapid extrication training session;

(E) The ability to properly assist in extricating, lifting and moving a patient; and

(F) The knowledge to properly operate all patient care equipment that may be used.

(2) A marine ambulance in operation and providing advanced level care must have the following advanced life support patient care equipment in a satisfactory working condition, kept in a sanitary manner and which is readily accessible to medical personnel:

(a) All items specified in OAR 333-255-0091(2)(a) through (2)(r);

(b) Cardiac monitoring equipment:

(A) Manual monitor/defibrillator;

(B) Monitoring electrodes, infant and adult;

(C) Patient cables — 2; and

(D) ECG paper.

(c) Advanced airway care equipment:

(A) Laryngoscope handle and assorted blade sizes, adult and pediatric;

(B) Spare dated batteries for the laryngoscope handle;

(C) Spare bulbs for the laryngoscope blades;

(D) Endotracheal tubes in assorted sizes, adult and pediatric.

(E) Magill Forceps, adult and child;

(F) Intubation stylettes, adult and pediatric;

(G) Endtidal CO₂ detection device; and

(H) Chest decompression equipment;

(d) Sterile intravenous agents and medications authorized by the EMS Medical Director;

(e) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 14-gauge through 24-gauges; and

(B) Specifically-designed needles for intraosseous infusions.

(f) Nasogastric tubes in assorted sizes;

(g) The storage of controlled substances in a marine ambulance must adhere to the procedure specified in OAR 333-250-0047(2)(a) and (b); and

(h) A copy of standing order for EMT-Paramedics, RNs and PAs dated within one-year and signed by the EMS Medical Director.

(3) The special equipment required for a marine ambulance may be kept separate from the craft in modular watertight and buoyant containers for rapid loading and easy access aboard the marine craft.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

333-265-0130

EMT-Paramedic Continuing Education Requirements for Recertification

(1) Beginning with the recertification cycle ending June 30, 2001, an EMT-Paramedic, regardless of affiliation, is required to have completed the following continuing education requirements to retain his or her Oregon EMT-Paramedic certification:

(a) All requirements to obtain National Registry of EMT-Paramedic reregistration as evidenced by submitting a copy of their current National Registry of EMT-Paramedic certificate to the Division; or

(b) Obtain a total of 24 hours of continuing education in any of the below listed categories:

(A) EMS clinical topics;

(B) EMS related topics; or

(C) Professional development topics. Professional development topics include but are not limited to administrative, managerial or educational development and includes course work leading to any academic degree.

(2) If the initial certification period is less than 12 months, the EMT-Paramedic must obtain 50 percent of the hours specified in section (1)(b)(A) or (C) of this rule.

(3) An EMT-Paramedic may receive a maximum of 25 percent credit of the total required hours for teaching EMT courses or EMT continuing education classes. A single topic or lecture may be counted only once in fulfillment of this requirement, even if taught multiple times.

(4) Continuing education credit shall be granted on an hour-for-hour basis for EMS training seminars, educational conferences, or continuing education classes. It shall be the responsibility of each EMT-Paramedic to ensure the hours obtained meet the Division's recertification requirements.

(5) Audiovisual Programs. An EMT-Paramedic may receive a maximum of 25 percent credit (6 hours) of the hours specified in section (1)(b)(A) through section (1)(b)(C) of this rule, when viewing video tapes, CD-ROMs or computer on-line programs. The EMT-Paramedic must pass a written examination approved by the medical director or medical director designee.

(6) An EMT-Paramedic may receive a maximum of 25 percent credit (6 hours) of the hours specified in section (1)(b)(A) through section (1)(b)(C) of this rule for being an EMT practical certification examination examiner or for reading EMS journals or articles. The EMT-Paramedic must pass a written examination approved by the medical director or medical director designee.

(7) An EMT-Paramedic, regardless of affiliation, is required to have verification of competencies by a Board-approved medical director in the following essential psychomotor skill categories to retain his or her EMT-Paramedic certification:

(a) Patient assessment and interviewing;

(b) Airway management, including use of bag-mask ventilation device with reservoir, endotracheal intubation (adult and pediatric), needle cricothyrotomy (adult and pediatric), and decompression of pneumothorax;

(c) Vascular access and medication administration, including intravenous drug infusion and intraosseous cannulation;

(d) Trauma management, including rapid extraction and spinal immobilization;

(e) Management of obstetric emergencies, including uncomplicated prehospital delivery;

(f) Management of cardiac emergencies in accordance with the standards of the American Heart Association, including the performance of one and two-person rescuer cardiopulmonary resuscitation (adult, child and infant), relief of foreign body airway obstruction, and advanced cardiac life support measures. This skill verification must include a minimum of two complete cardiac arrest management scenarios managed in accordance with local EMS treatment protocols; and

(g) Application of local protocols, standing orders, and trauma system entry criteria.

(8) Verification of the psychomotor skills specified in section (7)(a) through section (7)(f) of this rule must be based on:

(a) The medical director's personal observation in the field or in a hospital or medical facility clinical setting;

(b) A demonstration in a classroom or laboratory session; or

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(c) By reliance upon documented successful field performance as demonstrated by agency quality improvement program data.

Stat. Auth.: ORS 682.157 & 682.215

Stats. Implemented: ORS 682.157 & 682.215

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07

Department of Public Safety Standards and Training Chapter 259

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

Adm. Order No.: DPSST 4-2007

Filed with Sec. of State: 2-15-2007

Certified to be Effective: 2-15-07

Notice Publication Date: 12-1-06

Rules Adopted: 259-060-0092

Rules Amended: 259-060-0010, 259-060-0060, 259-060-0065, 259-060-0075, 259-060-0080, 259-060-0120, 259-060-0135

Subject: Define "Accreditation Program Manager";

Amend rules relating to the eight-hour basic classroom instruction, written examination, four-hour assessment module, annual/biennial refresher courses, professional certification and instructor certification; and

Establish procedures for accreditation of private security training programs.

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

259-060-0010

Definitions

(1) "Accreditation Program Manager" means a person who is designated as the administrator of an employer accredited training program and is primary liaison with the Department.

(2) "Armed Private Security Professional" means a private security professional who is in possession of a firearm at any time while performing duties as a private security professional.

(3) "Assessment module" means a four-hour curriculum given to private security professionals that includes, but is not limited to, the demonstration of task-related skills learned in the eight-hour basic classroom instruction as applied to hypothetical situations.

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

(5) "Certification" means recognition by the Department that a private security professional or instructor, meets all the qualifications listed in ORS 181.875 and the rules set forth in this Division.

(6) "Certified Private Security Instructor" and "instructor" as used in ORS 181.878, means recognition by the Department that a person meets the minimum qualifications as specified in OAR 259-060-0135.

(7) "Certified Private Security Firearms Instructor" means recognition by the Department that a person meets the minimum qualifications of a private security firearms instructor as specified in OAR 259-060-0135.

(8) "Conviction" or "Convicted" means a finding of guilt in a court of competent jurisdiction by a plea, a jury verdict or a determination by a judge sitting as a trier of fact at a trial. Conviction does not require a final judgment or sentence. A person will not be considered to have been convicted of an offense for purposes of these rules if the conviction is an offense for which the person has been pardoned. A person will also not be considered to have been convicted of an offense for purposes of these rules if the conviction has been expunged or set aside pursuant to the laws of any jurisdiction other than Oregon, provided, however, that the same offense, if committed in Oregon, would have been expunged or set aside pursuant to ORS 137.225. A person will not be considered convicted of an offense committed in Oregon if the conviction has been set aside and the records of arrest and conviction have been ordered sealed pursuant to ORS 137.225.

(9) "Denial" or "Deny" is that action taken by the Department in refusing to issue a license or certificate to an applicant who has not satisfied all requirements for issuance of a license or certificate.

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

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

(12) "Direct supervision of new hire" means actively monitoring the work of a new hire by the ongoing and uninterrupted presence of a certified private security professional, or a licensed executive or supervisory man-

ager. The person being monitored may not make decisions regarding any course of action independent of the person providing the direct supervision.

(13) "Employer" means an individual or entity who employs persons to provide private security services.

(14) "Executive Manager" means an individual who has the authority to act on behalf of the company or business in matters of licensure and certification, and whose primary responsibility is the management of certified private security professionals, including any supervisory managers. An executive manager has authority to issue Temporary Work Permits and has ultimate responsibility for compliance with ORS 181.870-181.991.

(15) "Instructor" means any person who has been certified by the department as meeting the requirements to provide instruction to private security providers or applicants.

(16) "License" means recognition by the Department that an employer, contractor, executive manager or supervisory manager meets the requirements adopted by the Board on Public Safety Standards and Training as necessary to provide private security services.

(17) "Policy Committee" means the Private Security Policy Committee created by ORS 181.889.

(18) "Primary responsibility" means an activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(19) "Private security professional" means an individual who performs, as the individual's primary responsibility, private security services for consideration, regardless of whether the individual, while performing the private security services, is armed or unarmed or wears a uniform or plain clothes, and regardless of whether the individual is employed part-time or full-time to perform private security services.

(20) "Private security provider" means any individual who performs the functions of a private security professional, executive manager, supervisory manager or instructor.

(21) "Private security services" means the performance of at least one of the following activities:

(a) The observation and reporting of any unlawful activity.

(b) The prevention of theft or misappropriation of any goods, money or other items of value.

(c) The protection of individuals or property, including, but not limited to, proprietary information, from harm or misappropriation.

(d) The control of access to premises being protected.

(e) The secure movement of prisoners.

(f) The taking of enforcement action by detaining persons or placing persons under arrest under ORS 133.225.

(g) Providing canine services for guarding premises or for the detection of unlawful devices or substances.

(22) "Revocation" or "Revoke" is that action taken by the Department after the licensee or certificate holder has had an opportunity for a hearing and the evidence supports allegations that the licensee or certificate holder has violated provisions of these administrative rules resulting in a Department order concluding that the licensee or certificate holder should not be allowed to continue to provide or implement security services.

(23) "Supervisory Manager" means an employee of or a person supervised by an executive manager who has as a primary responsibility the supervision of certified private security professionals.

(24) "Suspension" or "Suspend" is that action taken by the Department in temporarily depriving the holder of a license or certificate that authorizes provision or implementation of private security services.

(25) "Temporary work permit" or Form PS-20 means a form issued by the employer to allow a company to employ and deploy a private security professional, executive or supervisory manager while the application for certification or licensure is being processed. A temporary work permit will not be issued for armed security applicants.

Stat. Auth.: ORS 181.870 & 181.878

Stats. Implemented: ORS 181.870 & 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07

259-060-0060

Eight-Hour Basic Classroom Instruction

(1) The training requirements for certification as a private security provider are:

(a) Eight hours of basic classroom instruction based upon a curriculum approved by the Board or its designated staff. For purposes of these

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rules, classroom instruction includes use of a subject matter expert, audio, visual and actual classroom instruction. Private security managers and instructors must utilize a management-specific training manual approved by the Board or designated staff, and review the training in a self-study environment. Any manager who provides private security services in the capacity of a private security professional must complete the full training designated for that classification (e.g., unarmed, armed or alarm monitor).

(b) An applicant may challenge the eight-hour basic classroom instruction component of the training requirements, if the person has two or more years of experience in the field of law enforcement, military police or private security; or has received any private security or law enforcement training. The person may challenge the eight-hour basic classroom instruction component only once. The four-hour assessment module may not be challenged.

(c) Four hours of additional assessment by a DPSST-certified instructor as detailed in OAR 259-060-0075. Managers and instructors will complete a four-hour management-specific orientation under the direction of the Department's designee, rather than a certified private security instructor.

(d) Successful completion of a written examination administered in compliance with OAR 259-060-0065. Managers and instructors will complete the written examination utilizing the management-specific training manual provided as a resource by the Department. The written examination will be reviewed at the manager's or instructor's four-hour orientation for grading by the Department's designee.

(2) All required training must be conducted by a certified private security instructor as defined by OAR 259-060-0135 or Department designee. Only a certified private security instructor or Department designee may sign a Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results).

(3) It is the responsibility of the applicant to obtain a completed Form PS-6 sealed in an approved tamper-proof bag and to submit this sealed bag to the Department, along with the completed application packet and fees. The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(4) The Department or its designated staff may cause inspections of training methods, instructors and accredited training programs to be made pursuant to ORS 181.878(4)(b), 181.878(6), and OAR 259-060-0135(6).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07

259-060-0065

Written Examinations

(1) Written examinations covering the required classroom instructional materials will be prepared and approved by the Board or its designated staff.

(2) A Department-certified instructor must administer the applicable written examination.

(3) The applicant must achieve a minimum of 80 percent correct answers on general test questions.

(4) A Department-certified instructor must review each incorrect test question with the applicant, explaining the principle behind the question, the correct answer and the basis for the correct answer. Oral responses of the applicant and the instructor's assessment of whether the applicant understands the underlying principles and the appropriate answer may cause the termination of training or indication on the Form PS-6 that the applicant has failed to successfully complete the required training. The instructor has the option of:

(a) Remediating the incorrect test responses (i.e., counting as correct the initially incorrect test answers) if the score is 50 to 99 percent correct; or

(b) Advising the applicant to repeat those portions of the training applicable to the missed questions and to retake the applicable sections of the written examination if the score is under 50 percent; or

(5) The Department-certified instructor must complete Form PS-6 affirming that the applicant's identity was confirmed and that the integrity of the examination process was maintained. No one other than the administering instructor may sign the Form PS-6 reflecting completion of training.

(6) The Department-certified instructor must fully complete, enclose and seal Form PS-6 in the approved tamper-proof bag and present the form(s) to the applicant to be sent to the Department along with Form PS-1 (Application for Licensure or Certification of Private Security Services Providers).

(7) Private Security managers and instructors will complete the written examination utilizing the management-specific training manual provided by the Department. The written examination will be taken to the four-hour orientation for grading by the Department's designee.

(8) The applicant may also elect to complete Form PS-7 (Private Security Instructor Evaluation) for submission to the Department together with the other application materials. The instructor has no authority to view this completed form, which will be used by the Department to evaluate performance.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878 & 181.883

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07

259-060-0075

Four-Hour Assessment Module

(1) For purposes of these rules, an approved or accredited four-hour assessment module means a four-hour curriculum given to private security professionals that includes, but is not limited to, demonstration of task-related skills learned in the eight-hour basic curriculum instruction as applied to hypothetical situations, administered by a Department-certified private security instructor. Managers will complete the four-hour orientation under the direction of the Department's designee, rather than a certified private security instructor.

(2) The required activities must include applicant completion of task-related skills based on classroom curriculum.

(3) It is the responsibility of the applicant to obtain a completed Form PS-6 and forward this to the Department. The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(4) It is not necessary for a prospective applicant to be employed as a private security provider to receive the eight-hour classroom training and four-hour assessment module.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878 & 181.883

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07

259-060-0080

Annual and Biennial Refresher Courses of Instruction

(1) In addition to the training requirements set forth in OAR 259-060-0060, 259-060-0070 and 259-060-0075 four-hour unarmed refresher courses and manager orientations must be completed biennially, within the 90 days prior to the expiration date of the certificate or license. Armed refresher courses must be completed annually, within the 90 days prior to the anniversary date of the certificate.

(a) Persons certified as private security professionals, or licensed as executive or supervisory managers, must successfully complete an approved or accredited four-hour refresher course biennially within the 90 days prior to the expiration date of the certificate;

(b) Persons certified as armed private security professionals must successfully complete a refresher course annually based upon a curriculum approved by the Board or its designated staff; must requalify annually in firearms marksmanship as provided in OAR 259-060-0085; and shall com-

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plete biennially the four-hour unarmed refresher course, within the 90 days prior to the expiration date of the certificate.

(c) Persons certified as private security professionals or licensed as executive or supervisory managers must successfully complete a written examination based upon the content of the required refresher course(s) and administered in accordance with OAR 259-060-0065.

(2) The four-hour biennial unarmed refresher course must be administered by a Department-certified unarmed private security instructor, or a Department-certified private security firearms instructor who has completed the unarmed instruction orientation. Firearms instructors who complete the unarmed instructor training will not be assessed an additional certification fee for the unarmed instructor status. Refresher course instruction required of armed private security officers must be administered by a certified private security or public safety firearms instructor.

(3) It is the responsibility of the holder of the certificate or license to obtain a completed and sealed Form PS-6 and to forward the documentation to the Department. The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(4) The person taking the examination may also elect to complete Form PS-7 (Private Security Instructor Evaluation) for submission to the Department.

(5) The holder of the certificate or license must complete (as required) the biennial four-hour refresher course, submitting the Form PS-6 to DPSST not more than 90 days prior to the expiration date of the certification or licensure. The holder of an armed certificate must also complete the annual firearms instruction refresher course, written exam, and marksmanship qualification, submitting the Form PS-6 to DPSST not more than 90 days prior to the anniversary date of the certification.

(6) Failure to comply with the requirements of this rule may result in suspension or revocation of a certificate or license.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878 & 181.883

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07

259-060-0092

Accreditation of Private Security Training Programs

(1) An employer seeking accreditation of training programs pursuant to ORS 181.878(3) must submit:

(a) A completed application on a form approved by the Department;
(b) A course syllabus with an hour- breakdown of the course outline and training schedule;

(c) A complete copy of the course curriculum; and

(d) Any required fees.

(2) Requests for accreditation that are determined by the department to be incomplete or insufficient will be returned to the designated accreditation program manager and Executive Manager, with an explanation of the deficiency.

(a) If the deficiency is not corrected within 21 days of the date of the letter, the request for accreditation will be administratively terminated.

(b) A provider must resubmit all required information, in accordance with subsection (1) of this section to reapply.

(3) The accredited program must be under the direction of a designated Accreditation Program Manager.

(a) Certified Private Security Instructors must administer the delivery and instruction of the accredited curriculum, in accordance with OAR 259-060-0135.

(b) Training records must be maintained by the instructor pursuant to OAR 259-060-0095.

(4) A written accreditation agreement must be under the direction of a designated Accreditation Program Manager.

(a) The accreditation agreement will not be valid until signed by the Department's designee, the security service provider's executive manager and designated accreditation program manager.

(b) The accreditation agreement must be renewed every two years in accordance with subsection (1) of this section.

(5) The Department may conduct periodic reviews of an accredited program.

(a) The review may consist of physical audits or written questionnaires.

(b) The Department, at its discretion, or upon constituent request, may monitor training and testing processes during the delivery of an accredited portion of the training program.

(c) The Department shall, at a reasonable time, be given access to personnel training records to verify training received under the accredited program.

(6) The accreditation agreement may be terminated for any of the following reasons:

(a) Any violation of the Private Security Service Providers Act or its administrative rules;

(b) Failure to comply with the terms of the accreditation agreement;

(c) At the discretion of the Department, or the service provider, with 14 days written notice.

(A) The executive manager, on behalf of the private security service agency, shall have the right to appeal a proposed termination of an accreditation agreement. The appeal must be in writing addressed to the Department.

(B) The Department may work with the service provider to correct any violation and continue the accreditation agreement upon a finding of good cause.

(7) Individuals or private security service agencies that use another service provider's accredited training program must also enter into an accreditation agreement with the Department before utilizing the accredited program.

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878 & 181.883

Hist.: DPSST 4-2007, f. & cert. ef. 2-15-07

259-060-0120

Private Security Professional Certification

(1) Under ORS 181.873(1)(a), it is unlawful for a person to engage in the business of, or perform any service as, a private security professional, or to offer services in such capacity, unless the person has obtained certification as a professional, in accordance with these rules.

(a) A Department-licensed executive manager may temporarily assign a person who is not certified as required by these rules to perform private security services within this state for a period of time not to exceed 90 days if:

(A) The person is employed in another state;

(B) The person holds a private security professional certification or licensure from another state; and

(C) The certification or licensing standards of the other state meet or exceed the standards of this state.

(D) The intent of this provision is to allow a company to transfer its employees to this state for the purpose of temporary assignment.

(E) A Department-licensed executive manager must provide to DPSST a copy of the authorizing state's statutory requirements for private security professionals, demonstrating that the professional has undergone a criminal history fingerprint background check. Additionally, the executive manager must complete Form PS-9 (Private Security Waiver for Reciprocity), a triplicate form; the original must be mailed to the Department or its designated staff, one copy must be retained by the employer, and one copy must be retained by the employee. The employee copy of this form must be carried on the employee's person at all times while performing private security services in this state or while on duty. It must be presented to any law enforcement officer upon demand and must be displayed to any other person upon reasonable request.

(F) The reciprocity packet must bear a postmark on or before the first day the applicant performs private security services in this state.

(b) A Department-licensed executive manager or supervisory manager who has completed the manager specific orientation requirement of OAR 259-060-0075 may temporarily assign a person, whose application for certification as a private security professional is being processed, to perform private security services within this state for a period of time not to exceed 120 days under the following conditions:

(A) The applicant has completed all the requirements under this section (OAR 259-060-0120), including training;

(B) A Department-licensed manager has completed and signed the applicable portions of Form PS-20 (Private Security Temporary Work Permit), affirming the above requirements have been met;

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(C) The Department-licensed executive manager or supervisory manager has attached the original of Form PS-20 to Form PS-1 (Application for Licensure or Certification of Private Security Services Provider); and

(D) The Department-licensed manager has mailed to the Department each of the items in this section, as a complete packet. Form PS-4 is a sworn statement and must be sealed in a tamper-proof bag, along with the fingerprint cards, by the person rolling the prints; Form PS-6 is a sworn statement, and must be sealed in a tamper-proof bag by the issuing instructor. The application packet must bear a postmark on or before the first day the applicant performs private security services. Form PS-27 (Private Security Code of Ethics) is for the use of the applicant. For purposes of this rule, the Department will not require submission of a PS-6 for any private security provider who is enrolled in an accredited private security program at the time of application.

(E) If an applicant has not completed each step of the application process, including training, the applicant can not perform unsupervised private security services. Such persons may only provide private security services under the direct supervision of a certified private security professional, licensed executive or supervisory manager. The person being monitored can not make decisions regarding any course of action independent of the person providing the direct supervision. The duration for direct supervision for an applicant is no more than 21 consecutive calendar days, during which time the applicant must be under the uninterrupted presence of a certified private security professional.

(F) The intent of the Form PS-20 provision is to allow a company to employ and deploy a private security professional or manager, while the application for certification or licensure is being processed. A temporary work permit will not be issued for armed private security professionals.

(G) The Form PS-20 will last no longer than 120 days and, in any event, shall end upon written notice from the Department to the applicant that the permit has been administratively terminated under subsection (1)(b)(H) of this rule.

(H) Upon written notice from the Department to the applicant and the manager who signed the Form PS-20, the permit and authority to provide private security services may be administratively terminated for the following reasons:

(i) The Department has reason to believe that a person with the applicant's name and birth date has been convicted of a disqualifying crime listed in OAR 259-060-0020.

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

(iii) Applicant has violated any private security administrative rule or condition imposed by Form PS-20. Applicants who provide false information in their application, contrary to their sworn oath, will be disqualified from reapplying for a period of 10 years.

(iv) The fingerprint cards of applicant have been rejected under subsection 5(b) of this rule.

(I) Upon notification from the Department that the Form PS-20 has been administratively terminated because of a deficiency in application, the manager who signed the permit must notify the applicant that he or she may not perform private security services. A new application with corrected deficiencies must be filed, along with a new certification fee, prior to the applicant resuming duties. This provision does not apply to terminations based upon criminal conviction disqualification.

(J) The termination of the Form PS-20 due to a criminal conviction disqualification is subject to the contested case hearing procedures set forth in OAR 259-060-0300.

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

(A) A letter will be mailed by the Department to the applicant, and the last known employer of the applicant, identifying the deficiencies in the Form PS-1, or the rejection of the fingerprint cards of applicant.

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

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

last known address, and notify the last known employer of the applicant, that the Department has administratively terminated the application process.

(D) Once the application process has been administratively terminated, the applicant will be required to submit a new Form PS-1, with another certification fee. An applicant whose application process has been administratively terminated is not eligible to perform private security services until a new, complete application and fees are submitted to the Department, along with a Form PS-6 providing proof of new basic training.

(2) The requirements for certification as an unarmed private security professional are as follows:

(a) Compliance with the minimum standards for certification under OAR 259-060-0020;

(b) Successful completion of the mandatory eight-hour basic classroom instruction required under OAR 259-060-0060, including successful completion of the written examination;

(c) Successful completion of the mandatory four-hour assessment module required under OAR 259-060-0075; and

(d) Submission to the Department of the completed application packet as required under Sub (5) of this rule, together with the appropriate fees.

(3) The requirements for certification as an armed private security professional are as follows:

(a) Compliance with the minimum standards for certification under OAR 259-060-0020;

(b) Successful completion of the mandatory eight-hour basic classroom instruction required under OAR 259-060-0060, including successful completion of the written examination;

(c) Successful completion of the mandatory four-hour assessment module required under OAR 259-060-0075;

(d) Successful completion of the mandatory 15-hour firearms course and marksmanship qualification required under OAR 259-060-0070, including successful completion of the written examination and satisfaction of marksmanship requirements; and

(e) Submission to the Department of the completed application packet as required under (5) of this rule, together with the appropriate fees.

(4) A certified private security provider or applicant must carry the certificate or Form PS-20 on his or her person at all times while performing security services or while on duty. The certificate or Form PS-20 must be presented to any law enforcement officer upon demand, and must be displayed to any other person upon reasonable request. A temporary work permit will not be issued for instructors or armed private security professionals.

(5) The application packet for certification as a private security provider must include:

(a) A completed Form PS-1, including a sworn affidavit attesting to the truth and correctness of the information provided by the applicant, and acknowledging the Department's right to terminate a temporary work permit. Falsification of this application can result in a denial of certification for up to ten years, as well as pursuit of criminal charges.

(b) A completed fingerprint packet. The Department will accept fingerprint cards correctly rolled and completed by private security or public safety personnel trained to roll fingerprints, or a person who is employed and trained by a private business that provides fingerprinting services. These fingerprint cards must be submitted on the pre-printed FBI fingerprint cards supplied by the Department, and must be sealed in a tamper-proof bag by the person rolling the prints. A fee will be charged for the third submittal of fingerprint cards if rejected twice by the Federal Bureau of Investigation;

(A) A fingerprint packet must include two fingerprint cards, and a Form PS-4. The person rolling the fingerprints must complete Form PS-4, enclose the two completed fingerprint cards and the Form PS-4 in the tamper-proof bag, seal it, and return it to the applicant.

(B) When the fees, application and completed fingerprint packet are received, the Department will assign a Private Security Identification number to the applicant, record that number on the fingerprint cards and forward the fingerprint cards to Oregon State Police. The Oregon State Police will process one set of the prints and send the other set of prints to the Federal Bureau of Investigation (FBI) for processing;

(C) The applicant's fingerprints will be retained and kept on file by the Oregon State Police Identification Services Section;

(D) The Oregon State Police Identification Services Section will notify the Department or its designated staff of any criminal record disclosed through processing the applicant's fingerprint cards; and

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(E) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department will comply with the most current requirements.

(c) The original Form PS-6 sealed by the instructor in the approved tamper-proof bag;

(d) A completed Form PS-7 (Private Security Instructor Evaluation) (optional);

(e) The original of completed Form PS-20 when required.

(6) The applicant must submit the nonrefundable certification fee (including the fingerprint processing fee) to the Department or its designated staff, along with the application packet. The application will be rejected unless the certification fee is paid by business check, money order or cashier's check. No personal checks, credit cards or cash will be accepted.

(7) The completed application packet must be mailed to the Department or its designated staff prior to the applicant performing any private security services.

(8) Renewal of certification must occur every two years subject to the following conditions:

(a) The certificate holder must, within the 90-day period prior to certificate expiration, obtain refresher training as provided for in OAR 259-060-0080, submit the Form PS-6, required fees and a completed Form PS-21 (Renewal of Private Security Licensure or Certification). A copy of the Form PS-21 must be carried on the provider's person, while performing private security duties, until a new certificate is received.

(b) The provider must submit the nonrefundable renewal fee to the Department or its designated staff. The renewal application will be rejected unless the renewal fee is paid by business check, money order or cashier's check. No personal checks, credit cards or cash will be accepted.

(c) The renewal documents must be received by the Department not more than 90 days prior to the anniversary date of the certification or licensure to allow for processing of the forms and criminal history check. The background check may determine convictions or other conditions under OAR 259-060-0020 that would disqualify the provider.

(d) Failure to comply with renewal requirements will result in the expiration of certificate or license.

(A) Persons reapplying within 90 days of expiration must complete the Form PS-21, and shall submit the certification fee.

(B) Persons reapplying after 90 days of expiration must complete the Form PS-21 (Application for Licensure or Certification), and must submit the certification fees, plus a \$25.00 late submission penalty fee.

(C) Persons continuing to provide private security services, after the certification has expired will be subject to penalties as provided for in ORS 181.991.

(9) Any private security provider who is arrested or charged criminal must notify the provider's employer and the Department of that fact not later than 48 hours after the arrest or charge is filed. Any employer who knows that an employee has been arrested or charged with a crime must notify the Department of that fact not later than 48 hours after the employer acquired knowledge. The initial notification may be by telephone, but must be immediately followed by written notification. The notification must include the specific charges, the county and state where any charges are pending, the investigating agency, and the date of the arrest. Failure to notify the Department may result in suspension of the arrested person's certification or licensure.

(10) The applicant or private security provider must notify the Department or its designated staff within 14 calendar days of any change of address by using Form PS-23 (Private Security Services Provider Change of Information). Executive managers may use the form to advise the Department of the termination of employment, or provide their own list. Under ORS 305.385, a summary of all private security providers and applicants is provided annually to the Oregon Department of Revenue, including name, address and Social Security number.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.873 - 181.878 & 181.883 - 181.885

Stats. Implemented: ORS 181.873 - 181.878 & 181.883 - 181.885

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 3-2005(Temp), f. 4-25-05, cert. ef. 5-1-05 thru 10-28-05; DPSST 9-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07

259-060-0135

Certification of Private Security Instructors

(1) The Department or its designated staff must certify instructors deemed qualified to teach in any required private security professional training courses.

(2) Certified Private Security Instructor

(a) The minimum requirements for certification as an instructor are as follows:

(A) Compliance with the minimum standards for certification under OAR 259-060-0020;

(B) Successful completion of training and examination required under OAR 259-060-0060, 0065 and 0075;

(C) High school diploma or GED;

(D) Minimum of three years work experience in the private security services, military, or law enforcement fields; and

(E) Compliance with the age requirements under the Private Security Service Providers Act;

(b) A certified instructor is authorized to:

(A) Provide the eight-hour "basic" instruction based on the approved or accredited course content and materials provided by the Department or its designated staff as specified in OAR 259-060-0060;

(B) Provide the four-hour assessment module based on the approved or accredited private security professional course content, materials and assessment criteria provided by the Department or its designated staff as specified in OAR 259-060-0075;

(C) Provide the four-hour biennial refresher training and testing based on the approved or accredited private security professional course content and materials provided by the Department or its designated staff as specified in OAR 259-060-0080; and

(D) Administer the applicable written examination(s) as specified in OAR 259-060-0065.

(c) The certified instructor must conduct all instruction, training and testing required by the Department in accordance with these rules. The instructor must provide to the applicant the fully-completed original Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results), sealed in a tamper-proof bag, if the applicant successfully completes all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(3) Certified Private Security Firearms Instructor

(a) The minimum requirements for certification as a private security firearms instructor are as follows:

(A) Compliance with the minimum standards for certification under OAR 259-060-0020;

(B) Successful completion of training required under OAR 259-060-0060 and 259-060-0075, including the successful completion of the written examination and orientation required under OAR 259-060-0065;

(C) Compliance with the firearms restriction requirements of OAR 259-060-0020(5); and

(D) Hold one or more of the following:

(i) A current certification through the National Rifle Association Law Enforcement Firearms Instructor Development School;

(ii) A current certification as a firearms instructor through the Federal Law Enforcement Training Center;

(iii) A current certification from a Department-certified law enforcement or criminal justice firearms instructor course;

(iv) A current certification as a firearms instructor through the Federal Bureau of Investigation; or

(v) A current certification as a private security firearms instructor through the Washington Criminal Justice Training Center.

(b) A certified private security firearms instructor is authorized to:

(A) Provide firearms instruction based upon curriculum approved by the Board, and administer firearms marksmanship qualifications as provided by the Department, or its designated staff, as specified in OAR 259-060-0070;

(B) Provide the annual firearms classroom instruction and firearms requalification as specified in OAR 259-060-0085;

(C) Administer required armed written examination as specified in OAR 259-060-0065; and

(D) Terminate the firearms instruction or firearms marksmanship qualification if, in the instructor's opinion, the applicant is unfit to proceed, taking into consideration the applicant's poor judgment, unsafe practices, abnormal behavior, or other relevant factors. The instructor must immediately notify the applicant of the reason for termination of training and must

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also notify the Department or its designated staff within 48 hours in writing, using Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results).

(c) A certified private security firearms instructor must conduct all instruction, training, qualification and testing required by the Department in accordance with these rules. Only the certified instructor who conducts the training will sign the Form PS-6. The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(4) Applications for instructor certification must be submitted on Form PS-1 (Application for Licensure or Certification of Private Security Services Provider), and must be accompanied by fees, a detailed resume of the applicant's qualifications, including a copy of a firearms instructor certificate (if applicable), and a fingerprint packet completed and sealed in compliance with OAR 259-060-0120(5)(b).

(5) If instructor certification is denied, the requesting applicant must be notified in writing and advised of the reasons for denial.

(6) Review of instructor certification may be initiated upon the request of a private security provider, the Department or its designee, or other reliable source.

(7) Instructor certification is valid for two years. The certification will be renewed upon payment of a nonrefundable renewal fee and proof of at least four hours of refresher course-work relating to any of the specific subjects being taught or generally improving instructor skills. An instructor may elect to provide proof of private security classes taught within the past year by submitting a Form PS-8 (Private Security Instructor Proof of Skills Improvement).

(8) Failure to comply with renewal requirements shall result in the expiration of certification. Reapplication after expiration can be conducted as provided for in OAR 259-060-0120(8)(d).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07

Rule Caption: Amend rules relating to Student Dismissal from Academy.

Adm. Order No.: DPSST 5-2007(Temp)

Filed with Sec. of State: 2-15-2007

Certified to be Effective: 2-15-07 thru 8-3-07

Notice Publication Date:

Rules Amended: 259-012-0035

Subject: Amends rule relating to student dismissal to include appeal processes by student and/or employer and establishes eligibility criteria to return to academy following a dismissal.

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

259-012-0035

Penalties

(1) A person attending any course as a student or other participant, or a person residing at the Academy for any purpose, is subject to the rules which have been promulgated by the Department. The rules will be posted in a prominent location at the Academy. All persons attending the Academy will be expected to be knowledgeable of and to conform their conduct to the standards set forth in the rules.

(2) Failure to comply with the rules may result in the person being dismissed from the Academy, suspended from participating in Academy activities, or any other disciplinary action deemed appropriate. A student dismissed from the Academy or suspended from Academy participation for conduct or behavior in violation of the rules may not be given training credit or credit for completion of the course in which that student was enrolled. Any decision to withhold credit will be subject to Department approval.

(3) Any alleged violation of these rules, wherein a formal written report is made, shall be communicated to the student's department administrator by the DPSST staff. All disciplinary actions shall be made in accordance with the Oregon Public Safety Academy Student Rules and Regulations.

(4) Dismissal, suspension, or other disciplinary action may be ordered by the Director, or any DPSST staff delegated that authority.

(a) If a student is dismissed from the Academy, the student may request a meeting with the Director and present written evidence on his/her behalf.

(b) If the Director, or designee, upholds the dismissal, the student's employer may appeal the Director's decision to the Board within 30 days of the dismissal. The appeal must be in writing and state the employer's reason for disagreeing with the dismissal.

(A) If the student's employer does not appeal the student's dismissal within 30 days, the dismissal is final.

(B) If the Board upholds the student's dismissal, the dismissal is final.

(c) Eligibility to return to the Academy, following a final dismissal, is subject to the provisions of this rule. This applies whether the Board upholds a dismissal or an employer fails to appeal a student's dismissal within 30 days.

(d) If the Board upholds the Department's dismissal, or an employer fails to appeal a student's dismissal within 30 days, any student coursework previously completed in a Basic Course will be considered unsuccessfully completed. If the student is eligible to return to the Academy, the entire course must be retaken and successfully completed for credit toward certification.

(e) If the Board overturns the Department's dismissal, the student will be eligible to return to the Academy to attend a subsequent Academy class if the employer submits a new Application for Training. If the Department determines training effectiveness would not be compromised, the student may be allowed to complete only the remaining coursework not previously completed due to the dismissal.

(f) Following any dismissal from the Academy, the Department will also review a student's file and all materials relating to the dismissal to determine whether the student's conduct should be reviewed by the appropriate Policy Committee for recommendation to the Board. The Board will make a final determination regarding possible violation(s) of the minimum standards for public safety officers. The provisions of OAR 259-008-0070 (Denial and Revocation) will apply.

(A) If Policy Committee and Board review is required, the student will remain ineligible to return to the Academy until the Board makes a determination regarding denial or revocation of a student's certification.

(B) A student will remain ineligible to return to the Academy pending any contested case proceeding initiated under the provisions of OAR 259-008-0070.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 4-2004, f. & cert. ef. 4-23-04; DPSST 8-2006(Temp), f. & cert. ef. 6-9-06 thru 12-1-06; DPSST 17-2006, f. & cert. ef. 11-20-06; DPSST 5-2007(Temp), f. & cert. ef. 2-15-07 thru 8-3-07

Department of Revenue Chapter 150

Rule Caption: Implementation of provisions related to independent contractors.

Adm. Order No.: REV 1-2007

Filed with Sec. of State: 2-1-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 150-670.600

Rules Amended: 150-316.162(2)(j)

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

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

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-316.162(2)(j)

Independent Contractor Definition

(1) As used in the various provisions of ORS Chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as

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an “independent contractor” if the standards of ORS 670.600 are met. See OAR 150-670.600 for definitions related to independent contractors.

(2) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Department of Consumer and Business Services, and Department of Revenue of the State of Oregon, under the authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

Stat. Auth.: ORS 305.100, 670.605
Stats. Implemented: ORS 670.600

Hist.: RD 7-1992, f. & cert. ef. 12-29-92; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 6-2005, f. 12-30-05, cert. ef. 1-1-06; REV 1-2007, f. & cert. ef. 2-1-07

150-670.600

Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines “independent contractor” for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for “independent contractors”. One requirement is that an “independent contractor” must be engaged in an “independently established business.” Another requirement is related to licenses and certificates that are required for an “independent contractor” to provide services. A third requirement is that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others.

(b) The specific focus of this rule is the “direction and control” requirement. See ORS 670.600 for the requirements of the “independently established business” test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the “direction and control” test:

(A) “Means” are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the “means” used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) “Manner” is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the “manner” by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) “Free from direction and control” means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor’s services does not constitute direction and control over the means or manner of providing those services.

(4) Application of “direction and control” test in construction and landscape industries.

(a) The provisions of this section apply to:

- (A) Architects licensed under ORS 671.010 to 671.220;
- (B) Landscape architects licensed under ORS 671.310 to 671.479;
- (C) Landscaping businesses licensed under ORS 671.510 to 671.710;
- (D) Engineers licensed under ORS 672.002 to 672.325; and
- (E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor’s services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor’s services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee’s customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor’s services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

Stat. Auth.: ORS 305.100, 670.605

Stats. Implemented: ORS 670.600

Hist.: REV 1-2007, f. & cert. ef. 2-1-07

Department of Transportation Chapter 731

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

Adm. Order No.: DOT 1-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 731-005-0450

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

Rules Coordinator: Brenda Trump—(503) 945-5278

731-005-0450

Prequalification of Offeror

(1) Prequalification.

(a) Mandatory Prequalification. ODOT requires mandatory general prequalification of Offerors on forms prescribed by ODOT. Annual prequalification with ODOT is required to bid on any Public Improvement project ODOT may advertise. Prequalification applications must be received by ODOT on the ODOT “Contractor’s Prequalification Application” form ten Days prior to Bid Opening. The application must be completed in its entirety or a Bidder’s Offer will be rejected. See OAR 734-010-0220 through 734-010-0280.

(b) Special Prequalification. ODOT must indicate in the Solicitation Document if it will require a special mandatory prequalification in addition to the general prequalification. Special prequalifications may be used for projects of a particularly complex nature or using products requiring highly specialized skills. The ITB shall indicate the requirements and time frame for special prequalifications.

(2) Standards for Prequalification. Standards for prequalification are identified in OAR chapter 734 division 10.

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

Stats. Implemented: ORS 279C.430 & 279C.435

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 1-2007, f. & cert. ef. 1-24-07

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

ADMINISTRATIVE RULES

Adm. Order No.: DOT 2-2007
Filed with Sec. of State: 1-24-2007
Certified to be Effective: 1-24-07
Notice Publication Date: 12-1-06
Rules Amended: 731-005-0600
Rules Repealed: 731-005-0600(T)

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

Rules Coordinator: Brenda Trump—(503) 945-5278

731-005-0600

Receipt, Opening, and Recording of Offers

(1) Receipt. ODOT shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. ODOT shall not open the Bid or Proposal Price Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If ODOT inadvertently opens a Bid or Proposal Price Offer or a modification prior to the Opening, ODOT shall return the Bid or Proposal Price or modification to its secure and confidential state until Opening. ODOT shall document the resealing for the procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and recording. ODOT shall publicly open Bid or Proposal Price Offers including any modifications made to the Offer pursuant to OAR 731-005-0590. To the extent practicable, ODOT shall read aloud the name of each Bidder or Price Proposer, the total of each Bid or Proposal Price, and such other information as ODOT considers appropriate. In the case of Requests for Proposals, if the Solicitation Document so provides, ODOT will not read Offers aloud.

(3) Availability. After Opening, ODOT shall make Bids available for public inspection. Proposals are not subject to disclosure until after notice of intent to award is issued as specified in ORS 279C.410. In any event, ODOT may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent ODOT determines such designation is not in accordance with applicable law, ODOT shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

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

Stats. Implemented: ORS 279C.365 & 279C.410

Hist.: DOT 2-2005, f. 2-16-05, cert. ef. 3-1-05; DOT 6-2006(Temp), f. 7-31-06, cert. ef. 8-1-06 thru 1-27-07; DOT 2-2007, f. & cert. ef. 1-24-07

Department of Transportation, Board of Maritime Pilots Chapter 856

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

Adm. Order No.: BMP 1-2007
Filed with Sec. of State: 1-25-2007
Certified to be Effective: 1-26-07
Notice Publication Date: 1-1-07
Rules Amended: 856-010-0010, 856-010-0011, 856-010-0012, 856-010-0015

Subject: Amends training for original licensing requirements and degrees of licenses for Columbia-Willamette River pilotage ground. Improves training by extending total training time, expanding the number of certified training trips, and provide flexibility in assigning training experiences. A few amendments address administrative

details such as the schedule for submission of license renewal physicals, training certifications, grading of exams, and some house-keeping.

Rules Coordinator: Susan Johnson—(971) 235-1530

856-010-0010

Original Licensing Requirements

In addition to the qualifications required for licensing of pilots under ORS 776, the applicant shall:

(1) Present an application in writing to the administrator of the board on the form provided by the board for the pilotage ground for which the applicant intends to become licensed. The application shall be filed not less than 30 days prior to appearance before the board for a written examination and may be supplemented at any time until the examination is taken. The board shall consider the application and upon approval, the written examination will be scheduled. The examination shall be proctored by the board's administrator. The examination for each pilotage ground shall be prepared by the board with the assistance of the board's licensed training organization for that pilotage ground. The examination will test for skill and knowledge of those factors identified in ORS 776.035(2) and 776.325(1)(b). The examination will be graded by the board member from the pilotage ground for which the applicant is seeking a license. If requested by the training course monitor, up to two additional pilots selected by the training course monitor and approved by the board may participate with the board member in grading the exam. The examination will be pass/fail.

(2) Accompany the application with a physical examination form provided by the Board and signed by an Oregon licensed physician verifying that the applicant meets the physical and mental criteria in subsections (a) through and including (l):

(a) Eyesight: Has visual acuity of at least 20/200 in each eye uncorrected and correctable to at least 20/40 in each eye as determined by Snellen test or its equivalent unless applicant qualified for a waiver from the Officer in Charge, Marine Inspection, or the Commandant, U.S. Coast Guard. Vision correctable to 20/40 in each eye is sufficient to satisfy the requirements of this subsection if the applicant carries a spare pair of correcting lenses while performing piloting duties;

(b) Color perception: Has normal color vision per pseudo isochromatic plates, Ishihara or Keystone test. If the applicant fails this test, the Farnsworth or Williams Lantern tests or their equivalent may be used to determine the applicant's ability to distinguish primary colors;

(c) Hearing: An audiometer test is only required if the applicant has, or is suspected to have, impaired hearing. A hearing loss of over 40 decibels is considered impaired hearing;

(d) Heart: Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

(e) Blood pressure: Has no current clinical diagnosis of high blood pressure. Blood pressure shall be recorded with either spring or mercury column type of sphygmomanometer. If the blood pressure is consistently above 160/90 mm. Hg, further tests may be necessary to determine whether the applicant is qualified to pilot a vessel;

(f) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(g) Has no established medical history or clinical diagnosis of a respiratory dysfunction;

(h) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic muscular, neuromuscular, or vascular disease;

(i) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness;

(j) Has no mental, nervous, organic, or functional disease or psychiatric disorder;

(k) Has submitted to a test indicating the applicant is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR § 16 (1994). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); and

(l) Has no current clinical diagnosis of alcoholism, unless the applicant has completed an in-patient program of rehabilitation and treatment under the care of a physician;

(m) Based on information on the physical examination form, and any other medical information or opinions provided to the Board by the appli-

ADMINISTRATIVE RULES

cant, the Board will determine whether the applicant's health is satisfactory for performance of the duties of a maritime pilot.

(3) Have actual experience as a pilot handling ships over the pilotage ground for which a state license is sought and state in the application the names of ships piloted, dates, draft, gross tonnage, and length over all, as specified in (but not limited to) (4), (5), (6) and/or (7) in this section, and:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard;

(b) Hold an unlimited federal pilot's endorsement for the ground for which a state license is sought; and

(c) Have served at least two years as Master aboard vessels, or when applying for a license over the Columbia and Willamette River pilotage ground, have completed a program of apprenticeship training which has been approved by the Board.

(4) In addition to the requirements in OAR 856-010-0010(1), (2), (3), to qualify for a Grade "C" license over the Columbia and Willamette River pilotage ground, the applicant shall, prior to taking the board's examination required under section (1) above:

(a) Have served at least 730 active working days as captain of towing vessels on the Columbia River and its tributaries, or have completed a program of apprenticeship training which has been approved by the Board, as specified in OAR 856-010-0014;

(b) Complete at least six trips under the supervision of an unlimited state-licensed pilot within 270 days preceding the examination while on the bridge of a ship of not less than 500 feet length over-all (L.O.A.) through the bridges in the upper harbor in Portland, up to and including the Broadway Bridge, which shall be made with and without the aid of a tug or towboat, including at least one trip in each direction, and also including at least six ship turns in the Willamette River;

(c) Complete at least 10 transits while on the bridge of a ship of not less than 500 feet L.O.A. within the six months preceding the examination, with at least 70 of these transits made under the supervision of an unlimited state-licensed pilot and at least 80 of the transits completed within 150 days after the first transit is completed;

(d) When combining trip segments to establish a transit, each trip segment may be used only once;

(e) Complete at least six trips under the supervision of an unlimited state-licensed pilot within the 270 days preceding the examination while on the bridge of a ship of not less than 500 feet L.O.A. in a combination of the following directions, with at least three trips in each direction:

(A) From the Willamette River, turning east (upstream) into the Columbia River; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River.

(f) Complete at least 10 trips in either direction between Astoria and Longview or Kalama under the supervision of an unlimited state-licensed pilot.

(g) Train at least 35 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor that may include, but need not be limited to, shipboard training, electronic navigation training, manned model training, attendance at meetings with maritime-related governmental agencies or exposure to maritime related administrative activities.

(h) Present recommendations from the training course monitor and from at least ten unlimited state-licensed pilots who participated in the training, certifying that the applicant has demonstrated sufficient knowledge and shiphandling skills to pilot ocean-going ships up to 570 feet L.O.A. on the pilotage ground.

(5) When applying for a license on the Coos Bay bar pilotage ground, the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilots endorsement for the Coos Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Coos Bay bar while under the supervision of an unlimited state-licensed Coos Bay bar pilot, with at least ten crossings with each unlimited state-licensed Coos Bay bar pilot and with at least 25 of the bar crossings completed during hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed pilot;

(e) Make at least 25 trips through each of the bridges; and

(f) Submit letters from each of the Coos Bay bar pilots who have supervised the training of the applicant, certifying that the applicant has

demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(6) When applying for a license on the Yaquina Bay bar pilotage ground the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilots endorsement for the Yaquina Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Yaquina Bay bar while under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing one year of piloting with a state license in Coos Bay, the number of bar crossings at Yaquina Bay may be reduced to 12, with at least one such crossing with each unlimited state-licensed Yaquina Bay bar pilot and with at least twenty-five percent (25%) of the bar crossings completed during the hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing one year of piloting with a state license in Coos Bay, the number of dockings and undockings may be reduced to 12;

(e) Make at least twenty-five (25) trips through the bridge, or after completing one year of piloting with a state license in Coos Bay, the number of trips may be reduced to 12; and

(f) Submit letters from each of the Yaquina Bay bar pilots who have supervised training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(7) When applying for an original license on the Columbia River bar pilotage ground the applicant shall:

(a) Hold a valid license issued by the U.S. Coast Guard as "Unlimited Master any oceans — any tonnage", endorsed for Radar Observer;

(b) Have served at least two years as Master of an offshore merchant ship of 5,000 gross tons or more, certified by Certificates of Discharge or Continuous Discharge Book;

(c) Obtain a federal pilot's endorsement for the Columbia River bar pilotage ground, after which a minimum of one hundred (100) crossings of the Columbia River bar shall be made under the supervision of an unlimited state-licensed Pilot, and make crossings with at least five unlimited state-licensed Columbia River bar pilots;

(d) Be on board a minimum of ten ships docking or undocking from the Astoria Port Docks, Tongue Point, and other facilities;

(e) Make approximately twenty-five percent (25%) of the crossings of the Columbia River bar during the hours of darkness.

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

Stat. Auth.: ORS 776.115

Stats. Implemented: ORS 776.115, 776.300

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; PC 7, f. 6-13-73, ef. 7-15-73; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 3-1995, f. & cert. ef. 3-16-95; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-1999, f. & cert. ef. 6-24-99; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2003, f. & cert. ef. 2-26-03; BMP 3-2006, f. 9-29-06, cert. ef. 10-1-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07

856-010-0011

Restrictions on Licenses

After receiving an original license the following restrictions shall apply:

(1) Columbia and Willamette River Grade "C" license holders shall not pilot tankers, or vessels with a draft of 38 feet or greater.

(2) Except for Columbia River bar pilots who have a minimum of two years experience on tankers as Master or pilot, no Columbia River bar pilot shall pilot a loaded tanker during the first two years as a licensee.

(3) Coos Bay bar pilots shall not move any ship exceeding 45,000 gross tons, or any ship with the wheelhouse forward of amidships, except during daylight hours, during the first year as a licensee.

(4) Coos Bay bar pilots shall not move loaded tankers during the first two years as a licensee.

(5) Yaquina Bay bar pilots shall not move any ship exceeding 45,000 gross tons, or any ship with the wheelhouse forward of amidships, except during daylight hours, during the first year as a licensee.

(6) Yaquina Bay bar pilots shall not move loaded tankers during the first two years as a licensee.

(7) The Board may, upon application by the licensee, recognize any combination of master's tanker and pilot's experience to equal any time period required by this rule.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 776.315

Hist.: MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1996, f. & cert. ef. 5-9-96; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07

ADMINISTRATIVE RULES

856-010-0012

Degrees of Licenses for the Columbia and Willamette River Pilotage Ground

(1) Grade "C" License: The initial license issued by the Board to a pilot for the Columbia and Willamette River pilotage ground shall only authorize the pilot to pilot vessels under 570 feet length over-all (L.O.A.).

(2) To obtain a Grade "B" License while holding a Grade "C" License: In order to obtain authority from the Board to pilot vessels from and including 570 feet L.O.A. up to 700 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

(a) Complete at least 180 days service on the pilotage ground while holding a Grade "C" license;

(b) Complete at least 30 transits on the pilotage ground piloting ships of between 300 and 570 feet L.O.A.;

(c) Complete at least 25 transits on ships 570 feet L.O.A. or greater under the supervision of a minimum of ten different pilots, at least six of whom have held unlimited state licenses for at least 5 years;

(d) Complete at least 5 trips in either direction between Astoria and either Longview or Kalama on ships 570 feet L.O.A. or greater under the supervision of an unlimited state-licensed pilot;

(e) Train at least 5 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(f) Present recommendations from the training course monitor and from at least ten pilots holding unlimited or Grade "A" state licenses who participated in the training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels from and including 570 feet L.O.A. up to 700 feet L.O.A.; and

(g) The requirements specified in subsections (b), (c), (d), and (e) of this section must have been met during the 180 days preceding application for authority to pilot vessels from and including 550 feet L.O.A. up to 700 feet L.O.A.; and

(h) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are less than 700 feet L.O.A., except that the applicant shall not pilot tankers, or vessels with a draft of 38 feet or greater, on the pilotage ground.

(3) To obtain a Grade "A" License while holding a Grade "B" License: In order to obtain authority from the Board to pilot vessels from and including 700 feet L.O.A. and 800 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

(a) Complete at least 270 days service on the pilotage ground while holding a Grade "B" license;

(b) Complete at least 40 transits piloting ships of between 300 and 700 feet L.O.A. as a state-licensed pilot;

(c) Complete at least 20 transits on ships 700 feet L.O.A. or greater while under the supervision of at least ten unlimited state-licensed pilots;

(d) Complete 2 trips from dock to dock or from an anchorage to a dock under the supervision of unlimited state-licensed pilots while on ships 700 feet L.O.A. or greater, with each trip including a 180 degree turn before docking;

(e) Make at least 6 trips under the supervision of unlimited state-licensed pilots within the 270 days preceding the application while on the bridge of a ship 500 feet L.O.A. or greater, with at least three trips in each of the following directions:

(A) From the Willamette River, turning east (upstream) into the Columbia; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River;

(f) Train at least 5 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(g) Present recommendations from the training course monitor and from at least ten pilots who participated in the training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A. on the pilotage ground;

(h) The requirements specified in subsections (b), (c), (d), (e) and (f) of this section must have been met during the 270 days preceding application for authority to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A.; and

(i) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are

less than 800 feet L.O.A. on the pilotage ground, except that the applicant shall not pilot tankers, or vessels with a draft of 38 feet or greater.

(4) To obtain an Unlimited License while holding a Grade "A" License: In order to obtain authority from the Board to pilot vessels on the Columbia and Willamette River pilotage ground without any limitation on the length and draft of the vessels, including tankers and vessels with a draft of 38 feet or deeper, an applicant must meet the following requirements:

(a) Complete at least 180 days service on the pilotage ground while holding a Grade "A" license;

(b) Complete at least 30 transits on ships of between 300 and 800 feet L.O.A. during the 180 days preceding application for an unlimited license;

(c) Complete 4 trips on ships 570 feet L.O.A. or greater from dock to dock or from an anchorage to a dock while under the supervision of unlimited state-licensed pilots, with each trip including a 180 degree turn before docking;

(d) Complete at least 6 trips within the 180 days preceding the application under the supervision of unlimited state-licensed pilots while on the bridge of a ship 500 feet L.O.A. or greater, with at least three trips in each of the following directions:

(A) From the Willamette River, turning east (upstream) into the Columbia; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River;

(e) Train at least 5 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(f) While holding a Grade "B" or Grade "A" license, complete at least ten transits on ships greater than 800 feet L.O.A. while under the supervision of ten different pilots. Five of these transits must be supervised by pilots with not less than five years experience as unlimited state-licensed pilots;

(g) Present recommendations from the training course monitor and from at least ten pilots who participated in training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels 800 feet L.O.A. or greater on the pilots ground;

(h) While holding a Grade "B" or Grade "A" license, complete at least 12 transits on tankers (including at least nine transits on loaded tankers) while under the supervision of at least six different state-licensed pilots with not less than five years' experience as unlimited state-licensed pilots;

(i) Present recommendations from the training course monitor and from at least six pilots who participated in training on tankers, certify that the applicant has sufficient knowledge and shiphandling skills to pilot tankers on the pilotage ground and understands the risks and hazards peculiar to piloting tankers on the pilotage ground;

(j) While holding a Grade "B" or a Grade "A" license, complete at least twelve transits on ships with drafts greater than 38 feet while under the supervision of at least six different state-licensed pilots with not less than five years' experience as unlimited state-licensed pilots;

(k) Present recommendations from the training course monitor and from at least six pilots who participated in training on vessels with drafts greater than 38 feet, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels with drafts greater than 38 feet;

(l) While holding a Grade "C", Grade "B" or Grade "A" license, complete a United States Coast Guard approved course in automatic radar plotting aids.

(m) When the foregoing requirements are met, the Board shall issue an unlimited license to the applicant authorizing the applicant to pilot vessels of any length and draft, including tankers, on the pilotage ground.

(5) Each grade of license will be valid for one year. No license except an unlimited license may be renewed.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 776.315

Hist.: MP 2-1985, f. & ef. 6-7-85; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2005, f. & cert. ef. 11-29-05; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07

856-010-0015

Renewal of License

(1) Application for renewal of license shall be made on a form provided by the board, signed by the applicant, accompanied by the physical examination form provided by the board and presented to the administrator of the board at least thirty (30) days prior to expiration of license.

(2) All state-licensed pilots shall be required to have an annual physical examination by an Oregon or Washington licensed physician within ninety (90) days prior to expiration of their license, the physical requirements for which are the same as for the original license as specified in OAR 856-010-0010(2), except for drug testing.

ADMINISTRATIVE RULES

(3) All state-licensed pilots shall, within six months prior to the expiration of their license, submit to a test indicating licensee is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR § 16 (1994). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); or provide proof to the board that licensee is participating in a US Coast Guard approved random drug testing program;

(4) All applicants for renewal of licenses shall submit a photocopy of their currently applicable United States government license with radar endorsement issued by the United States Coast Guard.

(5) Failure of a licensed pilot to comply with all requirements for renewal of license shall constitute the failure to submit a complete application for renewal and will result in the withholding of the renewal license.

(6) Every applicant for renewal of an unlimited license shall certify that, during the sixty-three (63) months prior to the expiration date of their license, the applicant completed continuing professional development courses in bridge resource management for pilots, manned model simulated ship handling and electronic navigation systems. An applicant who is unable to complete these requirements within the time allowed due to unexpected, emergency circumstances may request a waiver and the Board may, upon good cause shown, permit a license renewal for one year without these requirements being met, provided that all required certifications must be made by the applicant at the time application for renewal is made the following year.

(7) Each license issued is valid for one year and only the unlimited state license may be renewed.

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

Stat. Auth.: ORS 776

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

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1995, f. & cert. ef. 5-9-96; BMOP 1-2000, f. & cert. ef. 12-6-00; BMP 4-2006, f. 9-28-06, cert. ef. 10-6-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07

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

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

Adm. Order No.: DMV 1-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Repealed: 735-072-0030, 735-072-0031, 735-072-0040, 735-072-0060, 735-072-0120, 735-072-0130, 735-072-0150

Subject: DMV implemented new rules for both Provisional and Adult Driver Improvement Programs in January 1, 2002. The programs established by those rules replaced the existing programs. OAR 735-072-0031 was adopted as a rule explaining the transition between the programs. OAR 735-072-0031(2) specified that OAR 735-072-0030, 735-072-0040, 735-072-0060, 735-072-0120, 735-072-0130 and 735-072-0150 only applied to certain individuals at the step of the previous programs where a person would be placed on probation, called in for an interview with a Driver Improvement Counselor and possibly subject to additional requirements as determined by the Driver Improvement Counselor. Any requirement imposed by a Driver Improvement Counselor needed to be completed or the person's driving privileges would be suspended for failure to comply. After a five-year period the person was eligible to re-apply for driving privileges without complying with the requirements of the Driver Improvement Counselor. These rules became obsolete as of January 1, 2007 and, therefore, DMV has replaced them.

Rules Coordinator: Brenda Trump—(503) 945-5278

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Rule Caption: Determining Hearing Location for Implied Consent Hearings.

Adm. Order No.: DMV 2-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 11-1-06

Notice Publication Date: 11-1-06

Rules Amended: 735-090-0101

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

Rules Coordinator: Brenda Trump—(503) 945-5278

735-090-0101

Hearing Location

(1) DMV designates the location of the hearing to be the location of the administrative law judge. The hearing must be held either in the county where the alleged offense occurred or at any place within 100 air miles of the place where the offense is alleged to have occurred. The administrative law judge may hold a hearing or portion of a hearing by telephone and permit a party or witness to appear in person at the hearing.

(2) If there is a mutual agreement between the petitioning party and DMV, a hearing or telephone hearing may be held at a location outside of either the county where the alleged offense occurred or 100 air miles of the place where the offense is alleged to have occurred.

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

Stats. Implemented: ORS 813.410 & 813.440

Hist.: DMV 23-2004, f. & cert. ef. 11-17-04; DMV 2-2007, f. & cert. ef. 1-24-07

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**Department of Transportation,
Highway Division
Chapter 734**

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

Adm. Order No.: HWD 1-2007

Filed with Sec. of State: 1-24-2007

Certified to be Effective: 1-24-07

Notice Publication Date: 12-1-06

Rules Amended: 734-010-0230, 734-010-0240

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

Rules Coordinator: Brenda Trump—(503) 945-5278

734-010-0230

Prequalification for Bidding

(1) Pursuant to ORS 279C.430(1), the Commission requires that all bidders be prequalified within the appropriate class(es) of work contained in the current Contractor's Prequalification Application adopted by ODOT.

(2) Special contractor prequalifications may be required in addition to the mandatory prequalification in subsection (1) when the elements of a particular public improvement project require specialized knowledge

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and/or expertise. When special prequalification is required, the Request for Special Contractor Prequalification will be advertised in the Daily Journal of Commerce.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 1-2007, f. & cert. ef. 1-24-07

734-010-0240

Conditions of Prequalification

(1) Applicants must be prequalified in the class(es) of work designated in the special provisions for the specific project in which the applicant desires to bid on ODOT contracts.

(2) Prequalification applications must be received at ODOT's address shown in the prequalification application at least 10 calendar days before the bid opening in which the applicant wishes to participate.

(3) If an applicant fails to complete the application as required or fails to submit the filing fee, ODOT will return the material submitted. Any changes or additional information required by ODOT must be submitted and signed by the same person that signed the original application. The changes and additional information must be attested to by a sworn affidavit. The applicant may send a new application that includes the changes or additional information required by ODOT.

(4) The date on which all required information has been received by ODOT's Procurement Office — Construction will be considered the receipt date of the prequalification application.

(5) Each member of a Joint Venture must be prequalified, with at least one of the Joint Venture members prequalified in each of the project's designated class(es) of work as defined in section (1) of this rule. A Joint Venture may be required to submit a joint venture agreement prior to award of the contract.

(6) Subcontractors are not required to be prequalified.

(7) All applicants desiring to prequalify shall:

(a) Complete and submit the Contractor's Prequalification Application, in accordance with the directions contained therein, setting forth their qualifications to satisfactorily carry out the work to be performed. The prequalification application is available on the ODOT Procurement Office, Construction website at <http://www.oregon.gov/ODOT/CS/OPO/construction/prequalification.shtml> or from the ODOT Procurement Office — Construction, 455 Airport Road SE, Building K, Salem, Oregon 97301-5348; and

(b) Submit a filing fee of \$100. In accordance with ORS 200.055(7), ODOT may collect a filing fee from applicants to cover the costs of the Department of Consumer and Business Services in administering ORS 200.005 to 200.075 and 279A.105. The \$100 fee must be submitted with the completed prequalification application to ODOT's address shown in the prequalification application.

(8) ODOT shall notify an applicant of acceptance or denial of prequalification within 30 days after receiving applicant's complete prequalification application and filing fee.

(9) Effective March 1, 2007, Prequalification is valid from March 1, 2007, or date of prequalification approval if later, through the last day of August, 2008. Thereafter, Prequalification is valid September 1 of the current calendar year, or date of prequalification approval if later, through the last day of August of the following calendar year. Applicants must renew their prequalifications with the \$100 filing fee annually.

(10) Applicants shall update their prequalification application with ODOT when information changes. Any change to an applicant's prequalification application must be received at ODOT's address shown in the prequalification application at least 10 days prior to bid opening if that information affects the bid submitted. Any changes requested by the applicant must be submitted and signed by the same person that signed the original application or by a person holding the same position as the person that signed the original application. The changes must be attested to by sworn affidavit. There is no charge to update an existing prequalification for minor changes such as changing an address, company name, or adding or deleting class(es) of work. Major changes must be submitted by a new prequalification application.

(11) Sections (2) through (10) of this rule also apply to applicants who use ODOT's prequalification system to prequalify for local agency projects.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430
Stats. Implemented: ORS 279C.430
Hist.: HWD 1-2005, f. 2-16-05, cert. ef. 3-1-05; HWD 1-2007, f. & cert. ef. 1-24-07

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

Adm. Order No.: HWD 2-2007

Filed with Sec. of State: 1-26-2007

Certified to be Effective: 1-26-07

Notice Publication Date: 12-1-06

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

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

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

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

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

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

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them into local plans, ordinances and development codes to implement an IAMP or AMP.

Changes to clarify, reorganize existing rule provision, or make grammatical corrections. The following are some of the notable changes:

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

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

Existing rules contained nearly duplicate lists of criteria for an AMP in OAR 734-051-0155(3) and OAR 734-051-0285(7). Amendments deleted the list of criteria in OAR 734-051-0285(7) and amended OAR 734-051-0285(4) to reference the criteria for AMPs under OAR 734-051-0155.

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

Rules Coordinator: Brenda Trump—(503) 945-5278

734-051-0020

Purpose and Applicability of Rules

(1) The purpose of division 51 rules is to provide a safe and efficient transportation system through the preservation of public safety, the improvement and development of transportation facilities, the protection of highway traffic from the hazards of unrestricted and unregulated entry from adjacent property, and the elimination of hazards due to highway grade intersections. These rules establish procedures and criteria used by the Department to govern highway approaches, access control, spacing standards, medians and restriction of turning movements in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans and consistent with Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), and the 1999 Oregon Highway Plan (OHP).

(2) The 1999 Oregon Highway Plan dated March 18, 1999 and all amendments approved by the Oregon Transportation Commission as of the adoption of this rule are hereby adopted by reference as the policy framework and investment priorities for implementing access management.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345
Stats. Implemented: ORS 374.305 - 374.350 & 374.990
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0030; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0035

Administration of Rules

(1) Approaches in existence and applications filed after March 1, 2004 are governed by these rules.

(2) Division 51 rules do not affect existing rights of owners of grandfathered approaches, except where these rules specifically state their application to grandfathered approaches, as in OAR 734-051-0045, Change of Use of an Approach. An approach no longer qualifies as grandfathered once the Department issues a Permit to Operate under Division 51 rules or the Department acquires access control, as defined in these rules.

(3) Consistent with ORS 374.312 the Department and local governments may enter into intergovernmental agreements allowing local governments to process applications and issue Construction Permits and Permits to Operate for private approaches to regional and district highways, including highways routed over city streets where the local government owns the right of way.

(4) Approval of a property for a particular use is the responsibility of city, county, or other governmental agencies, and an applicant must obtain appropriate approval from city, county, or other governmental agencies having authority to regulate land use. Approval of an application or issuance of a Construction Permit or a Permit to Operate is not a finding of compliance with statewide planning goals or an acknowledged comprehensive plan.

(5) Any notice or other communication by the Department is sufficient if mailed by first class mail to the person at the address on the application or where property tax statements for the property are sent. Any notice of an appealable decision is sufficient if sent by certified mail to the person at the address on the application or where property tax statements for the property are sent. The notice date is the date of mailing.

(6) Pursuant to ORS 374.310(3), the division 51 rules may not be exercised so as to deny any property adjoining the highway reasonable access and ORS 374.312(1)(c) requires adoption of rules establishing criteria for reasonable access consistent with ORS 374.310(3) criteria. These rules address "reasonable access" solely in the context of the issuance of approach permits. "Reasonable access" under these rules does not affect whether access may be reasonable for other purposes or under other reviews.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345
Stats. Implemented: ORS 374.305 - 347.350 & 374.990
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0050 & 734-051-0060; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0040

Definitions

The following definitions apply to division 51 rules:

(1) "1999 Oregon Highway Plan" means the 1999 Oregon Highway Plan and all amendments approved by the Oregon Transportation Commission as adopted by OAR 734-051-0020.

(2) "Access Control" means no right of access exists between a property abutting the highway and the highway. The right of access may have been acquired by the Department or eliminated by law.

(3) "Access Management Strategy" means a project delivery strategy that identifies the location and type of approaches and other necessary improvements that will occur primarily within the highway right of way and that is intended to improve current conditions of the section of highway by moving in the direction of the access management spacing standards.

(4) "Access Management Plan" means a plan for managing a designated section of highway or the influence area of an interchange to maintain and improve highway performance and safety. It is intended to improve current and future conditions on a section of highway or interchange by moving in the direction of the access management spacing standards and may address local street connectivity, local street improvements and local plans and land use regulations. An Access Management Plan may be developed independent of or in conjunction with a highway or interchange project, however an Access Management Plan is not a highway or interchange project.

(5) "Access Mitigation Proposal" means a proposal offered by an applicant that identifies the location and type of approaches and necessary improvements to the highway and that is intended to improve current conditions of the section of highway by moving in the direction of the access management spacing standards by combining or removing approaches resulting in a net reduction of approaches to that section of highway. An Access Mitigation Proposal must be approved by the Department, agreed to by all affected property owners, and real property interests must be recorded.

(6) "Alternate Access" means the physical existence of other means to access a property than the proposed approach, such as an existing public right of way, another location on the subject state highway, an easement across adjoining property, a different highway, a service road, or an alley, including singularly or as a joint approach, but without a conclusive determination that the alternate access is "reasonable" as defined in section (5) of this rule.

(7) "Appealable decision" means a decision by the Department that may be appealed through a Region Review as set forth in OAR 734-051-0345 or a Contested Case Hearing as set forth in OAR 734-051-0355. An appealable decision includes a decision to deny an application or to deny a deviation or approval of an application with mitigation measures.

(8) "Applicant" means a person, firm or corporation, or other legal entity that applies for an approach or deviation including an owner or lessee, or an option holder of a property abutting the highway, or their designated agent.

(9) "Application" means a completed form Application for State Highway Approach including any required documentation and attachments necessary for the Department to determine if the application can be deemed complete.

(10) "Approach" means a legally constructed, approach road or private road crossing, recognized by the Department as grandfathered or existing under a valid Permit to Operate.

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(11) "Approach road" means a legally constructed, public or private connection, providing vehicular access to and/or from a highway and an adjoining property.

(12) "Classification of highways" means the Department's state highway classifications defined in the **1999 Oregon Highway Plan**.

(13) "Commission" means the Oregon Transportation Commission.

(14) "Construction Permit" means a Permit to Construct a State Highway Approach including all attachments, required signatures, and conditions and terms.

(15) "Crash history" means at least the three most recent years of crash data recorded by the Department's Crash Analysis and Reporting Unit.

(16) "Day" means calendar day, unless specifically stated otherwise.

(17) "Deemed complete" means an application and all required supplemental documentation necessary for the Department to review and assess the application and determine if a Construction Permit or a Permit to Operate may be issued.

(18) "Department" or "ODOT" means the Oregon Department of Transportation.

(19) "Deviation" means a departure from the access management spacing standards.

(20) "Division 51" means Oregon Administrative Rules (OAR) 734-051-0010 through 734-051-0560 and **Tables 1, 2, 3, 4, 5, 6 and 7** adopted and made a part of division 51 rules and **Figures 1, 2, 3 and 4** adopted and made a part of division 51 rules.

(21) "Double-Frontage Property" means a property with a right of access to more than one state highway.

(22) "Executive Deputy Director" means the Executive Deputy Director for Highway Division of the Oregon Department of Transportation.

(23) "Expressway" means a segment of highway defined in the **1999 Oregon Highway Plan** and classified by the Oregon Transportation Commission.

(24) "Fair Market Value" means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy.

(25) "Freeway or Expressway ramp" means all types, arrangements, and sizes of turning roadways for right or left turning vehicles that connect two or more legs at an interchange and the components of a ramp area terminal at each leg and a connection road, usually with some curvature and on a grade.

(26) "Grandfathered approach" means a legally constructed approach existing prior to 1949. A property owner has the burden to prove an approach is grandfathered based upon existence prior to 1949. For purposes of this Division, grandfathered approaches also include approaches presumed in compliance as set forth in OAR 734-051-0285(7) and approaches intended to remain open that were improved in conjunction with a Department project prior to April 1, 2000, as set forth in OAR 734-051-0285(9).

(27) "Grant of Access" means the conveyance or evidence of the conveyance from the Department of a specific right of access at a location where an abutting property currently does not have that specific right of access.

(28) "Highway mobility standards" mean the established standards for maintaining mobility as defined in the 1999 Oregon Highway Plan.

(29) "Highway segment designations" mean the four categories of designations, Special Transportation Area, Commercial Centers, Urban Business Areas, and Urban, defined in the 1999 Oregon Highway Plan.

(30) "Indenture of Access" means a deeded conveyance that changes the location, width, or use restrictions of an existing reservation of access.

(31) "Infill" means development of vacant or remnant land passed over by previous development and that is consistent with zoning. Infill occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below 45 miles per hour.

(32) "Influence area of an interchange" means the area 1320 feet from an interchange ramp terminal measured on the crossroad away from the mainline.

(33) "Interchange" means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

(34) "Interchange Area Management Plan" means a plan for managing a grade-separated interchange area to ensure safe and efficient operation between connecting roadways and to protect the functional integrity, operations, and safety of the interchange. An Interchange Area Management Plan may be developed independent of or in conjunction with an interchange project and may address local street connectivity, local street improvements and local plans and land use regulations. An Interchange Area Management Plan is not an interchange project.

(35) "Intersection" means an area where two or more highways or an approach and a highway join or cross at grade.

(36) "Land Use Action" means an action by a local government or special district concerning the adoption, amendment or application of the statewide planning goals, a comprehensive plan provision, or a land use regulation including zoning or subdivision codes.

(37) "Median" means the portion of the roadway separating opposing traffic streams.

(38) "Mitigation Measures" mean conditions, improvements, modifications, and restrictions set forth in OAR 734-051-0145 and required by the Department or initiated by an applicant for approval of a deviation or an application.

(39) "Move in the direction of" means that changes in the approach(es) to a property abutting the highway would bring a site closer to conformance with existing highway standards including where existing approaches to the highway or expressway are combined or eliminated resulting in a net reduction in the number of approaches to the highway or expressway, improvements in spacing of private approaches or public approaches, or improvements to intersection sight distance.

(40) "Peak hour" means the highest one-hour volume observed on an urban roadway during a typical or average week or the 30th highest hourly traffic volume on a rural roadway typically observed during a year.

(41) "Permit to Construct" means a Permit to Construct a State Highway Approach including all attachments, required signatures, conditions and terms, and performance bonds or insurance.

(42) "Permit to Operate" means a Permit to Operate, Maintain and Use a State Highway Approach including all required signatures and attachments, and conditions and terms.

(43) "Permitee" means a person, firm or corporation, or other entity holding a valid Permit to Operate including the owner or lessee of the property abutting the highway or their designated agent.

(44) "Permitted approach" means a legally constructed approach existing under a valid Permit to Operate.

(45) "Planned" means not currently existing but anticipated for the future when referring to items such as a roadway or utility connection shown in a corridor plan, or comprehensive plan, or transportation system plan.

(46) "Private approach" means an approach serving one or more properties and is not a public approach as defined in section (50) of this rule.

(47) "Private road crossing" means a legally constructed, privately owned road designed for use by trucks which are prohibited by law from using state highways, county roads, or other public highways.

(48) "Professional Engineer" means a person registered and holding a valid certificate to practice engineering in the State of Oregon, as provided in ORS 672.002 through 672.325, with expertise in traffic engineering, as provided in OAR 820-040-0030.

(49) "Project Delivery" means the allocation of resources to plan and construct new highways or modify and improve existing highways.

(50) "Public approach" means an approach serving multiple properties, owned and operated by a public entity, and providing connectivity to the local road system.

(51) "Reasonable Access" means the ability to access a property in a manner that meets the criteria under ORS 374.310(3).

(52) "Redevelopment" means the act or process of changing existing development including replacement, remodeling, or reuse of existing structures to accommodate new development that is consistent with current zoning. Redevelopment occurs in urban areas. It may also occur in rural areas on commercial or industrial zoned land where the land has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below 45 miles per hour.

(53) "Region Access Management Engineer" means a professional engineer employed by the Department who by training and experience has comprehensive knowledge of the Department's access management rules, policies, and procedures, or as specified in an Intergovernmental Agreement delegating permitting authority as set forth in OAR 734-051-0035(3).

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(54) "Region Manager" means the person in charge of one of the Department's Transportation Regions or designated representative.

(55) "Reservation of Access" means a limitation of a common law right of access to a specific location where the Department has acquired access control subject to restrictions that are designated in a deed. A reservation of access may include a use restriction limiting the right of access to a specified use or restriction against a specified use. A use restriction included in a reservation of access does not restrict turning movements nor does the absence of a use restriction allow unrestricted turning movements. A reservation of access affords the right to apply for an approach but does not guarantee approval of an Application for State Highway Approach or the location of an approach.

(56) "Restricted Use Approach" means an approach that is intended to provide vehicular access for a specific use and for a limited volume of traffic. Such uses are determined by the Department and may include emergency services, government, and utility uses. A mitigation required as a part of approach permit approval or a condition on a construction permit does not by itself create a "restricted use approach."

(57) "Right of access" means the right of ingress and egress to the roadway and includes a common law right of access, reservation of access, or grant of access.

(58) "Right of way" means real property or an interest in real property owned by the Department as defined in the 1999 Oregon Highway Plan.

(59) "Rural" means the area outside the urban growth boundary, the area outside a Special Transportation Area in an unincorporated community, or the area outside an Urban Unincorporated Community defined in OAR 660-022-0010(9).

(60) "Safety factors" include the factors identified in OAR 734-051-0080(9).

(61) "Signature" means the signature of the specific individual or an authorized officer of the corporation or partnership and must include the name of the corporation or partnership licensed as set forth in ORS 60.111, and which maintains a registered agent and registered office in this state.

(62) "Spacing Standards" mean Access Management Spacing Standards as set forth in OAR 734-051-0115 and specified in Tables 1, 2 and 3 adopted and made a part of division 51 rules and Access Management Spacing Standards for Approaches in an Interchange Area as set forth in OAR 734-051-0125 and specified in Tables 4, 5, 6 and 7 and Figures 1, 2, 3 and 4, adopted and made a part of division 51 rules.

(63) "Temporary approach" means an approach that is constructed, maintained, and operated for a specified period of time not exceeding two years, and removed at the end of that period of time.

(64) "Traffic Impact Study" means a report prepared by a professional engineer that analyzes existing and future roadway conditions resulting from the applicant's development.

(65) "Trip" means a one-way vehicular movement. A vehicle entering a property and later exiting that property has made two trips.

(66) "Urban" means the area within the urban growth boundary, within a Special Transportation Area of an unincorporated community, or within an Urban Unincorporated Community defined in OAR 660-022-0010(9).

(67) "Vehicle trips per day" means the total of all one-direction vehicle movements with either the origin or destination inside the study site that includes existing, primary, pass by, and diverted linked trips and is calculated in accordance with the procedures contained in the current edition of the Institute of Transportation Engineers (ITE) publications Trip Generation and Trip Generation Handbook. Adjustments to the standard rates in the ITE publications for mode split may be allowed if calculated in accordance with Transportation Planning Rule and the ITE procedures. Adjustments to the standard rates for multi-use internal site trips may be allowed if calculated in accordance with ITE procedures and if the internal trips do not add vehicle movements to the approaches to the highway.

(68) "Vehicular Access" means access by motorized vehicles to a property from a street, roadway, highway, easement, service road, or alley including singular or joint access.

(69) "Work Day" means Monday through Friday and excludes holidays.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Tables & Figures referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312, 374.313 & 374.345
Stats. Implemented: ORS 374.305 - 374.345 & 374.990
Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0010; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0070

Application Procedure and Timelines

(1) The Department shall document decisions made under Division 51 rules with written findings and shall provide written notice to applicants:

- (a) Written findings shall be provided to the applicant upon request;
- (b) Materials submitted by the applicant become the property of the Department;

(c) The Region Manager may waive requirements for information and documentation required from an applicant depending on the nature of the application and on the sufficiency of other information available to the Department for its evaluation of an application;

(d) Where necessary to comply with the permitting criteria under Division 51 rules, approval of an application may be conditioned upon significant changes to a proposed site plan including relocation of buildings, parking, circulation, reduction of intensity of use, or variances from local jurisdictions; and

(e) Approval of an application may require mitigation measures set forth in OAR 734-051-0145.

(2) The Department, applicant, or local government may request a pre-application meeting to discuss the approach application process.

(3) An application is required:

- (a) For a new approach to a state highway;
- (b) When a change of use occurs as set forth in OAR 734-051-0045;
- (c) For a temporary approach to a state highway; or
- (d) For a restricted use approach to a state highway.

(4) An application accompanied by a site plan must be submitted for each approach requested. All of the following apply to an application:

(a) The Department shall not accept an application for an approach to a freeway, a freeway ramp, or an expressway ramp, or where an approach would be aligned opposite a freeway or expressway ramp terminal.

(b) The Department shall require written evidence of concurrence by the owner where an applicant is not the property owner.

(c) The Department may refuse to accept an application that is incomplete or contains insufficient information to allow the Department to determine if supplemental documentation is required or otherwise determine that the application may be deemed complete.

(5) The Department shall determine if an application is deemed complete:

(a) Within 30 days of accepting an application when section (6) of this rule does not require supplemental documentation; or

(b) When the supplemental documentation is received and the Department determines that the supplemental documentation is sufficient to evaluate the application, if section (6) of this rule requires supplemental documentation.

(6) The Department may require supplemental documentation before an application is deemed complete, and the Region Manager:

(a) May conduct an on-site review to determine the need for supplemental documentation before an application is deemed complete. The on-site review area includes both sides of the highway in the vicinity of the proposed approach including:

- (A) The site frontage;
- (B) All approaches; and
- (C) The nearest public intersections within a distance less than the applicable spacing standard distance.

(b) May meet with the applicant to discuss the supplemental documentation including definition and degree of specification;

(c) Shall notify an applicant, within 30 days of accepting an application, of the supplemental documentation necessary for an application to be deemed complete;

(d) Shall notify an applicant, within 30 days of accepting an application, that an application may not be deemed complete where no right of access exists; and

(A) An applicant may apply for an Application for a Grant of Access or Application for an Indenture of Access;

(B) An application for a Grant of Access or Application for an Indenture of Access must be submitted concurrently with an Application for State Highway Approach;

(C) OAR 734-051-0295 through 734-051-0335 govern modification of access rights:

(i) To state highways and other public roads from property where the Department has access control; and

(ii) To state highways from property owned or controlled by cities or counties where the Department has access control where a public road connection is requested.

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(D) Submittal of an Application for a Grant of Access or Application for an Indenture of Access stays the 120-day timeline in section (8) of this rule;

(E) The timeline for processing an Application for a Grant of Access and completing the appraisals and property transactions may be up to 365 days depending on the complexity of the request; and

(F) The timeline for processing an Application for an Indenture of Access may be up to 60 days depending on the complexity of the request.

(e) May require a Traffic Impact Study for:

(A) Proposed developments generating vehicle trips that equal or exceed 600 daily trips or 100 hourly trips; or

(B) Proposed zone changes or comprehensive plan changes;

(f) Shall require a Traffic Impact Study for proposed developments or land use actions where the on-site review indicates that operational or safety problems exist or are anticipated; and

(g) Shall notify the applicant that required supplemental documentation, including an application for a grant of access or indenture of access, must be submitted within 60 days of the date of notice of supplemental documentation or the application expires.

(7) All of the following apply when a Traffic Impact Study is required:

(a) A Professional Engineer employed by the Department shall determine the scope of the study and shall review and comment on the study.

(b) Future year analyses apply to both public and private approaches and include year of each phase opening and future year beyond build out, based on vehicle trips per day and type of land use action, but not greater than the year of planning horizon for transportation system plans or 15 years, whichever is greater.

(c) A Professional Engineer must prepare the study in accordance with methods and input parameters approved by the Department.

(d) The scope and detail of the study must be sufficient to allow the Department to evaluate the impact of the proposal and the need for roadway capacity, operational, and safety improvements resulting from the approach.

(e) The study must identify the data and the application of data in the analysis.

(f) The study may be sufficient to satisfy the requirements of this rule without being adequate to satisfy local government requirements or the Transportation Planning Rule.

(8) When necessary to comply with the permitting criteria of division 51 Rules the Department shall evaluate an application that is deemed complete and shall approve or deny that application within 120 days including a final order as set forth in OAR 734-051-0355:

(a) The final 60 days of the 120 days are reserved for the Contested Case Hearing process set forth in OAR 734-051-0355;

(b) The Department shall use division 51 and ORS Chapter 374 and may use other applicable statutes, administrative rules, or manuals to evaluate and act on an application;

(c) If an application is approved, the Department shall issue a Construction Permit or a Permit to Operate as set forth in sections (10) through (13) of this rule; and

(d) Denial of an application is an appealable decision.

(9) If approval of an approach requires a deviation from access management spacing standards or access management spacing standards for approaches in an interchange area, a Traffic Impact Study may be required and the Department may approve or deny the deviation as set forth in OAR 734-051-0135:

(a) Approval of a deviation may be conditioned upon changes to a proposed site plan including relocation of buildings, changes to parking or circulation, reduction of the intensity of use, or variances from local jurisdiction regulations; and

(b) Denial of a deviation from spacing standards is an appealable decision.

(10) If a land use action is pending, including an appeal of a final land use decision or a limited land use decision, for a property for which an application has been submitted, the application may be accepted and processed:

(a) Approval will be conditioned on the Department receiving notice of approval of the land use action shown on the application.

(b) A Construction Permit may be issued while the local land use action is pending. A deposit may be required, to be determined in the manner used for a Temporary Approach in OAR 734-051-0095(2), to ensure that the approach will be removed if the land use is not approved.

(c) A Permit to Operate shall not be issued until the applicant provides the Department with written proof of final land use decision.

(11) To obtain a Construction Permit an applicant must submit construction drawings and plans within 60 days of notice of approval of an application when use of the Department's standard drawings is not appropriate. The Region Manager determines the acceptability of submitted construction plans. If plans are not submitted within the 60 days and no request for extension is received within that time, the approval will be void.

(12) The Department shall issue a Construction Permit as set forth in OAR 734-051-0175 upon approval of an application and approval of construction drawings and plans where required; and

(a) An approach approved by a Construction Permit must be constructed as required by OAR 734-051-0175 through 734-051-0245; and

(b) An applicant must have insurance, bonds, and deposits in place before construction begins and must provide 30 days written notice of cancellation or intent not to renew insurance coverage as set forth in OAR 734-051-0215.

(13) The Department shall issue a Permit to Operate as set forth in OAR 734-051-0245.

(14) An applicant may request a Region Review of an appealable decision within 21 days of notice of that decision as set forth in OAR 734-051-0345:

(a) An applicant may request a collaborative discussion within the Region Review process; and

(b) The Region Review process stays the 120-day timeline for approval or denial of an application.

(c) An applicant may request a Contested Case Hearing following a Region Review and the hearing will be on the original decision.

(15) An applicant may request a Contested Case Hearing of an appealable decision within 21 days of notice of that decision, or within 21 days of notice of a Region Review decision, as set forth in OAR 734-051-0355.

(16) Division 51 timelines may be extended if the applicant and the Department agree in writing before the applicable deadline, as specified in these rules. Any agreement to extend a timeline shall include a new deadline date and shall state the reason for the extension. Applications for which an extension of time has been issued will expire on the deadline date specified in the extension letter if no new extension has been agreed to and the activities for which the deadline was extended have not been completed.

(17) An application will expire after 120 days of inactivity on the part of the applicant if the Department sends a reminder letter to notify the applicant that 90 days have passed with no activity, and advising that the application will expire in 30 days if the application continues to be inactive. Submittal of any information after the date of expiration will require a new application.

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

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: 1 OTC 43, f. 11-26-74, ef. 12-1-74; 1 OTC 20-1980, f. & ef. 10-22-80; 2HD 13-1981, f. & ef. 10-2-81; TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; Renumbered from 734-050-0015; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0090 & 734-051-0100; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0115

Access Management Spacing Standards for Approaches

(1) Access management spacing standards for approaches to state highways:

(a) Are based on the classification of the highway and highway segment designation, type of area, and posted speed;

(b) Apply to properties abutting state highways, highway or interchange construction and modernization projects, and planning processes involving state highways or other projects determined by the Region Manager; and

(c) Do not apply to approaches in existence prior to April 1, 2000 except where any of the following occur:

(A) These standards will apply to private approaches at the time of a change of use.

(B) If infill development or redevelopment occurs, spacing and safety factors will improve by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(C) For a highway or interchange construction or modernization project or other roadway or interchange project determined by the Region Manager, the project will improve spacing and safety factors by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(2) Spacing standards in Tables 1, 2 and 3 adopted and made a part of this rule, identify the spacing standards. The Region Access Management Engineer may apply the 'urban' standards to infill or redevelopment projects in a rural area on commercial or industrial zoned land where the land

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has been developed into an urban block pattern including a local street network, and the posted highway speed is at or below 45 miles per hour.

(3) An applicant may provide evidence to support a determination that an approach is located in a commercially zoned area that has the characteristics established in the Oregon Highway Plan for a Special Transportation Area (STA) or for an Urban Business Area (UBA), in which case the spacing standards for such segment designation may be applied to the application. A decision by local government or by the Oregon Transportation Commission to either designate or not designate an STA and/or UBA makes this provision unavailable. This provision may not be applied where a management plan would be required for an STA or a UBA under the provisions of the Oregon Highway Plan.

(4) Deviations must meet the criteria in OAR 734-051-0135.

(5) Location of traffic signals on state highways must meet the criteria of OAR 734-020-0400 through 734-020-0500.

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 374.305 - 374.345 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04 cert. ef. 3-1-04, Renumbered from 734-051-0190; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0125

Access Management Spacing Standards for Approaches in an Interchange Area

(1) Tables 4, 5, 6 and 7 identify the spacing standards for approaches in the area of an interchange, which are shown in Figures 1, 2, 3 and 4. These tables and figures are adopted and made a part of this rule. The spacing standards:

(a) Are based on classification of highway and highway segment designation, type of area, and posted speed;

(b) Apply to properties abutting state highways, highway or interchange construction and modernization projects, planning processes involving state highways, or other projects determined by the Region Manager; and

(c) Do not apply to approaches in existence prior to April 1, 2000 except where any of the following occur:

(A) These standards will apply to private approaches at the time of a change of use.

(B) If infill development or redevelopment occurs, spacing and safety factors will improve by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(C) For a highway or interchange construction or modernization project or other roadway or interchange project determined by the Region Manager, the project will improve spacing and safety factors by moving in the direction of the access management spacing standards, with the goal of meeting or improving compliance with the access management spacing standards.

(2) When the Department approves an application:

(a) Access spacing standards for approaches in the area of an interchange shown in Figures 1, 2, 3 and 4 must be met or approaches must be combined or eliminated to result in a net reduction of approaches to the state highway and improve compliance with spacing standards; and

(b) The approach must be consistent with any applicable Access Management Plan or Interchange Area Management Plan.

(3) Deviations must meet the criteria in OAR 734-051-0135.

(4) Location of traffic signals within an interchange area illustrated in Figures 1, 2, 3 and 4 must meet the criteria of OAR 734-020-0400 through 734-020-0500.

(5) The Department should acquire access control on crossroads around interchanges for a distance of 1320 feet. In some cases it may be appropriate to acquire access control beyond 1320 feet.

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

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0200; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0145

Mitigation Measures

(1) The Department may require mitigation measures on the state highway or the subject property to comply or improve compliance with the division 51 rules for continued operation of an existing approach or construction of a new approach.

(2) Unless otherwise set forth in division 51 rules, the cost of mitigation measures is the responsibility of the applicant, permittee, or property owner as set forth in OAR 734-051-0205.

(3) Mitigation measures may include:

(a) Modifications to an approach;

(b) Modifications of on-site storage of queued vehicles;

(c) Installation of left turn or right turn channelization or deceleration lanes;

(d) Modifications to left turn or right turn channelization or deceleration lanes;

(e) Modifications required to maintain intersection sight distance;

(f) Modification or installation of traffic signals or other traffic control devices;

(g) Modification of the highway;

(h) Modification or installation of curbing;

(i) Consolidation of existing approaches or provisions for joint use accesses;

(j) Installation of raised medians;

(k) Restriction of turn movements for circumstances including:

(A) The proximity of existing approaches or offset of opposing approaches;

(B) Approaches within an Interchange Management Area;

(C) Approaches along an Expressway;

(D) Areas of insufficient decision sight distance for speed;

(E) The proximity of railroad grade crossings;

(F) Approaches with a crash history involving turning movements;

(G) The functional area of an intersection; and

(H) Areas where safety or traffic operation problems exist.

(I) Installations of sidewalks, bicycle lanes, or transit turnouts;

(m) Development of reasonable alternate access; and

(n) Modifications of local streets or roads along the frontage of the site.

(4) Mitigation measures are directly related to the impacts of the particular approach on the highway and the scale of the mitigation measures will be directly proportional to those impacts, as follows:

(a) Where safety standards can be met by mitigation measures located entirely within the property controlled by the applicant or within existing state right of way, that will be the preferred means of mitigation.

(b) Where safety standards cannot be met with measures located entirely within the property controlled by the applicant or within existing state right of way, ODOT will make an effort to participate in negotiations between the applicant and other affected property owners or assist the applicant to take necessary actions.

(c) When cumulative effects of existing and planned development create a situation where approval of an application would require mitigation measures that are not directly proportional to the impacts of the proposed approach, the Region Manager may allow mitigation measures to mitigate impacts as of the day of opening and defer mitigation of future impacts to ODOT project development provided the applicant conveys any necessary right of way to ODOT prior to development of the subject approach.

(5) Mitigation to an alternate access may be more significant where the property fronts a higher classification of highway than where the property fronts a lower classification of highway.

(6) An applicant may propose an Access Mitigation Proposal or an Access Management Plan to be implemented by the applicant or the local jurisdiction.

(7) The Department will work with the local jurisdiction and the applicant to establish mitigation measures and alternative solutions including:

(a) Changes to on-site circulation;

(b) On-site improvements; and

(c) Modifications to the local street network.

(8) Where mitigation measures include traffic controls:

(a) The applicant bears the cost of the controls and constructs required traffic controls within a timeframe identified by the Department or reimburses the Department for the cost of designing, constructing, or installing traffic controls; and

(b) An applicant that is a lessee must provide evidence of compliance with required traffic controls and must identify the party responsible for construction or installation of traffic controls during and after the effective period of the lease.

(9) Traffic signals are approved in the following priority:

(a) Traffic signals for public approaches.

(b) Private approaches identified in a transportation system plan to become public.

(c) Private approaches.

(10) Traffic signals are approved with the following requirements:

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(a) A signalized private approach must meet spacing standards for signalization relative to all planned future signalized public road intersections; and

(b) The effect of the private approach must meet traffic operations standards, signals, or signal systems standards in OAR 734-020-0400 through 734-020-0500 and 734-051-0115 and 734-051-0125.

(11) All highway improvements within the right of way resulting from mitigation constructed by the permittee, and inspected and accepted by the Department, become the property of the Department.

(12) Approval of an application with mitigation measures is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345
Stats. Implemented: ORS 374.305 - 374.350 & 374.990
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0210; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0155

Access Management Plans and Interchange Area Management Plans

(1) The Department encourages the development of Access Management Plans and Interchange Area Management Plans to maintain and improve highway performance and safety by improving system efficiency and management before adding capacity. Access Management Plans and Interchange Area Management Plans:

- (a) Must be consistent with Oregon Highway Plan;
- (b) Must be used to evaluate development proposals; and
- (c) May be used to determine mitigation for development proposals.

(2) Access Management Plans and Interchange Area Management Plans must be adopted by the Oregon Transportation Commission as a transportation facility plan consistent with the provisions of OAR 731-015-0065. Prior to adoption by the Oregon Transportation Commission, the Department will work with local governments on any amendments to local comprehensive plans and transportation system plans and local land use and subdivision codes to ensure the proposed Access Management Plan and Interchange Area Management Plan is consistent with the local plan and codes.

(3) The priority for developing Access Management Plans should be placed on facilities with high traffic volumes or facilities that provide important statewide or regional connectivity where:

- (a) Existing developments do not meet spacing standards;
 - (b) Existing development patterns, land ownership patterns, and land use plans are likely to result in a need for deviations; or
 - (c) An Access Management Plan would preserve or enhance the safe and efficient operation of a state highway or interchange.
- (4) An Access Management Plan may be developed:
- (a) By the Department;
 - (b) By local jurisdictions; or
 - (c) By consultants.

(5) An Access Management Plan must comply with all of the following criteria, unless the Plan documents why a criterion is not applicable:

(a) Include sufficient area to address highway operation and safety issues and development of adjoining properties including local access and circulation.

(b) Describe the roadway network, right-of-way, access control, and land parcels in the analysis area.

(c) Be developed in coordination with local governments and property owners in the affected area.

(d) Be consistent with any applicable Interchange Area Management Plan, corridor plan, or other facility plan adopted by the Oregon Transportation Commission.

(e) Include polices, provisions and standards from local comprehensive plans, transportation system plans, and land use and subdivision codes that are relied upon for consistency and that are relied upon to implement the Access Management Plan.

(f) Contain short, medium, and long-range actions to improve operations and safety and preserve the functional integrity of the highway system.

(g) Consider whether improvements to local street networks are feasible.

(h) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway segment designation.

(i) Consider the use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(j) Provide a comprehensive, area-wide solution for local access and circulation that minimizes use of the state highway for local access and circulation.

(6) The Department encourages the development of an Interchange Area Management Plan to plan for and manage grade-separated interchange areas to ensure safe and efficient operation between connecting roadways:

(a) Interchange Area Management Plans are developed by the Department and local governmental agencies to protect the function of interchanges by maximizing the capacity of the interchanges for safe movement from the mainline facility, to provide safe and efficient operations between connecting roadways, and to minimize the need for major improvements of existing interchanges;

(b) The Department will work with local governments to prioritize the development of Interchange Area Management Plans to maximize the operational life and preserve and improve safety of existing interchanges not scheduled for significant improvements; and

(c) Priority should be placed on those facilities on the Interstate system with cross roads carrying high volumes or providing important statewide or regional connectivity.

(7) An Interchange Area Management Plan is required for new interchanges and should be developed for significant modifications to existing interchanges. An Interchange Area Management Plan must comply with the following criteria, unless the Plan documents why compliance with a criterion is not applicable:

(a) Be developed no later than the time an interchange is designed or is being redesigned.

(b) Identify opportunities to improve operations and safety in conjunction with roadway projects and property development or redevelopment and adopt policies, provisions, and development standards to capture those opportunities.

(c) Include short, medium, and long-range actions to improve operations and safety within the designated study area.

(d) Consider current and future traffic volumes and flows, roadway geometry, traffic control devices, current and planned land uses and zoning, and the location of all current and planned approaches.

(e) Provide adequate assurance of the safe operation of the facility through the design traffic forecast period, typically 20 years.

(f) Consider existing and proposed uses of all the property within the designated study area consistent with its comprehensive plan designations and zoning.

(g) Be consistent with any applicable Access Management Plan, corridor plan or other facility plan adopted by the Oregon Transportation Commission.

(h) Include polices, provisions and standards from local comprehensive plans, transportation system plans, and land use and subdivision codes that are relied upon for consistency and that are relied upon to implement the Interchange Area Management Plan.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345
Stats. Implemented: ORS 374.305 to 374.350 & 374.990
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0360; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0225

Post-Decision Review Procedure for Construction Permits

(1) An applicant may request a post-decision review to modify a Construction Permit if:

- (a) Ambiguities or conflicts exist in the Construction Permit;
- (b) New and relevant information concerning the approach or the Construction Permit is available; or
- (c) Requirements of local governments or state agencies are relevant to the modification of the Construction Permit.

(2) The Region Manager shall determine if a request for a post-decision review meets the criteria in section (1) of this rule.

(3) The Region Manager may conduct a post-decision review and may modify the Construction Permit.

(4) A post-decision review does not stay the time period to request a Region Review or Contested Case Hearing.

(5) A post-decision review decision to modify a construction permit is an appealable decision.

Stat. Auth.: ORS 184.616, 184.619, 374.310, 374.312 & 374.345
Stats. Implemented: ORS 374.305 - 374.350 & 374.990
Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0235; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0285

Project Delivery

(1) This rule applies to access management on projects involving construction of new highways and interchanges, highway or interchange modernization projects, highway and interchange preservation projects, high-

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way and interchange operations projects, or other highway and interchange projects. The Department encourages the development of Access Management Strategies and Access Management Plans during project delivery to maintain and improve highway performance and safety by improving system efficiency and management before adding capacity. Access Management Plans and Access Management Strategies developed during project delivery must improve access management conditions to the extent reasonable within the limitation, scope, and purpose of the project and consistent with design parameters and available funds.

(2) This rule does not create an obligation that the Department apply documentation requirements in OAR 734-051-0070(1) or the standards and criteria in OAR 734-051-0080, 734-051-0115, 734-051-0125, 734-051-0275 or 734-051-0295 through 734-051-0335.

(3) The Region Manager shall develop Access Management Strategies for modernization projects, projects within an influence area of an interchange where the project includes work along the crossroad, or projects on an expressway and may develop Access Management Strategies for other highway projects.

(4) Except where the Region Manager documents the reasons why an Access Management Plan is not appropriate, the Region Manager shall develop an Access Management Plan for highway modernization projects and for interchange modernization projects where the project includes work along the crossroad. Access Management Plans are developed under the requirements of OAR 734-051-0155.

(5) The Region Manager may require modification, mitigation or removal of approaches within project limits:

(a) Pursuant to either:

(A) An Access Management Plan or an Interchange Area Management Plan adopted by the Oregon Transportation Commission; or

(B) An approved Access Management Strategy; and

(b) If necessary to meet the classification of highway or highway segment designation, mobility standards, spacing standards or safety factors; and

(c) If a property with an approach to the highway has multiple approaches and if a property with an approach to the highway has alternate access in addition to the highway approach.

(d) The determination made under subsections (a) through (c) of this section must conclude that the net result of the project including closures, modification and mitigations will be that access will remain adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property.

(6) An Access Management Strategy may be developed for the project limits, a specific section of the highway within the project limits, or to address specific safety or operation issues within the project limits. An Access Management Strategy must:

(a) Describe the criteria for actions that will be taken during the project and that will occur primarily within the highway right of way, within the project limits.

(b) Be consistent with the **1999 Oregon Highway Plan**.

(c) Promote safe and efficient operation of the state highway consistent with the highway classification and the highway segment designation.

(d) Provide for reasonable use of the adjoining property consistent with the comprehensive plan designation and zoning of the area.

(e) Be developed in coordination with local governments to facilitate any actions needed on the part of local governments to implement the Access Management Strategy.

(7) All approaches in an area that is not access controlled that are identified to remain open in an Access Management Strategy or Access Management Plan are presumed to be in compliance with Division 51 rules once any measures prescribed for such compliance by the plan are completed. Subsequent changes will be measured from that status. However, that status does not convey a grant of access.

(8) In the event of a conflict between the access management spacing standards and the access management spacing standards for approaches in an interchange area the more restrictive provision will prevail. These spacing standards are used to develop Access Management Plans and where appropriate:

(a) Support improvements such as road networks, channelization, medians, and access control, with an identified committed funding source, and consistent with the **1999 Oregon Highway Plan**;

(b) Ensure that approaches to cross streets are consistent with spacing standards on either side of the ramp connections; and

(c) Support interchange designs that consider the need for transit and park-and-ride facilities and the effect of the interchange on pedestrian and bicycle traffic.

(9) Notwithstanding other provisions of this Division, the Region Manager, not a designee, may recognize an approach to be in compliance where there is no Access Control, and where construction details for a Department project show the intention to preserve the approach as a part of that project, as documented by plans dated before April 1, 2000.

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

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0370; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0295

Grants of Access

(1) A grant of access establishes a right of access; and

(a) For a grant of access approved prior to April 1, 2000, the grant of access does not guarantee approval of an Application for State Highway Approach or issuance of a Construction Permit or Permit to Operate; and

(b) Subsequent to April 1, 2000, the Department may approve an Application for a Grant of Access only where an Application for State Highway Approach or a Construction Permit or Permit to Operate may be approved.

(2) The applicant for a grant of access must be the owner of the property abutting the highway right of way or the owner's designated agent.

(3) The Department shall not approve an Application for a Grant of Access for a private approach:

(a) On a freeway, freeway mainlines, or freeway ramp;

(b) On an expressway or expressway ramp;

(c) Opposite a freeway or expressway ramp terminal; or

(d) In an Interchange Management Area.

(4) The Department may approve an Application for a Grant of Access to private property abutting a state and local facility where all of the following conditions are met:

(a) An applicant submits an Application for State Highway Approach as set forth in OAR 734-051-0070 and concurrently submits an Application for a Grant of Access, as set forth in OAR 734-051-0305.

(b) An applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175.

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the Construction Permit and the Permit to Operate.

(d) The grant of access is consistent with the 1999 Oregon Highway Plan.

(e) One of the following occurs:

(A) The Department determines that access control is no longer needed at the location specified in the Application for a Grant of Access as set forth in section (7) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-0085(1) and (2).

(f) Alternate access to the property is not and cannot be made reasonable as set forth in OAR 734-051-0080(8).

(g) The property owner must agree to deed restrictions to ensure that future development intensity and trip generation can be safely accommodated by the state transportation system.

(h) The application is approved by the Region Manager and reviewed by the State Traffic Engineer, and approved by the Technical Services Manager.

(5) The Department shall not approve an Application for a Grant of Access for a public approach:

(a) On a freeway, freeway mainlines, or freeway ramp;

(b) On an expressway ramp;

(c) Opposite a freeway or expressway ramp terminal; or

(d) In an Interchange Management Area.

(6) The Department may approve an Application for a Grant of Access for a public approach to a state highway where all of the following conditions are met:

(a) An applicant submits an Application for State Highway Approach, as set forth in OAR 734-051-0070 and concurrently submits an Application for a Grant of Access, as set forth in OAR 734-051-0305.

(b) The applicant meets the requirements for issuance of a Construction Permit, as set forth in OAR 734-051-0175.

(c) The applicant agrees in writing to meet any mitigation measures, terms, and conditions placed on the Construction Permit and the Permit to Operate.

(d) The grant of access is consistent with the 1999 Oregon Highway Plan, an adopted corridor plan, and local transportation system plan, or in the absence of an adopted corridor plan or transportation system plan, a grant of access may be considered where the applicant has explored all pos-

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sible alternatives to the connection, including parallel streets, and the purchase of additional right of way.

(e) One of the following occurs:

(A) The Department determines that access control is no longer needed at the location specified in the Application for a Grant of Access as set forth in section (7) of this rule; or

(B) The applicant establishes that the grant of access will benefit the state highway system as set forth in OAR 734-051-0085; and

(i) The Department may determine that a benefit to the state highway system exists where the proposed connection is a public facility with a functional classification of collector or higher and is identified in an adopted transportation system plan, consistent with OAR 660-012-0000 through 660-012-0070; and

(ii) The Department shall require supporting documentation of sufficient detail to determine that a benefit to the state highway system exists, as set forth in OAR 734-051-0085(1) and (2), to be included in the transportation system plan; and

(iii) The Department shall determine if the supporting documentation is sufficient to meet the requirements in subparagraph (ii) of this paragraph.

(f) The Department and the local jurisdiction requesting a grant of access for a public approach:

(A) Shall enter into an intergovernmental agreement that details the responsibility for construction, maintenance, operation and cost of the public approach; and

(B) May enter into an intergovernmental agreement that addresses transportation plan and land use amendments or modifications to ensure that planned development intensities and trip generation can be safely supported on the state transportation system.

(g) The application is approved by the Region Manager and reviewed by the State Traffic Engineer, and approved by the Technical Services Manager.

(7) For the purposes of sections (4) and (6) of this rule, the Department shall consider the following factors in determining whether access control is still needed at the location specified in an application for a grant of access:

- (a) Classification of the highways and highway segment designations;
- (b) Spacing Standards;
- (c) Highway mobility standards;
- (d) State and local transportation system plans;
- (e) Comprehensive plan and land uses in the area; and
- (f) Safety factors.

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

Stats. Implemented: ORS 374.305 - 374.350 & 374.990

Hist.: TO 4-2000, f. 2-14-00, cert. ef. 4-1-00; HWD 2-2004, f. 2-18-04, cert. ef. 3-1-04, Renumbered from 734-051-0430; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0500

Authority and Purpose of OAR 734-051-0500 through 734-051-0560

(1) Pursuant to ORS 374.313, a person holding an interest in real property, which is or would be served by an approach may appeal the closure or denial of the approach under OAR 734-051-0355 by filing a claim for relief when:

(a) The Department closes an approach for which a permit was issued under ORS 374.310 or that was allowed by law prior to enactment of statutory permit requirements for approach roads, or denies an application for an approach at the location of a grant or reservation of access; and

(b) Such closure or denial is not the result of conditions contained in a contract, condemnation judgment, recorded deed or permit.

(2) The Department may offer remedies upon such closure or denial.

(3) OARS 734-051-0500 through 734-051-0560:

(a) Establish administrative remedies to address issues related to real property, value, utility and use; and

(b) Provide a simplified procedure for resolving the claim.

Stat. Auth.: ORS 184.616, 184.619, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07

734-051-0510

Definitions

The following definitions apply to OAR 734-051-0500 through 734-051-0560:

(1) "Claim for relief," means an appeal of the denial of an approach application or the closure of an existing permitted or grandfathered approach under OAR 734-051-0355.

(2) "Person holding an interest in real property," means the owner of the title to real property or the contract purchaser of such real property, or record as shown on the last available complete tax assessment roll.

(3) "Administrative remedy," "appropriate remedy" or "remedy" mean the monetary or non-monetary benefits to a property that would address issues related to real property value, utility or uses, which include the equivalent value of:

(a) Actual physical reconnection of an approach to the highway or some other public facility;

(b) Construction of public roads or other public facilities, including frontage or utility roads, city streets, alleys or county roads;

(c) Improvements or modifications to the real property served or intended to be served by the approach, including paving of parking, restriping of lanes or parking, relocation of other traffic barriers and other items that directly address the impact to the property of the closure or denial; and

(d) Improvements or modifications to highways or other public facilities, including medians or other traffic channelization, signing or signal installation.

(4) Remedies will include any benefits derived by the property by virtue of highway improvements and highway modifications, whether or not related to the specific closure.

(5) Remedies will be limited to those necessary to serve existing uses or other uses reasonably allowed given the existing zoning of the property and other factors, including physical or geographic constraints.

(6) Remedies do not include:

(a) Reimbursement for attorney fees;

(b) Relocation expenses;

(c) Lost profits;

(d) Lost opportunities; or

(e) Costs not specifically related to value, utility or use of the property itself.

(7) Offers of remedies are totally discretionary on the part of the Department and are not subject to a contested case appeal.

Stat. Auth.: ORS 184.616, 184.619, 374.313 & 374.345

Stats. Implemented: ORS 374.310, 374.313 & 374.345

Hist.: TO 7-2000, f. & cert. ef. 7-14-00; HWD 8-2005, f. & cert. ef. 9-16-05; HWD 2-2007, f. & cert. ef. 1-26-07

Employment Department Chapter 471

Rule Caption: OAR 471-030-0074 and OAR 471-030-0075 school rules.

Adm. Order No.: ED 1-2007

Filed with Sec. of State: 1-29-2007

Certified to be Effective: 1-29-07

Notice Publication Date: 1-1-07

Rules Amended: 471-030-0074, 471-030-0075

Subject: OAR 471-030-0074 is being amended to clarify "employment," and define "relevant period" for the proper application of ORS 657.167 and 657.221.

OAR 471-030-0075 is being amended to add language to make the rule consistent with federal guidelines. The language added includes in paragraph (1) ...immediately following the academic year, term, vacation period or holiday recess which is in the same or similar capacity unless the economic terms and conditions of the employment in the second year or period are substantially less than the employment in the first year or period. A finding of reasonable assurance may be based on the totality of circumstances.

Paragraph (2) of the definition "substantially less" is added.

Paragraph (3) the definition of "same or similar capacity" is added.

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-030-0074

School Employees

(1) ORS 657.167 and 657.221 apply only when the individual claiming benefits was not unemployed as defined by ORS 657.100 in the period immediately preceding the holiday, vacation or recess period. Where the week(s) claimed commenced during a holiday or vacation period, the relevant period is the week immediately prior to the holiday or vacation period. Where the week(s) claimed commenced during a customary recess period between academic terms or years, the relevant period is the academic year or term immediately prior to the recess period.

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(2) The provisions of ORS 657.167 and 657.221 apply irrespective of whether or not the individual performed services only during an academic year or in a year-round position.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.167 & 657.221
Hist.: ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 13-2006(Temp), f. 12-1-06, cert. ef. 12-3-06 thru 6-1-07; ED 1-2007, f. & cert. ef. 1-29-07

471-030-0075

“Reasonable Assurance” Defined

(1) With respect to the application of ORS 657.167 and 657.221, “reasonable assurance” means a written contract, written notification or any agreement, express or implied, that the employee will perform services immediately following the academic year, term, vacation period or holiday recess which is in the same or similar capacity unless the economic terms and conditions of the employment in the second year or period are substantially less than the employment in the first year or period. A finding of reasonable assurance may be based on the totality of circumstances.

(2) As used in this rule, “substantially less” means:

(a) The gross weekly wage offered is less than 90% of the gross weekly wage earned in the prior academic year or term which preceded the weeks of unemployment or,

(b) The average number of hours the individual will be working is less than 90% of the average number of hours worked in the prior academic year or term, which preceded the weeks of unemployment;

(c) For the purpose of this section, employer paid benefits are not to be considered.

(3) With respect to (1) of this rule, “same or similar capacity” refers to the type of services provided: i.e., a “professional” capacity as provided by ORS 657.167 or a “nonprofessional” capacity as provided by ORS 657.221.

(4) Reasonable assurance cannot be ended or abated by any unilateral action of the individual. A decision to quit work, even for good cause, and even if the employer accepts the resignation, does not end or abate reasonable assurance.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.167 & 657.221
Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 1-1984, f. & ef. 3-21-84; IDE 3-1985, f. & ef. 12-16-85; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 13-2006(Temp), f. 12-1-06, cert. ef. 12-3-06 thru 6-1-07; ED 1-2007, f. & cert. ef. 1-29-07

Rule Caption: OAR 471-031-0181.

Adm. Order No.: ED 2-2007

Filed with Sec. of State: 1-31-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 471-031-0181

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

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-031-0181

Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. 670.600 defines “independent contractor” for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for “independent contractors.” One requirement is that an “independent contractor” must be engaged in an “independently established business.” Another requirement is related to licenses and certificates that are required for an “independent contractor” to provide services. A third requirement is that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others.

(b) The specific focus of this rule is the “direction and control” requirement. See ORS 670.600 for the requirements of the “independently established business” test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the “direction and control” test:

(A) “Means” are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the “means” used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) “Manner” is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the “manner” by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) “Free from direction and control” means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor’s services does not constitute direction and control over the means or manner of providing those services.

(4) Application of “direction and control” test in construction and landscape industries:

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscaping businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (6)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor’s services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor’s services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee’s customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor’s services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will perform work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will perform work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.040, 670.600, 670.605, 671.010 - 657.710, 672.002 - 672.325, 701
Hist.: ED 2-2007, f. 1-31-07, cert. ef. 2-1-07

ADMINISTRATIVE RULES

Land Conservation and Development Department Chapter 660

Rule Caption: Measure 37 Rules Clarifying Requirements for Claims and Local Authorizations, Including Notice to State.

Adm. Order No.: LCDD 1-2007

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

Certified to be Effective: 2-9-07

Notice Publication Date: 1-1-07

Rules Adopted: 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030, 660-041-0040, 660-041-0050

Rules Repealed: 660-041-0000(T), 660-041-0020(T), 660-041-0030(T)

Subject: The permanent rules adopt OAR chapter 660, division 041. The purpose of these rules do three things. First, the rules clarify the requirements for Measure 37 claims submitted to the state after December 4, 2006, where the claim is based on one or more DLCD land use regulations. The rules specify that claims based on an existing DLCD statute, land use planning goal, or rule must include a final decision by a local government that applies one or more of these state lands use regulations as approval criteria to deny or condition an application for the use that the claimant desires to carry out. Claims based on new state land use regulations may be made without applying for a local decision, so long as they are made within two years of the date of enactment or adoption. These rules apply only to claims filed with the State after December 4, 2006 that are based on DLCD land use regulations. Second, the rules also require local governments to notify DLCD prior to a decision on a permit or other authorization of a use based on a Measure 37 waiver to ensure that State and local actions on Measure 37 claims are coordinated and consistent to the extent possible. Third, the rules clarify that owners of real property in rural areas must file Measure 37 claims with both the State and with the county that the property is located in, and have both the State and county act to “modify, remove, or not to [sic] apply” the applicable local and state land use regulations before they may lawfully obtain a local permit or other authorization to proceed with a use of their property under Measure 37.

Rules Coordinator: Shelia Preston—(503) 373-0050, ext. 222

660-041-0000

Purpose

The purpose of this division is to clarify the requirements of ORS 197.352 (2004 Oregon Ballot Measure 37) as they relate to other aspects of the statewide land use planning program, including requirements for filing Claims based on one or more DLCD Regulations after December 4, 2006, notice of applications and decisions regarding Measure 37 Permits, and requirements for DLCD Waivers.

Stat. Auth.: ORS 197.040 & 197.065

Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352

Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

660-041-0010

Definitions

The following definitions apply to this division:

- (1) “Agency” has the meaning provided by ORS 183.310.
- (2) “Claim” means a written demand for compensation under ORS 197.352.
- (3) “Claimant” means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.
- (4) “DAS” means the Department of Administrative Services.
- (5) “Department” means the Department of Land Conservation and Development.
- (6) “DLCD Regulation” means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule. An “Existing DLCD Regulation” means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A “New DLCD Regulation” means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.
- (7) “DLCD Waiver” means a decision by the Land Conservation and Development Commission (LCDC) or DLCD under ORS 197.352 to modify, remove or not apply one or more DLCD Regulations in order to allow the Claimant to carry out a use of that Property that was permitted when the Claimant acquired the Property.

ify, remove or not apply one or more DLCD Regulations in order to allow the Claimant to carry out a use of that Property that was permitted when the Claimant acquired the Property.

(8) “Land Use Application” means an application for a “land use decision,” a “limited land use decision,” or an “expedited land division,” as those terms are defined by ORS 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under 215.402 to 215.437.

(9) “Land Use Regulation” has the meaning provided by ORS 197.352(11).

(10) “LCDC” means the Land Conservation and Development Commission.

(11) “Measure 37 Permit” means a final decision by a city, a county, or by Metro to authorize the development, division or other use of Property pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and ORS 227.160), a zone change, or a comprehensive plan amendment.

(12) “Measure 37 Waiver” means a decision by a city, a county, Metro or the State of Oregon to modify, remove or not apply one or more land use regulations to allow a Claimant to use the Property for a use that was permitted when the Claimant acquired the Property.

(13) “Metro” means the Portland Metropolitan Service District.

(14) “Property” means the Lot or Parcel that is or that includes the private real property that is the subject of a Claim.

Stat. Auth.: ORS 197.040 & 197.065

Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352

Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

660-041-0020

Contents of a Measure 37 Claim Based on a DLCD Regulation

(1) When a Claim is based on one or more Existing DLCD Regulations, then the Claim must:

(a) Be received by DAS within two years of the date a city, county, Metro, or an Agency applied one or more Existing DLCD Regulations, or applied city, county or Metro land use regulations that implement Existing DLCD Regulations, as approval criteria to an application submitted by the Claimant; and

(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCD Regulations or city, county or Metro Land Use Regulations that implement Existing DLCD Regulations were approval criteria for the decision; or

(B) A copy of the final written action by an Agency on a complete application to the Agency, in which the Agency determined that one or more Existing DLCD Regulations were approval criteria for the application.

(2) When a Claim is based on one or more New DLCD Regulations, then the Claim must:

(a) Be received by DAS within two years of:

(A) The effective date of the New DLCD Regulations; or

(B) Within two years of the date the Claimant submitted a Land Use Application in which the Land Use Regulations were approval criteria, whichever is later; and

(b) If the Claim is submitted more than two years after the effective date of the New DLCD Regulations, the Claim must include a copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that the New DLCD Regulations or city or county or Metro Land Use Regulations that implement the New DLCD Regulations were approval criteria for the decision.

(3) When a Claim is based on both Existing and New DLCD Regulations, the requirements of section (1) of this rule must be met with respect to the Existing DLCD Regulations, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulations.

(4) A DLCD Regulation is applied as an approval criterion for purposes of this rule and ORS 197.352(5) when a city, county or Metro makes a final written decision on a Land Use Application, or when an Agency takes final written action on an application to that Agency, and that final written decision or final written action denies the application or conditions the approval of the application on the basis (in whole or in part) of the DLCD Regulation.

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(5) This rule applies only to Claims that were received by DAS after December 4, 2006, and that are based on one or more DLCDD Regulations.

Stat. Auth.: ORS 197.040 & 197.065

Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352

Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

660-041-0030

Notice of Applications and Decisions

(1) Except for a building permit that is not a "land use decision" under ORS 197.015(11)(b)(B), cities, counties and Metro must provide written notice to the department of all applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit, filed with or made by the city, county or Metro after February 20, 2007.

(2) Notice of an application for a Measure 37 Permit required under section (1) of this rule must be mailed to the department's Salem office at least ten calendar days before any deadline for comment on the application for a Measure 37 Permit. If there is no opportunity for comment, then the notice must be sent ten days before the decision becomes final. The notice must include:

(a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;

(b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);

(d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject land use application; and,

(e) The name of the present owner of the property.

(3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must be mailed to the department's Salem office within ten calendar days of the date of the final written decision. The notice must include a copy of the final written decision.

Stat. Auth.: ORS 197.040 & 197.065

Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352

Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

660-041-0040

When a DLCDD Waiver is Required

(1) Before a Claimant may use Property for a use under a Measure 37 Waiver, the Claimant must obtain a DLCDD Waiver for that use of the Property in all cases where that use is restricted by a DLCDD Regulation or by a city, county or Metro Land Use Regulation that implements a DLCDD Regulation. These cases include, but are not limited to, all cases where the use is a use of land, and the Property includes:

(a) Land zoned for farm use under Goal 3;

(b) Land zoned for forest use under Goal 4; or

(c) Land outside of an acknowledged urban growth boundary where the Claimant's desired use of the Property is an urban use under Goal 14, or that use includes the establishment or extension of a sewer or water system restricted under Goal 11.

(2) When a state agency or a special district is required to take an action in a manner that complies with the Statewide Planning Goals and that is compatible with comprehensive plans and land use regulations under ORS 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state agency or special district must not take that action if it involves a use of Property under a Measure 37 Waiver unless the Claimant has obtained a DLCDD Waiver for that use of the Property.

Stat. Auth.: ORS 197.040 & 197.065

Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352

Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

660-041-0050

Applicability

OR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006, and that are based on one or more DLCDD Regulations. OR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007. OR 660-041-0040 takes effect upon the filing of these rules with the Oregon Secretary of State.

Stat. Auth.: ORS 197.040 & 197.065

Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352

Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07

Landscape Contractors Board Chapter 808

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

Adm. Order No.: LCB 1-2007

Filed with Sec. of State: 1-30-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Amended: 808-003-0260

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

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-003-0260

Independent Contractor

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines "independent contractor" for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for "independent contractors". One requirement is that an "independent contractor" must be engaged in an "independently established business." Another requirement is related to licenses and certificates that are required for an "independent contractor" to provide services. A third requirement is that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others.

(b) The specific focus of this rule is the "direction and control" requirement. See ORS 670.600 for the requirements of the "independently established business" test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the "direction and control" test:

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) "Manner" is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) "Free from direction and control" means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor's services does not constitute direction and control over the means or manner of providing those services.

(4) Application of "direction and control" test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscaping businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

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(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor's services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(5) As used in ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration is considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 and this rule are met.

(6) The Landscape Contractors Board, Construction Contractors Board, Employment Department, Department of Consumer and Business Services, and Department of Revenue of the State of Oregon, under the authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

Stat. Auth.: ORS 670.600 & 671.670

Stats. Implemented: ORS 670.600

Hist.: LCB 5-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 1-2007, f. 1-30-07, cert. ef. 2-1-07

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Oregon Commission on Children and Families Chapter 423

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

Adm. Order No.: OCCF 1-2007

Filed with Sec. of State: 2-12-2007

Certified to be Effective: 2-12-07

Notice Publication Date: 10-1-06

Rules Adopted: 423-045-0101, 423-045-0105, 423-045-0110, 423-045-0112, 423-045-0115, 423-045-0120, 423-045-0125, 423-045-0130, 423-045-0135, 423-045-0140, 423-045-0150, 423-045-0155, 423-045-0160, 423-045-0165, 423-045-0170, 423-045-0175, 423-045-0185

Rules Amended: 423-010-0024

Subject: These administrative rules establish prerequisites for operation and funding of Relief Nurseries. The rules establish minimum services, infrastructure, staffing, curriculum, staff training and supervision. The rules also include optional services of Relief Nurseries.

Rules Coordinator: Marsha Clark—(503) 378-5138

423-010-0024

Program Purposes and Restrictions

Activities and initiatives will have measurable outcomes and support county goals adopted in the Local Plan. These outcomes will be reported using the format and timeline prescribed by the Agency. It is the intent of the State Commission that activities and initiatives will be provided in a culturally competent and gender-specific manner that reflects the popula-

tion, needs and resources of the county. The following purposes and restrictions will apply to county allocations:

(1) Program Area: Great Start:

(a) Age: Prenatal services to expectant mothers, children 0 through eight years of age and the children's families;

(b) Service Areas: Programs and services that promote outcomes identified in the Local Plan including, but not limited to, research-based early childhood programs and services in county settings that meet the needs of the community.

(2) Program Area: Child Care and Development Fund:

(a) Age: 0 up to 13 years of age, except children with special needs 0 up to 18 years of age;

(b) Service areas: Program and services that promote outcomes identified in the comprehensive plan to:

(A) Stabilize the supply of child care;

(B) Increase the availability of quality hard to find care including infant/toddler, school age, odd hours, sick care and/or care for children with special needs;

(C) Improve the quality of child care;

(D) Meet local and statewide standards for child care availability for low income working parents and/or student parents.

(c) Highest priority will be given to areas where school districts are eligible for Chapter 1 grants, areas with high concentrations of poverty, and areas of high and low population density;

(d) Emphasis should be placed on the following hard to find child care as identified in the Local Plan:

(A) School age;

(B) Infant/toddler;

(C) Non-traditional hour;

(D) Sick child;

(E) Special Needs.

(e) Local Commissions can use funds to expand existing half day Head Start, Oregon Pre-Kindergarten and preschool programs to include half-day child care;

(f) Local Commissions can use Child Care and Development Fund for efforts to develop and maintain a child care system that is based on best practice, high standards and is research based;

(g) The Child Care and Development Fund can not be used for:

(A) Head Start, Oregon Pre-Kindergarten, half day preschool, respite and "drop in" child care programs;

(B) Contracted child care slots or scholarships for children from low-income families;

(C) Purchase of real estate or build new or existing facilities;

(D) Any purpose not directly related to child care supply and quality;

(E) Support of targeted populations that are already funded by or eligible to receive funds from Child Care Development Fund, which include child care for migrant and seasonal farm workers, teen parent programs and parents in alcohol or drug treatment programs.

(h) Child Care and Development Funds can not be used for community planning, community mobilization, or in duplication of services provided by other programs funded by Child Care and Development Fund, unless written authorization is obtained from the Agency.

(3) Program Area: Children, Youth and Families Fund:

(a) Age: 0-through 18 and their families;

(b) Service Area: Programs and services supported with Children, Youth and Families Funds will be used to promote outcomes identified in the local comprehensive plans. These funds must support research-based services, systems, initiatives, and programs. These funds are intended to allow maximum flexibility by counties to fund those areas of highest priority.

(4) Program Area: Court Appointed Special Advocates (CASA):

(a) Age: 0 through 18 years of age;

(b) Service areas: CASA programs provide for the recruitment, training, support and supervision of CASA. See OAR 423-045-0030 through 423-045-0035.

(5) Program Area: Youth Investment:

(a) Age: Ages 13 through 18 years, although 11 and 12 year olds may be included where appropriate;

(b) Service Areas: Services to non-delinquent youth who are chronically acting out or are victims of neglect. Programs and services will promote outcomes identified in the Local Plan. Youth are considered chronically acting out when they are exhibiting school behavior problems, are out of parental control, are runaway and homeless, or are exhibiting other risk factors. Youth are non-delinquent if they have no history of, or current involvement with, the juvenile justice system, or have been diverted from

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the juvenile justice system. Youth who have been referred to a juvenile department for a criminal activity, or who have been placed on an informal accountability agreement are not considered to be non-delinquent for purposes of this funding. These funds must support research-based services, systems, initiatives and programs.

(6) Program Area: Healthy Start:

(a) Age: Children prenatal through five and their families;

(b) Service Areas: Provide funding for voluntary family support services following the Healthy Families America model. See OAR 423-045-0005 through 423-045-0015.

(7) Program Area: Family Preservation and Support:

(a) Age: All children and their families;

(b) Service Areas:

(A) Family Preservation Services: Family preservation services refers to services for children and families designed to protect children from harm and help families (including foster, adoptive, and extended families) at risk or in crisis, including:

(i) Pre-placement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families, where possible. Examples of programs may include Intensive Family Treatment, Domestic Violence prevention programs, or other pre-placement preventative programs for families at risk of foster care placement;

(ii) Service programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement. Examples of programs may include family preservation services to assist in re-unification of families;

(iii) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement. Examples of programs may include family-centered service programs that provide follow-up care to families re-united with their child;

(iv) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents). Example of programs may include Family Respite Care;

(v) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition. Example of programs may include Parenting Skill Building;

(vi) Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care. Example of acceptable programs could include Community Safety Net.

(B) Family Support Services: Family support services means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development. Family support services may include:

(i) Services, including in-home visits, parent support groups, and other programs designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition. Example of programs may include Parenting Classes, Parent-to-Parent Support, and In-Home Visitation classes;

(ii) Respite care of children to provide temporary relief for parents and other caregivers. Example of program may include Family Respite Care;

(iii) Structured activities involving parents and children to strengthen the parent-child relationship. Example of program may include Healthy Start;

(iv) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff. Example of program may include Family Resource Centers;

(v) Transportation, information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education literacy programs, legal services, and counseling and mentoring services. Example of programs may include Dial-a-ride, Child Care Referral, and Outreach Centers;

(vi) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs. Example of programs may include Healthy Start.

(8) Program Area: Relief Nurseries:

(a) Clients: The clients of Relief Nurseries are children birth through age five and their parents or caregivers who have multiple risk factors linked to child abuse and neglect. Some children may turn six years of age and continue in the program until the start of school;

(b) Service Areas: Relief Nurseries are community-based organizations that seek to prevent the cycle of child abuse and neglect through early intervention programs that focus on developing successful and resilient children, strengthening family skills of parents or caregivers, and preserving families. Relief Nursery services are offered within a comprehensive and integrated early childhood and family support system to appropriately meet the needs of the individual family with children who have been abused or are at risk of child abuse and neglect. Relief Nurseries must include therapeutic early childhood education programs, home visitation and parent education and support. Relief Nursery services are voluntary, strength-based, culturally appropriate, and designed to achieve appropriate early-childhood benchmarks and healthy family functioning.

(c) Eligibility for State Funding:

(A) An emerging Relief Nursery must work collaboratively with the Local Commission to ensure that the program is consistent and aligned with the Local Comprehensive Plan. Relief Nurseries must participate in local community efforts to develop and implement an early childhood system of supports and services towards the achievement of positive outcomes for children and families, maximizing the effective use of available resources and avoiding duplication of services;

(B) Applications for State Funding must be submitted to the Agency by the Local Commission in the county where an emerging Relief Nursery exists. The application process must include no less than three existing Relief Nursery program directors in review and approval of the Relief Nursery program for meeting the requirements in OAR 423-045-0101 through 0185. The Local Commission will submit review and approval documentation to the Agency with the application for State Funding;

(C) Eligibility for State funding requires local community financial support as described in OAR 423-0024(8)(d) Matching Funds.

(d) Matching Funds: To be eligible to receive state funds, Relief Nursery programs are required to provide matching community financial support equal to a minimum of 25 percent of any state allocation;

(e) Funding Processes for Existing Relief Nurseries:

(A) Local Commissions are not required to do a competitive process every biennium to fund existing Relief Nurseries;

(B) Local Commissions may consider a competitive or collaborative funding process when significant changes occur within an existing Relief Nursery or when the Local Commission determines necessary.

Stat. Auth.: ORS 417.705 - 417.797 & 419A.170

Stats. Implemented: ORS 417.705 - 417.900 & 419A.170

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 1-2007, f. & cert. ef. 2-12-07

423-045-0101

Relief Nurseries

The Program Purposes and Restrictions are described in 423-010-0024(8). The description includes Clients, Services Areas, Matching Funds, Funding Processes, and Eligibility for State Funding of Relief Nurseries. OAR 423-045-0101 through 423-045-0185 are the standards for the establishment, operation, evaluation, and funding of Relief Nurseries under ORS 417.788.

Stat. Auth.: ORS 417.710

Stats. Implemented: ORS 417.788

Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0105

Definitions

(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) "Caregiver" is the adult or adults who provide the majority of care and nurturing for the child. The Primary Caregiver is the person with whom the child spends the majority of their time.

(3) "Local Commission" is a local commission on children and families appointed pursuant to ORS 417.760.

(4) "Relief Nursery" means an agency that:

(a) Includes therapeutic early childhood education and developmental programs, home visiting, parent education and support services;

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(b) Meets the requirements of OAR 423-045-0101 through 423-045-0185; and

(c) Meets the requirements of OAR 423-010-0024(8) and is determined Eligible for State Funding.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0110

Relief Nursery Statewide Operations

Existing Relief Nursery directors will advise the Agency regarding:

(1) Readiness of an organization to become a Relief Nursery by reviewing and approving the Local Commission application as required by OAR 423-010-0024(c)(B);

(2) Requests for waivers submitted to the Agency as outlined in OAR 423-045-120 and make recommendations to the Agency regarding each waiver request.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0112

Resolution of Conflict

This rule outlines the process for resolution.

(1) In the event of a conflict between the recommendations made to the Agency as outlined in OAR 423-045-0110 and the Agency's decisions, Relief Nursery directors may request consideration of the decision at the next regularly scheduled meeting of the Executive Committee of the State Commission. Relief Nursery directors may appeal the Executive Committee's decision to the State Commission at its next regularly scheduled meeting.

(2) In the event of a conflict between the requestor for a waiver to the Agency as outlined in OAR 423-045-0120 and the Agency's decisions, the requestors may request consideration of the decision at the next regularly scheduled meeting of the Executive Committee of the State Commission. Requestors may appeal the Executive Committee's decision to the State Commission at its next regularly scheduled meeting.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0115

Informed Consent

Relief Nurseries will make sure that parents have given express written consent before providing services or releasing information.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0120

Waivers

If a Relief Nursery cannot meet a requirement of OAR 423-010-0024(8) or of 423-045-0101 through 423-045-0185, the Local Commission and the Board of Directors of the Relief Nursery requesting a waiver must jointly submit a written request to the Agency for a waiver to such requirement, with specific justification and plan for meeting the intent of the requirement. The Agency will review the request for waiver and respond in writing within 90 days of receipt of the waiver.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0125

Prerequisites

(1) ORS 417.788 designates the responsibility for establishment of Relief Nurseries to Local Commissions. Early involvement of Local Commissions in establishing new Relief Nurseries is essential. Relief Nursery advocates must ensure that services provided by Relief Nurseries are identified as needed in the Local Comprehensive Plan.

(2) Local Commissions and the Agency will provide initial information to assist an emerging Relief Nursery in meeting the minimum requirements for becoming a Relief Nursery.

(3) Local Commissions will notify the agency of any pending Relief Nursery development that may result in requests for state funds.

(4) Before a Relief Nursery will be eligible to receive state funding, it must meet the requirements in OAR 423-010-0024(8)(c) or obtain a waiver as outlined in OAR 423-045-0120.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0130

System Requirements

(1) Coordinate with Local Early Childhood System:

(a) Relief Nurseries must be consistent with the local early childhood system planning described in ORS 417.777 and in OAR 423-010-0024(8)(c)(A), and must actively participate in local community efforts described in OAR 423-045-0020 and 0025;

(b) Relief Nurseries are community-driven, nongovernmental organizations.

(2) Coordinated Home Visiting. Relief Nurseries will coordinate their home visiting services as needed with Healthy Start, the local health department and other home visiting programs.

(3) Participation. Relief Nurseries must participate in the following activities initiated by the Agency or Local Commission:

(a) Statewide Relief Nursery evaluations;

(b) Statewide and local training or meetings, as required; and

(c) Reviews by OCCF or Local Commission staff, as necessary.

(4) Mandatory Child Abuse Reporting. Relief Nursery staff and volunteers are mandatory reporters as defined in ORS 419B.005 through 419B.050

(5) Data Collection. Each Relief Nursery must have the capacity to adequately collect and report data. Relief Nurseries will use required forms established by the statewide evaluation and Local Commission.

(6) Quality Assurance Standards. Relief Nurseries must meet statewide and local early childhood system Quality Assurance Standards.

NOTE: Copies of the Statewide Early Childhood System Quality Assurance Standards are available from the Agency.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0135

Infrastructure

The Relief Nursery must have an infrastructure that provides oversight, responsibility and resources necessary to provide services on an ongoing basis.

(1) Organizational Structure. Each Relief Nursery must be incorporated as a 501(c)(3) organization.

(2) Licenses. Relief Nurseries must be licensed or certified by the Employment Department Child Care Division.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0140

Sustainability

The Relief Nursery must provide a business plan to the Local Commission that documents at least 25 percent match, of any state allocation, in local community financial support. The business plan must also delineate anticipated support for the ongoing operation of the program and services.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0150

Minimum Services

The Relief Nursery must include early childhood education with home visiting, and parent education and support. The Minimum Services to be provided by a new Relief Nursery are outlined below.

(1) Basic Needs Support and Services. Relief Nurseries will provide resource referral, short- and long-term problem solving, and emergency food and clothing as available.

(2) Therapeutic Early Childhood Classroom. These classrooms provide nurturing and developmentally appropriate activities and interactions to promote the healthy development of children who have multiple risk factors and stresses linked to neglect and abuse.

(3) Child Screenings and Assessments. All children must be regularly screened and assessed when indicated, for appropriate development using research based developmental screening.

(4) Minimum Hours. Relief Nurseries will operate one or more therapeutic classrooms with the following time periods:

(a) A minimum of one three-hour class per week for infants up to 12 months of age;

(b) A minimum of two three-hour classes (a total of six hours per week) for children 12 months and older.

(5) Curriculum. The therapeutic classroom curriculum must:

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(a) Integrate focused interventions for children with emotional, social and behavioral concerns or delays. Individual child goals are developed and recorded in the child records;

(b) Adhere to principles and guidelines for developmentally appropriate practices;

(c) Support development in all domains (physical, cognitive, social/emotional, language); and

(d) Respond to the unique needs of the child and family.

(6) **Class Size and Ratios.** Relief Nurseries must meet the following minimum ratios of adults to children, which may include a mix of qualified staff and trained volunteers. A minimum of three adults, at least two of whom must be staff, for:

(a) Six children, ages 6 weeks to 24 months;

(b) Eight children, ages 24 to 36 months; and

(c) Eleven children, ages 3 to 5 years.

(7) **Home Visiting:**

(a) Home visiting, provided by the child's classroom teacher, is a required component for participants in the therapeutic early childhood classroom;

(b) Home visiting promotes healthy development, care and support of the child in the context of the family. It also provides parenting support and education that includes child development and facilitates individual and family goal setting and support. Home visits also help with problem solving, resource and referral, family stabilization, and improving parent and child interactions;

(c) Home visiting staff will coordinate with other community service providers.

(8) **Frequency of Visits:**

(a) For children attending class twice a week, classroom teachers will visit children and families in their homes at least once a month, providing a supportive service, based on the unique needs of the child and the family's goals;

(b) For children attending class once per week, classroom teachers will visit children and families in their homes at least weekly for one to two hours, providing a supportive service, based on the unique needs of the child and the family's goals.

(9) **Parent Education and Support.** All parents served by the Relief Nursery must be offered parenting education, through home visiting or groups, using evidence-based curriculum that is appropriate to the needs of the family.

(10) **Nutritious Meals and Snacks.** Relief Nurseries must provide nutritious snacks and meals following USDA standards for nutrition during program hours.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0155

Staff Requirements

Staffs that provide therapeutic early childhood classes, home visits, outreach and crisis response services must meet the following qualifications:

(1) **Qualifications for Direct Service Staff.** Direct services staff, at a minimum, will have either:

(a) A bachelor's degree in early childhood or relevant field with early childhood teaching experience; or

(b) A combination of an associate's degree, Oregon Registry Level 4, and appropriate experience; or

(c) A degree in a field other than child development or early childhood education and six courses in child development or early childhood education focusing on children from birth to age six.

(2) **Exceptions.** Relief Nursery directors may make an exception to staff qualifications in a special circumstance. Applicants who do not meet the qualifications above may be hired if a two-year Professional Development and Training Plan is written and implemented. Staff hired under this exception must receive more intense training and supervision during the two-year training period.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0160

Training Requirements

New hire training and participation in ongoing training is required for all staff. Individual training plans are developed around demonstrated competencies.

(1) **New Hire Training.** New and ongoing training must include, but not be limited to: therapeutic relationships; boundary setting with children and families; supporting children's feelings; supporting attachment for children and families; supporting therapeutic work in preschool curricula; understanding parent education issues for multi-stressed families; basic observation and assessment strategies; awareness of cultural contexts of families; substance abuse issues; documentation; understanding family support principle; and home visiting.

(2) **Professional Development.** Each Relief Nursery must provide for the ongoing professional development of its staff.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0165

Supervision

Relief Nurseries must ensure that supervisors are experienced in supervision or have supervisory training.

(1) **Supervisors.** Supervisors must provide regular, ongoing, high quality supervision for all assigned staff. Supervision must address topics of child and family case management, individual personnel issues, and professional development and support. Supervisors will maintain records documenting supervisory activities.

(2) **Ratios.** Relief Nurseries will maintain a supervision ratio of one supervisor to eight direct service staff.

(3) **Timely Supervision.** Supervision of Relief Nursery staff will be provided in a timely manner appropriate to the experience and the needs of the staff. Individual and group supervision will be provided.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0170

Direct Service Volunteers

Relief Nurseries must assure that direct service volunteers are trained and provided with ongoing support and guidance. Relief Nurseries may not allow volunteers to be alone with children.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0175

Services of Mature Relief Nurseries

Relief Nurseries are expected to offer these additional services beginning the third year of operation.

(1) **Transportation.** Relief Nurseries provide transportation support services through bus services for children, bus tokens or gas vouchers; and

(2) **Outreach & Crisis Response.** Relief Nursery staff provide immediate services for family stabilization including, but not limited to, one-on-one meetings, resource and referral support, phone consultation, and follow up.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

423-045-0185

Optional Services

A Relief Nursery may also provide the following services or make referrals to programs that provide such services:

(1) Alcohol and drug recovery and support services;

(2) Additional home-based services;

(3) Early intervention and early childhood special education;

(4) Mental health services;

(5) Supervised visitation services for courts;

(6) USDA certified food program; and

(7) Services to Mandated Clients:

(a) Relief Nurseries may provide parent education classes that include participants who are mandated by the courts to attend classes, and who are not involved in other Relief Nursery services;

(b) Participation in Relief Nurseries may be part of a service plan developed by the Department of Human Services Self Sufficiency or Child Welfare Services.

Stat. Auth.: ORS 417.710
Stats. Implemented: ORS 417.788
Hist.: OCCF 1-2007, f. & cert. ef. 2-12-07

ADMINISTRATIVE RULES

Oregon Department of Education Chapter 581

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

Adm. Order No.: ODE 1-2007

Filed with Sec. of State: 1-26-2007

Certified to be Effective: 1-26-07

Notice Publication Date: 12-1-06

Rules Adopted: 581-011-0131

Subject: The criteria committee for Physical Education and Health met earlier this year and has recommended the criteria for reviewing and adopting instructional materials in those subjects. The proposed rule would adopt by reference the approved criteria for selecting instructional materials in Physical Education and Health. The review and selection process will take place over the next year with recommendation to the State Board of Education in fall 2007.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-011-0131

Criteria for the Adoption of Instructional Materials in Physical Education and Health — Contract Years 2008-2014

The State Board of Education adopts by reference the Criteria for the Adoption of Instructional Materials for the following:

- (1) Health Education (Grades K-5/6).
- (2) Health Education (Grades 6-8).
- (3) Health Education (Grades 9-12).
- (4) Physical Education (Grades 6-8).
- (5) Physical Education (Grades 9-12).

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

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 337.035

Hist.: ODE 1-2007, f. & cert. ef. 1-26-07

Rule Caption: The proposed amendment will adopt by reference the 2006 Budgeting and Accounting Manual.

Adm. Order No.: ODE 2-2007

Filed with Sec. of State: 1-26-2007

Certified to be Effective: 1-26-07

Notice Publication Date: 8-1-06

Rules Amended: 581-023-0035

Subject: The proposed amendment changes the reference in the rule from the 2002 Budgeting and Accounting Manual to the 2006 Budgeting and Accounting Manual.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-023-0035

Budgeting and Accounting for Schools

Rules governing the budgeting and accounting systems for schools and the school systems of accounts are contained in Chapter 2 of the Program Budgeting and Accounting Manual 2006 Edition, published by the Oregon Department of Education. The State Board of Education adopts this publication to govern budgeting and accounting systems for schools.

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

Stat. Auth.: ORS 326.051 & 327.125

Stats. Implemented: ORS 294.356 & 327.125

Hist.: 1EB 163, f. 2-20-74, ef. 3-15-74; 1EB 234, f. & ef. 6-18-76; 1EB 23-1980(Temp), f. & ef. 9-2-80; 1EB 27-1980, f. & ef. 11-7-80; EB 12-1987, f. & ef. 7-10-87; ODE 5-1999, f. & cert. ef. 1-12-99; ODE 5-2001, f. & cert. ef. 1-29-01; ODE 3-2003, f. & cert. ef. 3-10-03; ODE 2-2007, f. & cert. ef. 1-26-07

Oregon Liquor Control Commission Chapter 845

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

Adm. Order No.: OLCC 1-2007

Filed with Sec. of State: 1-17-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Repealed: 845-015-0199

Subject: This rule describes a pilot project wherein the Commission placed, for up to two years each, new liquor stores within existing grocery stores. The purpose of the pilot project was to place these

new liquor stores and study their viability and impact on public safety and public convenience. We adopted the rule to create the pilot project in 2004. The pilot project was completed in early 2006. Since the project is completed and was a success, the Commission does not intend to continue the project, and the rule is no longer needed.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

Oregon Public Employees Retirement System Chapter 459

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

Adm. Order No.: PERS 1-2007

Filed with Sec. of State: 1-23-2007

Certified to be Effective: 1-23-07

Notice Publication Date: 11-1-06

Rules Amended: 459-007-0025, 459-007-0300

Subject: OAR 459-007-0025 describes how earnings are credited to member lump sum payments. The amendment clarifies the definition of "member lump sum payment" and modifies language in section (2) that restricts certain lump sum payments from receiving earnings.

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

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-007-0025

Crediting Earnings To Member Lump Sum Payments Received

(1) Definition.

(a) "Member lump sum payment" means any payment received by PERS that:

(A) Is not regularly scheduled;

(B) Is not paid as a statutorily fixed percentage of salary; and

(C) The member or payor has control over whether to make the payment.

(b) Member lump sum payments include, but are not limited to:

(A) Retirement credit purchases.

(B) Voluntary redeposit, as provided under ORS 238.105.

(C) A member's account balance that is transferred through an integration under ORS 238.680.

(2) No earnings shall be credited to member lump sum payments that are made within 90 days before or after the member's effective retirement date.

(3) Earnings from the date of payment to December 31 of the calendar year of the date of payment, or the member's effective retirement date, whichever occurs first, shall be credited to the member's lump sum payment based on the rate derived from the formula:

$(Y - X)(R/T) + (Z - Y)$, where:

R = The number of days from the date of payment through the last day of the month the payment is received;

T = The total number of days in the month the payment is received;

X = The latest year-to-date calculation ("factor") applicable to the member's regular account as of the first of the month of the date of payment;

Y = The factor as of the first of the month following the date of payment; and

Z = The factor as of the effective retirement date if such date occurs during the year the payment is received, or, in all other cases, the annual rate applicable to the member's regular account as of December 31 of the year the payment is received.

(4) If the formula described in section (3) of this rule results in a rate less than zero for a Tier One member, the rate shall be zero.

[Example: A member lump sum payment is received by PERS on May 12, 2002, from a Tier One member whose effective retirement date is August 1, 2003. The Tier One factor as of May 1, 2002, is 1.0263, the Tier One factor as of June 1, 2002, is 1.0330, and the Tier One annual rate for 2002 is 1.0800. Therefore, R = 20, T = 31, X = 1.0263, Y = 1.0330, Z = 1.0800 and the earnings crediting rate is:

$$\begin{aligned} & (1.0330 - 1.0263)(20/31) + (1.0800 - 1.0263) \\ &= (0.0067)(0.6452) + (0.0537) \\ &= 0.0043 + 0.0537 \\ &= 0.0580 \end{aligned}$$

(5) If the effective retirement date does not occur in the same year as the date of payment, the member lump sum payment shall be made a part of the member's regular account as of January 1 of the year following the date of payment.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

ADMINISTRATIVE RULES

Hist.: PERS 9-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 13-2003, f. & cert. ef. 11-14-03; PERS 1-2007, f. & cert. ef. 1-23-07

459-007-0300

Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund.

- (1) Definitions. For the purpose of this rule:
 - (a) "Effective date of unit benefits" means the date the member elects to begin receiving unit benefits.
 - (b) "End date" means the date after which earnings are no longer credited to the unit account and is the later of:
 - (A) The first of the calendar month following the date the member reaches age 65; or
 - (B) The first of the calendar month following the date the member separates from the service of all participating employers.
 - (c) "Unit" means a unit of additional benefits purchased under ORS 238.440.
 - (d) "Unit account" means the member's account in the Fund that is used to purchase unit benefits, which includes actuarially determined member additional contributions (ORS 238.440(1)) and earnings or losses.
 - (e) "Unit benefits" means the increased benefits a police officer or firefighter may purchase under ORS 238.440.
- (2) Crediting annual earnings or losses. Annual earnings or losses will be credited to the unit account as follows:
 - (a) For a Tier One member, in the same manner as provided for Tier One member regular accounts in OAR 459-007-0005.
 - (b) For a Tier Two member, in the same manner as provided for Tier Two member regular accounts in OAR 459-007-0005.
- (3) Crediting earnings or losses to a withdrawal. If the unit account is withdrawn under ORS 238.440(4) or (5), earnings or losses will be credited to the unit account as follows:
 - (a) For a Tier One member, in the same manner as provided in OAR 459-007-0040(1).
 - (b) For a Tier Two member, in the same manner as provided in OAR 459-007-0220(1).
- (4) Crediting earnings or losses on a lump sum purchase.
 - (a) If a member makes a lump sum purchase under ORS 238.440(2) and elects an effective date of unit benefits that is the same date as the member's effective retirement date, earnings or losses will not be credited on the lump sum purchase.
 - (b) If a member makes a lump sum purchase under ORS 238.440(2) and elects an effective date of unit benefits that is later than the member's effective retirement date, earnings or losses on the member's lump sum purchase from the date of receipt to the effective date of unit benefits shall be credited to the unit account as provided in sections (8) to (10) of this rule.
- (5) Crediting earnings or losses to effective date of unit benefits. When a retired member elects to begin receiving unit benefits under ORS 238.440(1) or (2), earnings or losses will be credited to the member's unit account as of the effective date of unit benefits as follows:
 - (a) For a Tier One member, in the same manner as provided in the version of OAR 459-007-0070(1) in effect on the effective date of unit benefits.
 - (b) For a Tier Two member, in the same manner as provided in OAR 459-007-0250(1).
- (6) If, after the crediting of earnings under section (5) of this rule, the amount in the unit account is greater than the actuarially determined amount required at the time of retirement to purchase the number of units elected, the difference will be returned to the member in a lump sum. The lump sum shall be credited with earnings from the effective date of unit benefits to the date of distribution based on the average annualized rate.
- (7) Crediting earnings to end date. If a member's effective date of unit benefits does not occur prior to the end date, earnings from the last annual earnings crediting to the end date shall be credited to the unit account as follows:
 - (a) If earnings for the calendar year prior to the end date have not yet been credited to the member's unit account, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.
 - (b) Earnings for the calendar year of the end date shall be credited to the unit account based on the latest year-to-date calculation as of the end date.
- (8) Earnings from the date of payment to December 31 of the calendar year of the date of payment, or the member's effective date of unit benefits, whichever occurs first, shall be credited to the member's lump sum

payment based on the rate derived from the formula:[Formula not included. See ED. NOTE.]

(9) If the formula described in section (8) of this rule results in a rate less than zero for a Tier One member, the rate shall be zero. [Example not included. See ED. NOTE.]

(10) If the effective date of unit benefits does not occur in the same year as the date of payment, the member lump sum payment shall be made a part of the member's regular account as of January 1 of the year following the date of payment.

[ED. NOTE: Example & Formula referenced are available from the agency.]

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.440

Hist.: PERS 8-2000, f. & cert. ef. 12-5-00; PERS 8-2004, f. & cert. ef. 4-15-04; PERS 1-2007, f. & cert. ef. 1-23-07

Rule Caption: Clarifies impact of "Break in Service" on redeposit.

Adm. Order No.: PERS 2-2007

Filed with Sec. of State: 1-23-2007

Certified to be Effective: 1-23-07

Notice Publication Date: 9-1-06

Rules Amended: 459-011-0050

Subject: Modifications to this rule clarify the impact of a "Break in Service" upon the restoration of service rights under this rule. A "Break in Service" prior to redeposit permits restoration of the service forfeited by withdrawal but precludes revival of the PERS Chapter 238 Program membership.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-011-0050

Forfeiture and Restoration of Service Rights

(1) A member who, pursuant to ORS 238.265, withdraws the amount credited to the member's account forfeits all membership rights accrued under ORS chapter 238 prior to the date of the withdrawal, including any service rights attributable to employment prior to the date of the withdrawal.

(2) Any such person who reenters the service of a participating employer within five years from the date of the last separation from employment that preceded the member's withdrawal may, at any time during the one-year period immediately following the date of reemployment, repay to PERS, in a single lump sum payment, an amount equal to the amount withdrawn plus the earnings the amount withdrawn would have accumulated from the date of withdrawal to the date of repayment. A person who makes a repayment as described in this section shall establish or reestablish membership in the system as provided in section (3) or (4) of this rule.

(3) If the date of the former member's repayment under section (2) is before the date on which the former member incurs a "Break in Service" under ORS 238A.025, the PERS Chapter 238 membership and service rights forfeited by the withdrawal will be revived. The former member will reestablish membership in the PERS Chapter 238 Program on the first day of the month following the date of the repayment. The withdrawn member account will be reestablished in the amount of the repayment.

(4) If the date of the former member's repayment under section (2) occurs on or after the date the former member incurs a "Break in Service" under ORS 238A.025, the PERS Chapter 238 membership and service rights forfeited by the withdrawal will be restored to the extent they existed immediately prior to the withdrawal. The withdrawn member account will be reestablished in the amount of the repayment. Membership and service subsequent to the date of reemployment will be subject to the provisions of the OPSRP Pension Program. The former member will establish membership in the OPSRP Pension Program on the earlier of:

(a) The date the former member establishes membership pursuant to ORS 238A.100; or

(b) The first day of the month following the date of the repayment.

(5) Notwithstanding the provisions of this rule, a member who withdraws pursuant to ORS 238.265 and receives an additional amount pursuant to section 2, chapter 276, Oregon Laws 2003, may not reestablish membership under section (2) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.105

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0060; PERS 2-2007, f. & cert. ef. 1-23-07

ADMINISTRATIVE RULES

Rule Caption: Amend Deferred Compensation program rules.

Adm. Order No.: PERS 3-2007

Filed with Sec. of State: 1-23-2007

Certified to be Effective: 1-23-07

Notice Publication Date: 7-1-06

Rules Amended: 459-050-0025, 459-050-0070, 459-050-0150

Subject: 459-050-0025: Modifies procedures for distribution of meeting minutes (housekeeping). Clarifies procedures for filling vacancies on the Deferred Compensation Advisory Committee.

459-050-0070: Clarifies requirements for participation in the 3-Year Catch-Up Program. Allows participant to contribute total allowable amount in year of retirement under certain conditions.

459-050-0150: Changes criteria for withdrawal eligibility. Participant is not eligible to apply for an "unforeseen emergency withdrawal" unless the participant has already utilized the loan provisions of the plan. Need for change is contingent upon adoption of 459-050-0077, establishing the loan program.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-050-0025

Deferred Compensation Advisory Committee

(1) The seven members of the Deferred Compensation Advisory Committee provided for under ORS 243.505, shall be subject to the following qualifications and limitations:

(a) Each member shall be a participant in a deferred compensation plan established under ORS 243.401 to 243.507, and shall have knowledge of the Program.

(b) Four members shall be participants in the state deferred compensation plan.

(c) Two members shall be participants in a local government deferred compensation plan.

(d) One member shall be a retired deferred compensation plan participant.

(e) No two members may be employed by the same state agency or local government except that a member who transfers employment to the employer of another member may continue to serve on the Advisory Committee, but only for the balance of the term of appointment of the transferring member.

(f) No member may serve more than two consecutive full terms.

(g) No member may be an employee of PERS during the term of appointment.

(2) The Advisory Committee shall study and advise the Board on all aspects of the

Program, including but not limited to:

(a) The Program fee structure and procedures;

(b) State and federal legislative issues relative to the administration of deferred compensation plans;

(c) The administration of the catch-up and the financial hardship provisions in Section 457 of the Internal Revenue Code;

(d) Ways and means to inform and educate eligible employees about the Program;

(e) The expressed desires of eligible employees as to the Program; and

(f) The actuarial characteristics of eligible employees.

(3) Upon the request of the OIC, the Advisory Committee shall study and advise the Board on the following:

(a) Investment programs, including options and providers; and

(b) Information furnished by the OIC or the State Treasurer concerning the types of available investments, the respective balance of risk and return of each investment, and the administrative costs associated with each investment.

(4) The Advisory Committee shall meet at least four times during a calendar year.

(5) A majority of the Advisory Committee shall constitute a quorum for transacting business. However, the Advisory Committee may establish such other procedures for conducting business that it deems necessary.

(6) Pursuant to the Public Meetings Law, ORS 192.610 to 192.690, the Deferred Compensation Manager shall distribute to the Advisory Committee, and other interested parties, an agenda for a regular meeting a reasonable time prior to the meeting.

(7) Nominations of candidates for the Advisory Committee shall be made as follows:

(a) Notice of a position on the Advisory Committee expected to become vacant upon the expiration of a term of appointment shall be published not later than April 15 of each calendar year.

(b) Persons interested in serving on the Advisory Committee must apply in writing to the Manager not later than May 15 following the publication of a vacancy.

(c) The Manager shall review the written applications of interested persons for completeness, accuracy, and satisfaction of the minimum requirements of the vacant position on the Advisory Committee.

(d) A committee consisting of the Manager and four members of PERS executive or managerial staff designated by the PERS Executive Director shall review the acceptable applications and recommend to the Board candidates for appointment to the Advisory Committee that:

(A) Reflect a cross section of state agencies, participating local governments, and classification levels;

(B) Reflect a mixture of expertise, knowledge, and experience useful to the Advisory Committee;

(C) Appear to have a sincere interest in the Program; and

(D) Appear to be willing and able to work in a group setting to review and recommend policies governing the Program.

(e) In the event of a vacancy for an unexpired term, the Manager may select applications from the most recent list of interested persons established under subsection (c) of this section and the applications of other persons as deemed appropriate for consideration. A committee consisting of the Manager and four members of PERS executive or managerial staff designated by the PERS Executive Director shall review the selected applications and recommend to the Board candidates for appointment to the Advisory Committee. The appointment shall be immediately effective for the remainder of the unexpired term. If no candidate is recommended or appointed, the vacancy must be filled under the provisions of subsections (a) through (d) of this section.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.505

Hist.: PERS 2-1993, f. & cert. ef. 9-23-93; PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 3-2007, f. & cert. ef. 1-23-07

459-050-0070

Catch-Up Programs

The purpose of this rule is to establish the criteria and process to allow an eligible employee to contribute additional amounts, in excess of the regular applicable maximum allowable contributions, to the eligible employee's account.

(1) Except as provided in subsections (a) and (b) of this section, for purposes of this rule, "normal retirement age" shall be the normal retirement age established in the plan sponsor's retirement plan.

(a) "Normal retirement age" for members of the Public Employees Retirement System shall be as provided in ORS 238.005(14), 238.280(3), 238A.160, or 238.535.

(b) If an eligible employee continues to work beyond normal retirement age, "normal retirement age" shall be that date or age designated by the eligible employee but may not be later than 70-1/2 years of age.

(2) 50-Plus Catch-Up Program. Pursuant to the conditions of this rule, eligible employees who are 50 years of age and older may elect to contribute an additional amount under section 414(v) of the Internal Revenue Code in excess of the maximum regular contribution allowed.

(a) Conditions for enrollment: An eligible employee must be 50 years of age or older on December 31 of the calendar year in which the eligible employee begins to participate in the 50-Plus Catch-Up Program.

(A) An eligible employee may participate in the 50-Plus Catch-Up Program during years either before or after participation in the 3-Year Catch-Up Program, but may not participate in both programs during the same calendar year.

(B) An eligible employee may participate in the 50-Plus Catch-Up Program during the calendar year containing the employee's retirement date.

(b) Application for enrollment. An eligible employee choosing to participate must enroll by entering into a written agreement with the plan sponsor. The written agreement must specify the amount of the additional annual deferral, that the additional deferral will be divided equally by the available months for the calendar year, and that the amount is in addition to the eligible employee's regular maximum deferral.

(A) An eligible employee may enter into a written agreement to participate in the 50-Plus Catch-Up Program on or before the first day of employment or anytime while employed.

ADMINISTRATIVE RULES

(B) A properly completed 50-Plus Catch-Up Program enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program.

(C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program conditions of enrollment, then the Deferred Compensation Program will notify the eligible employee within 30 calendar days from the date the enrollment form is received of the reasons the enrollment cannot be accepted.

(c) 50-Plus Catch-Up Program deferral effective date. 50-Plus Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional deferral amounts. The additional deferral may be an amount elected by an eligible employee, but shall not exceed the maximum additional deferral amount allowed under section 414(v) of the Internal Revenue Code, 26 USC 414(v). An eligible employee may change the amount of additional contributions deferred within the maximum additional deferral amount allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. Additional contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 50-Plus Catch-Up Program. An eligible employee may cancel participation in the 50-Plus Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An eligible employee who has cancelled participation may later re-apply to begin participation in the 50-Plus Catch-Up Program.

(3) 3-Year Catch-Up Program. An eligible employee may elect to contribute an additional amount under section 457 of the Internal Revenue Code, in excess of the maximum regular contribution allowed, for one or more of the three consecutive calendar years of employment prior to attaining normal retirement age, if in previous years the eligible employee did not contribute the maximum regular contribution amount.

(a) Conditions for enrollment. The earliest date to begin participation in the 3-Year Catch-Up Program is in the three calendar years immediately preceding the year in which an eligible employee reaches normal retirement age.

(A) Contributions over the maximum allowable regular contribution limit are permitted only to the extent of the unused portions of the maximum allowable regular contribution for previous calendar years during which the eligible employee contributed less than the maximum allowable regular contribution or did not make contributions to the Deferred Compensation Program.

(B) Calendar years during which contributions were made under the 50-Plus Catch-Up Program shall not be included in the calculation to determine the maximum allowable contribution under the 3-Year Catch-Up Program.

(C) An eligible employee may not participate in the 3-Year Catch-Up Program and the 50-Plus Catch-Up Program during the same calendar year.

(D) An eligible employee must designate a proposed retirement date upon application. The designated proposed retirement date shall be used for the purpose of determining the catch-up period only. The catch-up period so determined shall not include the year of the designated proposed retirement date. An eligible employee who retires during the catch-up period may contribute the maximum allowable amount for the year of his retirement.

(E) Pursuant to section 457(b) of the Internal Revenue Code, an eligible employee who is 70-1/2 years of age or older may not participate in the 3-Year Catch-Up Program.

(F) An eligible employee may participate only once in the 3-Year Catch-Up Program, regardless of whether participation in the 3-Year Catch-Up Program is for less than three calendar years or whether the eligible employee participates in an eligible plan after retirement.

(b) Application for enrollment. An eligible employee may participate in the 3-Year Catch-Up Program by entering into a written agreement with the plan sponsor. The written agreement must specify the eligible employee's designated proposed retirement date, the month in which to begin the 3-Year Catch-Up Program contributions and the number of years the eligible employee plans to participate in the 3-Year Catch-Up Program.

(A) An eligible employee may enter into a written agreement to participate in the 3-Year Catch-Up Program at any time while employed.

(B) A properly completed 3-Year Catch-Up Program enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program. Wage or salary information must be submitted for previous calendar years during which an eligible employee either did not participate in the Deferred Compensation Program or did not contribute the maximum regular contribution amount. An eligible employee must submit:

(i) Legible copies of W-2 Wage and Tax Statement forms for each relevant calendar or tax year; or

(ii) Legible copies of final pay stubs showing gross and taxable salary for each relevant calendar year.

(C) If the application for enrollment is incomplete, if wage or salary information is incomplete or illegible, or if the application does not comply with the 3-Year Catch-Up Program conditions of enrollment, then the Deferred Compensation Program will notify the eligible employee within 30 calendar days from the date the enrollment documents are received of the reasons the Deferred Compensation Program cannot accept the enrollment.

(c) 3-Year Catch-Up Program deferral effective date. 3-Year Catch-Up Program contributions may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(d) Additional Deferral Amount. After receipt of a properly completed 3-Year Catch-Up Program enrollment form and required wage or salary information, the Deferred Compensation Program will notify the eligible employee of the maximum amount of additional contributions that may be deferred.

(A) The amount of the 3-Year Catch-Up Program salary reduction may not be less than the minimum additional contribution amount established by the plan sponsor and may not exceed the maximum allowable contribution under section 457(b)(3) of the Internal Revenue Code.

(B) An eligible employee may change the amount of additional contributions deferred within the minimum and maximum additional deferral amounts allowed. Changes may be made at any time on forms or by other approved methods prescribed by the Deferred Compensation Program and will be effective for any calendar month only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.

(e) Cancellation of Participation in the 3-Year Catch-Up Program. An eligible employee may cancel participation in the 3-Year Catch-Up Program at any time on forms or by other approved methods prescribed by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An election to cancel participation is irrevocable.

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 12-2002, f. & cert. ef. 7-17-02; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 3-2007, f. & cert. ef. 1-23-07

459-050-0150 Unforeseeable Emergency Withdrawal

The purpose of this rule is to establish the criteria and process for a participant to obtain a distribution of deferred compensation funds prior to separation from employment due to an unforeseeable emergency.

(1) Definitions.

(a) "Unforeseeable emergency" or "Unforeseen emergency" means a severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant as defined in 26 CFR 1.152-1, a loss of the participant's property due to casualty or other similar extraordinary and unforeseeable circumstance beyond the control of the participant.

(b) "Immediate need" means a financial obligation attributable to an unforeseeable emergency that accrues within the 180-day period preceding and the 90-day period following receipt of an application for emergency withdrawal.

(c) "Emergency withdrawal" means a payment to the participant from the participant's deferred compensation account in an amount directly related to and reasonably necessary to satisfy an immediate need of an unforeseeable emergency, but in no case shall the amount exceed the balance of a participant's deferred compensation account.

ADMINISTRATIVE RULES

(2) Eligibility for emergency withdrawals. Only a participant who established a deferred compensation account as an eligible employee and has not terminated from employment with their plan sponsor may apply to receive an unforeseeable emergency withdrawal. An alternate payee of a participant shall not be eligible to receive an emergency withdrawal.

(3) A participant must, if eligible, apply for a loan under the provisions of OAR 459-050-0077 prior to application for an unforeseen emergency withdrawal unless, as determined by the Deferred Compensation Manager, the participant would suffer additional financial hardship by complying with the loan application requirement.

(4) Circumstances that do not constitute an unforeseeable emergency. An emergency withdrawal shall not be approved for any reason other than an unforeseeable emergency. Circumstances that do not constitute an unforeseeable emergency include, but are not limited to:

- (a) Participant or dependent school expenses;
- (b) The purchase of a home or costs associated with a voluntary relocation of housing;
- (c) The reduction of personal credit liabilities not associated with an unforeseeable emergency;
- (d) Expenses associated with a legal separation or the dissolution of a marriage;
- (e) Expenses associated with medical procedures that are elective or not medically required;
- (f) Expenses associated with establishing or managing a personal business;
- (g) Recreational expenses;
- (h) Travel expenses not associated with an unforeseeable emergency; and
- (i) Usual and customary tax obligations.

(5) Limitations on amount of emergency withdrawal. The maximum amount that may be approved as an emergency withdrawal shall be limited to what is reasonably needed to satisfy the immediate financial obligation related to the unforeseeable emergency, including taxes anticipated on the distribution. The amount of the emergency withdrawal shall be limited to the extent that the financial obligation can or may be satisfied by:

- (a) Reimbursement or compensation by insurance or otherwise;
- (b) Liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe unforeseeable emergency; or
- (c) Cessation of participant contributions to the Deferred Compensation Program.

(6) Application for an emergency withdrawal. A participant must submit a completed emergency withdrawal application and financial information and related documentation sufficient to satisfy the provisions of this rule. The emergency withdrawal application may be returned if incomplete or if insufficient financial information or related documentation is submitted.

(a) The application form may be obtained from the Deferred Compensation Program or the third party administrator (TPA) retained to administer a portion of the Deferred Compensation Program.

(b) The completed application, financial information, and related documentation shall be submitted by use of the United State Postal Service or by private carrier as defined in ORS 293.660(2) for initial review.

(7) Cancellation of future contributions. Contributions by a participant to the Deferred Compensation Program shall immediately be cancelled upon receipt of an application for an emergency withdrawal from the participant.

(a) A participant who receives approval for an emergency withdrawal shall be prohibited from making elective deferrals and contributions to the Deferred Compensation Program for a period of six consecutive months from the date of distribution.

(b) A participant who receives a denial for an emergency withdrawal may enroll to make elective deferrals and contributions to the Deferred Compensation Program at any time.

(8) Approval or denial notification. The Deferred Compensation Manager or an authorized designee shall approve or deny a request for an emergency withdrawal within three working days after receipt of an accepted application. The participant will be notified by mail within ten days after a decision is made.

(9) Release of payment upon approval of an emergency withdrawal. The Deferred Compensation Manager or an authorized designee shall determine the method of payment, based on the immediate need. The Deferred Compensation Program shall immediately notify the TPA to release the requested funds.

(10) A participant may appeal a denial of an emergency withdrawal to the Unforeseeable Emergency Withdrawal Appeals Committee as provided in OAR 459-050-0040. The appeal shall be in writing and must include:

(a) A request for review by the Unforeseeable Emergency Withdrawal Appeals Committee;

(b) A short statement of the facts that are the basis of the appeal; and

(c) Any additional information or documentation to support the request for an emergency withdrawal.

(11) Number of emergency withdrawal requests. The number of times a participant may apply for an emergency withdrawal is unlimited and is unaffected by previous applications.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 3-2007, f. & cert. ef. 1-23-07

Rule Caption: Establishes trading restrictions; establishes loan program within Deferred Compensation Program.

Adm. Order No.: PERS 4-2007

Filed with Sec. of State: 1-23-2007

Certified to be Effective: 5-1-07

Notice Publication Date: 7-1-06, 12-1-06

Rules Adopted: 459-050-0037, 459-050-0077

Subject: 459-050-0037: Establishes permanent restrictions on transfers of funds within OSGP investment options. Provides for temporary restrictions and temporary suspension of restrictions. Excludes certain transfers from restrictions.

459-050-0077: Establishes loan program for Deferred Compensation Program participants.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-050-0037

Trading Restrictions

The purpose of this rule is to establish criteria under which a participant may make trades in the Deferred Compensation Program. The Program is designed for long-term investment and periodic adjustment of asset allocation. Restrictions upon trades are necessary to protect participants and the Program from adverse financial impact attributable to frequent trading. Frequent trading by some participants can lower returns and increase transaction costs for all participants. Frequent trading also can trigger the imposition of redemption fees and restrictions by mutual funds within the Program and may cause the Program to be eliminated as an allowable investor in a mutual fund.

(1) Definitions. For the purposes of this rule:

(a) "Investment Option" means an investment alternative made available under ORS 243.421.

(b) "Trade" means a purchase or redemption in an investment option for the purpose of moving monies between investment options.

(2) Restrictions. The following restrictions apply to all participants:

(a) A participant may not make a trade that exceeds \$100,000.

(b) A purchase that is attributable to a trade may not be redeemed from the investment option in which the purchase was made for a period of 90 days following the date of the trade.

(c) No trade may move monies directly from the Stable Value Option to the Short-Term Fixed Income Option or the Intermediate Bond Option.

(3) The Deferred Compensation Manager, if necessary to comply with trading restrictions imposed by a participating mutual fund or the Securities and Exchange Commission, may establish additional temporary trading restrictions.

(4) The Deferred Compensation Manager, in the event of extraordinary market conditions, may temporarily suspend any or all trading restrictions established by this rule.

(5) Any action taken by the Deferred Compensation Manager under sections (3) or (4) of this rule must be presented to the Board at its next scheduled meeting. The Board may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the action(s) taken by the Deferred Compensation Manager shall expire on the first business day following the date of the meeting.

(6) The provisions of this rule are not applicable to trades attributable to the operation of an automatic account rebalancing function offered by the Program.

(7) The trading restrictions provided in this rule are not exclusive. The Board may establish additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

(8) The effective date of this rule is May 1, 2007.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.401 – 243.507
Hist.: PERS 4-2007, f. 1-23-07, cert. ef. 5-1-2007

459-050-0077

Loan Program

(1) Definitions. For purposes of this rule:

(a) “Cure period” is that time from when a default occurs until the end of the quarter following the quarter in which the default occurred.

(b) “Loan balance” means the outstanding principal and accrued interest due on the loan.

(c) “Participant Loan” means a loan that only affects the deferred compensation account of a participant.

(d) “Promissory note” means the agreement of loan terms between the Program and a participant.

(e) “Third Party Administrator (TPA)” means the entity providing record keeping and administrative services to the Program.

(2) Eligibility for loan. Participants who are currently employed by a Plan Sponsor that has agreed to participate in a Participant Loan program are eligible for a Participant Loan. Retired participants, participants separated from employment, designated beneficiaries, and alternate payees are not eligible.

(3) Application for loan: A participant must apply for a loan and meet the requirements set forth in this rule.

(a) Once a loan is approved, a participant must execute a promissory note in the form prescribed by the Program.

(b) If a participant is deceased prior to the disbursement of the proceeds of a loan, the participant’s loan application shall be void as of the date of death.

(4) Loan Types:

(a) General purpose loan — a loan not taken for the purpose of acquiring a principal residence. General purpose loans must be repaid over a non-renewable repayment period of up to five years.

(b) Residential loan — a loan made for the purpose of acquiring a principal residence, which is, or within a reasonable time shall be, the principal residence of the participant. Residential loans must be repaid over a non-renewable repayment period of up to 15 years. A refinancing does not qualify as a residential loan. However, a loan from the Program that will be used to repay a loan from a third party will qualify as a residential loan if the loan would qualify as a residential loan without regard to the loan from the third party.

(5) Interest Rate: The rate of interest for a loan shall be fixed at one percent (1%) above the prime interest rate as published by the Wall Street Journal on the last business day of the month prior to the month in which the loan is requested.

(6) Loan Fees: A loan fee of \$50.00 shall be assessed when the loan is approved. The fee shall be deducted from a participant’s deferred compensation account on a pro-rata basis from existing investments.

(7) Loan Limitations:

(a) The maximum loan amount is the lesser of:

(A) \$50,000; or

(B) One-half of the value of the participant’s deferred compensation account on the date the loan is made.

(b) The minimum loan amount is \$1000.

(c) A participant may only have one outstanding loan.

(d) A participant who has received a loan may not apply for another loan until 12 months from the date the previous loan was paid in full.

(8) Source of Loan: The loan amount will be deducted from a participant’s deferred compensation account.

(a) Loan amounts will be deducted pro-rata from existing investments in a participant’s deferred compensation account.

(b) A participant may not transfer a loan to or from another retirement or deferred compensation plan.

(9) Repayment Terms: The loan amount will be amortized over the repayment period of the loan with interest compounded daily to calculate a level payment for the duration of the loan.

(a) Loan payments must be made by payroll deduction. To receive a loan from the Program a participant must enter into a payroll deduction agreement. Except as provided in this rule, a participant may not submit a loan payment directly to the Program or the Third Party Administrator.

(b) A participant is responsible for loan repayment even if the employer fails to deduct or submit payments as directed under the payroll deduction agreement. To avoid defaulting on a loan by reason of the employer’s failure to deduct or submit a payment a participant may submit a loan payment by sending a money order or certified check to the Third Party Administrator.

(c) A participant may repay the loan balance in a single payment at any time before the date the final loan payment is due.

(d) Partial payment of a scheduled payment and partial prepayment or advance payment of future payments shall not be permitted.

(e) Loan payments will be allocated in a participant’s deferred compensation account in the same manner as the participant’s current contribution allocation. If, for any reason, the allocation is not known, the payment will be allocated to the Short-Term Fixed Income Option.

(f) Any overpayment will be refunded to the participant.

(10) Leave of Absence. Terms of outstanding loans are not subject to revision except as provided in this section.

(a) Loan payments may be suspended up to one year during an authorized leave of absence if a participant’s pay from the employer does not at least equal the payment amount.

(A) Interest on a loan continues to accrue during a leave of absence.

(B) A participant must immediately resume payments by payroll deduction upon return to work.

(C) The loan balance will be re-amortized upon the participant’s return to work to be repaid within the remaining loan repayment period.

(D) Loan payments may be revised to extend the remaining loan repayment period to the maximum period allowed in the event the loan originally had a term shorter than the maximum period allowed under section (4) of this rule.

(E) If a participant is on a leave of absence that exceeds one year, the loan shall be in default unless repayment begins one year from the participant’s last date worked or the date the final payment is due under the promissory note, whichever is earlier.

(b) Military Leave. Loan payments for participants on military leave may be suspended for the period of military service.

(A) A leave of absence for military service longer than one year will not cause a loan to be in default.

(B) Loan payments by payroll deduction must resume upon the participant’s return to work.

(C) The original repayment period of a loan will be extended for the period of military service or to the maximum repayment period allowed for that type of loan, whichever is greater.

(D) Interest on a loan continues to accrue during a leave of absence for military service. If the interest rate on the loan is greater than 6%, then under the provisions of the Servicemembers Civil Relief Act of 2003, the rate shall be reduced to 6% during the period of military service.

(E) The loan balance will be re-amortized upon the participant’s return to work to be repaid within the remaining loan repayment period as determined under paragraph (C) of this subsection.

(c) A participant on an authorized leave of absence or military leave may submit loan payments by sending a money order or certified check to the Third Party Administrator.

(11) Tax Reporting.

(a) The loan balance of a general purpose loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(b) The loan balance of a residential loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(c) If a participant dies prior to the loan balance being repaid, and the participant’s beneficiary does not repay the loan balance in a single payment within 90 days of the participant’s death, the loan balance will be reported as a taxable distribution to the estate of the participant.

(d) The reporting of a loan balance as a taxable distribution under this section will cancel the loan at the time the taxable distribution is reported.

(12) Default.

(a) A loan is in default if a payment is not paid as scheduled or under any of the provisions set forth in this rule, the promissory note, or any related loan agreement.

(b) A loan is in default if the participant separates from employment with the plan sponsor that administers the loan payment payroll deductions.

(c) If a participant with a loan in default resumes loan payments by payroll deduction before the end of the cure period, the default will be cured and the participant’s loan balance will be re-amortized as if the participant had been on a leave of absence under the provisions of paragraph (10)(a)(C) of this rule.

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(d) Except as provided in subsection (c) of this section, if the participant does not cure a default by repaying the loan balance before the end of the cure period, the loan balance will be reported as a taxable distribution to the participant and the loan will be canceled.

(13) The effective date of this rule is May 1, 2007.

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 – 243.507

Hist.: PERS 4-2007, f. 1-23-07, cert. ef. 5-1-07

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Oregon State Lottery

Chapter 177

Rule Caption: Deletes primary business and dominant use purpose determination; prohibits casinos; adds process for determining casinos.

Adm. Order No.: LOTT 1-2007

Filed with Sec. of State: 1-31-2007

Certified to be Effective: 2-4-07

Notice Publication Date: 1-1-07

Rules Amended: 177-040-0017, 177-040-0061

Subject: The Lottery amended Rule -0017 to delete primary activity or primary business as criteria for denying a Video LotterySM contract. The Lottery amended Rule -0061 to delete the process for determining a retailer's "dominant use" and "dominant purpose", including the 60% Lottery income provisions. It further amended the rule to prohibit the placement of Video LotterySM terminals in establishments that operate as a casino, and to set forth the process for determining if an establishment is or will be operating as a casino, including adding a 50% Lottery income threshold, and factors to be used in that analysis and determination when the 50% threshold is reached. The names of both rules were changed also.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0017

Additional Video LotterySM Retailer Business Operation Criteria and Requirements

(1) **Placement of Video LotterySM Terminals:** The Lottery will not place Video LotterySM terminals in a business or at a premises:

(a) That has operated or will operate primarily as a grocery or convenience store. This subsection shall not apply to any existing Video LotterySM retailer who the Director determines was not in accordance with this subsection as of October 14, 1993;

(b) That operates as a laundromat, movie theater, car dealership, beauty salon, bed and breakfast lodging, hardware store, dry goods store, clothing store, liquor store, or other business not normally associated with the on-premise consumption of food and alcoholic beverages.

(2) **Grocery Store:** For purposes of this rule, a grocery store means a retail business at which food and foodstuffs are regularly and customarily sold in a bona fide manner for consumption off the premises, and shall include supermarkets and one-stop shopping centers which contain a grocery section in addition to offering other wares, goods, and services.

(3) **Convenience Store:** For purposes of this rule, a convenience store means a retail business which offers a relatively limited line of high-volume grocery and beverage products and the majority of the products are for consumption off the premises.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 9-2005(Temp), f. & cert. ef. 9-7-05 thru 3-5-06; LOTT 20-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 1-2007, f. 1-31-07, cert. ef. 2-4-07

177-040-0061

Casino Prohibition

(1) **General:** The operation of a casino is constitutionally prohibited in the state of Oregon. It is the policy of the Oregon State Lottery to place Video LotterySM terminals only in an establishment that does not operate as a casino. The purpose of this rule is to provide a framework and a process for determining when an establishment is operating or may operate as a casino. This framework and process are in addition to other methods the Oregon State Lottery uses to prevent Video LotterySM retailers from operating an establishment as a casino. Other methods include, but are not limited to:

(a) A limit on the number of Video LotterySM terminals in any establishment;

(b) Limiting public view of Video LotterySM terminals;

(c) A limitation on certain advertising and promotional activities by retailers; and

(d) Considering the sale of Lottery tickets and shares by retailers an adjunct to their businesses.

(2) **Definitions:** For purposes of this rule:

(a) "Establishment" means any single location in which Video LotterySM games are operated or which is identified in a Video LotterySM Retailer Application as the proposed site for such activity. An establishment must be owned or operated by a person licensed to sell alcoholic beverages for consumption in a specific age-controlled area of the establishment. The final determination of what constitutes an establishment shall be made by the Director.

(b) "Total Annual Lottery Compensation" means the actual, or in the case of an applicant, the reasonably projected total annual compensation received from the Lottery for the sale of all Lottery tickets and shares at the establishment over a selected twelve-month period, including, but not limited to, compensation resulting from participation in Lottery incentive and bonus programs, as described in the Retailer Contract, other than those programs awarding bonuses on the basis of the sale of winning and validated Scratch-itSM or On-Line tickets for which a prize of \$10,000 or more is paid.

(c) "Annual Non-Lottery Sales" means the actual, or in the case of an applicant, the reasonably projected revenue from the sale of products or services other than Lottery tickets and shares to retail customers at the establishment over a selected twelve-month period. Projected sales will only be deemed reasonable if they are based on a detailed business plan which is fact and evidence based or meets industry standards for business plans. Only the sale of products or services to retail customers in return for which the establishment receives cash or any instrument evidencing cash consideration shall be included in the calculation of annual non-Lottery sales. Examples of products and services not considered for annual non-Lottery sales for purposes of this rule include, but are not limited to:

(A) The sale of products or services which are not usually sold by or associated with the type of retail establishment being reviewed. For example, the sale of a car by a tavern would not be included;

(B) The wholesale sale of products. "Wholesale" means the sale of goods in quantity, as to retailers or jobbers, for resale to the public. This includes the sale or transfer of cigarettes or other products between two or more establishments operated by the same retailer;

(C) The gifting of complimentary or promotional products; or the value of promotional discounts/coupons;

(D) The retail sale of products or services sold or rendered outside of the establishment (such as catering) unless the work is substantially completed at the establishment and the services are provided substantially by employees of the establishment;

(E) The sale of products or services for which the retailer receives a commission, except that the amount of the commission received may be considered; and

(F) Income from other than the sale of a product or service (such as a cover charge) will not be included in the calculation of annual non-Lottery sales.

(3) **Director's Casino Determination:** The Director shall determine whether an establishment is operating or may operate as a casino before entering into a Video LotterySM contract for that establishment. The Director may also initiate a review of an existing Video LotterySM retailer whenever the Director has reason to believe that an establishment is operating as a casino, or may operate as a casino. The Director may rely on whatever resources and information are available in deciding to initiate a review of an existing Video LotterySM retailer. A Video LotterySM retailer, or person applying to become a Video LotterySM retailer, has the burden of proof to show to the satisfaction of the Director that an establishment is not operating, or will not be operating, as a casino. The Director's determination is final.

(4) **Conclusive Evidence that an Establishment Is Not a Casino:** The following establishments are not casinos for purposes of this rule:

(a) A commercial establishment with a Full On-Premises Sales License issued by the Oregon Liquor Control Commission;

(b) An establishment with a Limited On-Premises Sales License issued by the Oregon Liquor Control Commission whose annual non-Lottery sales are at least 50% of the establishment's total income as defined in section (5) of this rule; or

(c) A private club as described in ORS 471.175 so long as the private club is not engaged exclusively in the business of selling Lottery tickets and shares.

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(5) **Income Analysis:** In determining whether an establishment meets the criteria set forth in section (4)(b) of this rule, the Director shall conduct an income analysis as set forth below.

(a) **General:** The Director shall conduct a review of the establishment's total income which, for the purpose of this rule, shall equal the sum of the establishment's total annual Lottery compensation and the establishment's annual non-Lottery sales. For a person applying to become a Video LotterySM retailer, the Director shall conduct a review of the establishment's projected total income which, for the purposes of this rule, shall equal the sum of the establishment's projected total annual Lottery compensation and the establishment's reasonably projected annual non-Lottery sales. If the review of an establishment's total income shows that the establishment's annual non-Lottery sales are less than 50% of total income or projected total income, and there is no conclusive evidence that the establishment is not a casino as explained in section (4) above, the Director shall consider other factors as set forth in section (6) below in determining whether the establishment is operating or may operate as a casino. The twelve-month period selected for the review will be chosen by Lottery staff. The ratio of an establishment's total annual Lottery compensation to its total income shall be determined by dividing the establishment's total annual Lottery compensation by the sum of:

(A) The establishment's actual, or in the case of an applicant, reasonably projected annual non-Lottery sales; and

(B) The establishment's actual or projected total annual Lottery compensation.

(b) **CPA Review:** The retailer or applicant may request that a Certified Public Accountant (CPA), engaged and paid for by the retailer or the applicant, verify the accuracy of the Lottery's calculation of the retailer's annual non-Lottery sales or the applicant's reasonably projected annual non-Lottery sales. The CPA must use procedures specified by the Lottery and document his or her analysis as required by the Lottery. The Director may consider the CPA's analysis in making the final determination.

(c) **Director's Determination:** The final determination of the ratio of an establishment's actual or projected total annual Lottery compensation to the establishment's actual or projected total income shall be made by the Director.

(d) **Business Records:** For the purposes of this rule, a Lottery retailer must acquire, compile, retain, and make readily available to the Lottery all business sales and expense records that are pertinent to the calculation and determination of the establishment's total income for a period of 24 months. Required records of the gross non-Lottery sales must be detailed and correct including, but not limited to, records of the cost, price and amount of goods sold, bank statements, records of daily sales, and other relevant sales records. Lottery staff shall be allowed to perform examinations of these records, and make any copies necessary to complete the review. Records and accounting information must be provided, at the retailer's expense, in any form or format reasonably requested by Lottery staff. Retailers operating multiple establishments must maintain separate and complete records as specified in this paragraph for each establishment they operate. In the absence of adequate records, Lottery staff will make a reasonable estimate of annual non-Lottery sales based on available records and information. In making a reasonable estimate, the Lottery will only rely on records and information that the Director concludes are credible and accurate.

(6) **Factors to Consider:** If the income analysis indicates that the establishment's annual non-Lottery sales are less than 50% of total income or projected total income, and there is no conclusive evidence that the establishment is not a casino as explained in section (4) above, the Director shall consider additional relevant factors such as those described below to make a final determination whether the establishment, taken as a whole, is operating as a casino or may operate as a casino. Such factors include, but are not limited to:

(a) **History:** The history of the establishment's operation, or lack of history. If, for example, an establishment has a longstanding history as a neighborhood pub or a family restaurant, this factor may demonstrate that the establishment is not operating as a casino.

(b) **Appearance:** The appearance of the premises, as perceived by a reasonable person and determined by the Director, as it relates to the type of establishment. If, for example, a reasonable person, as determined by the Director, would perceive the establishment to be a place to eat, drink, socialize, and engage in a variety of activities or forms of entertainment, this factor may demonstrate that the establishment is not operating as a casino.

(c) **Floor Space:** The ratio of floor space dedicated for the use of Video LotterySM games to the total floor space of the establishment. Any space or portion of an establishment which is designated as a common area,

is shared with other establishments or businesses, or is not contiguous with the area(s) where the Video LotterySM terminals are located or are proposed to be located, shall not be considered as part of an establishment's total floor space. Any areas of the establishment not normally open to patrons shall not be considered as part of an establishment's total floor space. For purposes of this rule, 24 square feet per Video LotterySM terminal shall be used to compute such a ratio. If the amount of floor space dedicated for the use of Video LotterySM games is 20% or less of the establishment's total floor space, this factor may demonstrate that the establishment is not operating as a casino.

(d) **Food Service Accoutrements:** The availability of menus, dining tables and chairs, tableware for the consumption of food and beverages, and other accoutrements intended specifically for use by patrons for eating and drinking. For example, an ample number of tables and chairs, proportionate to the size of the area, that are set up with napkins, salt and pepper, etc., and are available to patrons for eating and drinking, combined with the availability of food and beverages, the staff and means to cook, prepare and serve food and beverages, the availability of tableware, a menu or reader board, may demonstrate that the establishment is not operating as a casino.

(e) **Meals and Menus:** The number and variety of meals and menu items available on a daily basis. For example, serving two meals per day, such as lunch and dinner, and a variety of entrees and side dishes for each meal, as opposed to serving only one or two items, or only a variety of sandwiches, throughout the day, may demonstrate that the establishment is not operating as a casino.

(f) **Non-Lottery Products and Entertainment:** The number and variety of non-Lottery products and forms of entertainment available. If, for example, an establishment offers snacks, gum, and cigarettes for sale, and has pool, darts, and live music and dancing, as opposed to only one or two products or services, this factor may demonstrate that the establishment does not operate as a casino. This factor acknowledges that a retailer's efforts to sell or serve non-Lottery products or services are not always successful. The mere fact that the non-Lottery products or services are readily available, as evidenced by observation and records, is a factor.

(g) **Business Name:** The name of the business. For example, if the business name does not contain words, references or allusions to gambling or gambling related objects or activities, good luck or good fortune, or winning, directly or indirectly, this factor may demonstrate that the establishment does not operate as a casino.

(h) **Advertising:** Advertising and promotional activities. If, for example, the retailer advertises food and other non-Lottery products, services or forms of entertainment at least equivalent to advertising for Lottery products; and, if the retailer offers promotions, such as discount coupons for food and other non-Lottery products at least equivalent to promotional activities related to Lottery products, this factor may demonstrate that the establishment does not operate as a casino.

(i) **Records:** The retailer's financial records. If the retailer's financial records, including expenses, show that the volume of non-Lottery products and services sold, and the number and variety of non-Lottery forms of entertainment made available to patrons is greater than indicated by the establishment's annual non-Lottery sales, this factor may demonstrate that the establishment does not operate as a casino.

(j) **Atmosphere:** The general atmosphere of the establishment and the attitude and approach of the retailer. If the retailer, and the retailer's employees encourage and promote food and beverage service; if the general environment is clean and inviting to patrons for purposes of dining or engaging in entertainment activities; if the retailer and the retailer's employees are equally courteous and accommodating to non-Lottery playing patrons as they are to those playing Lottery games; and if the retailer demonstrates cooperation with the Lottery and approaches this matter with a demonstrated willingness to keep the establishment in compliance, this factor may demonstrate that the establishment does not operate as a casino.

(7) **Compliance Plan:**

(a) **General:** For purposes of selling Video LotterySM tickets and shares, the Lottery Director shall determine whether a Lottery retailer is operating an establishment as a casino, or in the case of an applicant, will be operating as a casino in violation of this rule. When the Director determines that an existing Video LotterySM establishment is operating as a casino pursuant to review under section (6) of this rule, the Director shall notify the retailer of the determination in writing, and set forth the reasons for the determination. The Director shall provide the retailer the opportunity to develop and implement a plan to bring the establishment into compliance with this rule within six months from the date of this written notification. The plan must be submitted within 30 days from the date the notification is issued by the Lottery. The plan shall include an analysis of the retail-

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er's business operation to show that the retailer has made a reasonable determination of what changes need to be made and the steps the retailer intends to take to bring the establishment into compliance. A retailer may not restrict access to any Lottery game to achieve compliance with this rule without prior written approval from the Director. The retailer's submission of the plan is for the purpose of demonstrating to the Lottery that the retailer seeks to bring the establishment into compliance. The Lottery will review the retailer's plan and may offer guidance to help the retailer bring the establishment into compliance. The retailer is solely responsible for implementing the plan and for its success or failure during the six month period.

(b) Four Month Review: At the end of the first four months of the six-month period, the Lottery will review the retailer's progress toward compliance, and may provide the retailer with factual information, analysis, or recommendations if it appears to Lottery staff that doing so will assist the retailer in bringing the establishment into compliance.

(c) Determination at End of Six-Month Period: At the end of the six-month period, the Director shall determine whether the establishment is in compliance. A retailer shall be deemed to be in compliance if either:

(A) The establishment's total Lottery compensation was not more than 50% of the establishment's total income, as set forth in section (5) of this rule, over the entire six-month period; or

(B) Based upon an analysis of some or all of the factors set forth in section (6) of this rule, or other additional factors, the Director determines that the establishment is not operating as a casino.

(d) Sixth Month: If the establishment's total Lottery compensation was not more than 50% of the establishment's total income, as set forth in section (5) of this rule, for the sixth month of the plan (but not the entire six months), the Director may extend the original six month period of the compliance plan up to three additional months if, in the opinion of the Director, the retailer will become compliant within that time. At the end of the additional time period, the Director shall determine whether the establishment is in compliance based upon subsection (7)(c) of this rule.

(e) Termination: If, at the end of the compliance period, the Director determines that the establishment continues to operate as a casino, the retailer's contract to sell Video LotterySM tickets and shares shall be immediately terminated.

(f) One Year Review: If, at the end of the compliance period, the Director determines that the establishment is no longer operating as a casino, the Director shall send a notice of compliance to the retailer. At the end of one year commencing on the first day of the month following notification of compliance, the Lottery will conduct another compliance review as set forth in this rule. If the Director determines that the establishment is again operating as a casino, the retailer's contract to sell Video LotterySM tickets and shares shall be immediately terminated. The retailer shall not be given the opportunity to implement a compliance plan as described in subsections (7)(a), (b), (c), and (d) of this rule in these circumstances. Nothing in this subsection prohibits the Director from initiating another review at any time as set forth in section (3) of this rule.

(g) Application Denial: If a person applying to become a Video LotterySM retailer is projected by the Lottery not to be in compliance with the requirements of this rule, the Director shall deny the application.

(8) **Re-Application:** Any Video LotterySM retailer whose contract to sell Video LotterySM tickets and shares is terminated, or any person applying to become a Video LotterySM retailer whose application is denied, shall not be eligible to reapply for a Lottery contract for the terminated or denied establishment for one year from the date of termination or application denial. After one year, the application shall only be accepted upon a showing by the applicant that a substantial change in conditions at the establishment has taken place. Upon acceptance of an application, the Director shall determine whether the establishment will be operated as a casino as set forth in this rule. In the case of a person applying to become a Video LotterySM retailer whose application is denied, the Director may, in the Director's sole discretion, waive up to six months of the one-year waiting period based upon a showing of good cause by the applicant.

Stat. Auth.: ORS 461.120(2)

Stats. Implemented: OR Const. Art. XV, Sec. 4(4) & ORS 461.200

Hist.: LC 10-1994, f. 11-23-94, cert. ef. 12-1-94; LC 2-1997, f. 2-27-97, cert. ef. 3-1-97, Renumbered from 177-100-0015; LOTT 4-1998, f. & cert. ef. 6-26-98, Renumbered from 177-040-0060; LOTT 5-1998(Temp), f. & cert. ef. 7-7-98 thru 12-31-98; LOTT 1-1999, f. & cert. ef. 2-1-99; LOTT 8-1999, f. 5-27-99, cert. ef. 5-30-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00, Renumbered from 177-100-0155; LOTT 1-2007, f. 1-31-07, cert. ef. 2-4-07

Rule Caption: Revises and establishes procedures for contracting and purchasing. Identical to rule changes adopted September 1, 2006.

Adm. Order No.: UO 1-2007(Temp)

Filed with Sec. of State: 2-13-2007

Certified to be Effective: 2-14-07 thru 8-1-07

Notice Publication Date:

Rules Adopted: 571-040-0010, 571-040-0015, 571-040-0100, 571-040-0400

Rules Amended: 571-040-0380, 571-040-0382, 571-040-0390

Rules Suspended: 571-040-0220, 571-040-0240, 571-040-0253, 571-040-0280

Rules Ren. & Amend: 571-040-0200 to 571-040-0201, 571-040-0210 to 571-040-0020, 571-040-0230 to 571-040-0040, 571-040-0243 to 571-040-0030, 571-040-0250 to 571-040-0251, 571-040-0260 to 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

Subject: 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 rule changes adopted September 1, 2006.

Rules Coordinator: Connie Tapp—(541) 346-3082

571-040-0010

Applicability of Chapter 571, Division 40; Policymaking Authority

(1) Except for OAR 571-040-0015 and 0020, the rules set forth in chapter 571, division 40, do not apply to:

(a) Transactions involving an interest in real property, including but not limited to, contracting with persons or entities to operate retail establishments in facilities owned or controlled by the University.

(b) Licenses or permits to use or gain access to real property or improvements thereon, regardless of the purpose for the license or permit.

(c) Public improvement contracts (facilities contracting) and contracts with architects, engineers, and similar consultants where the services are related to a public improvement project.

(d) Material transfer agreements, licenses by the University of inventions, software, trademarks, trade secrets, know-how, or copyrighted materials, confidentiality agreements, and acquisition of an interest in intellectual property for management, licensing, or dissemination by the University.

(e) The provision of services or goods by a University unit.

(f) The conveyance by the University of any interest in personal property, tangible or intangible, or real property.

(g) Grants, sponsored research agreements, and the like.

(h) Academic agreements, including but not limited to, student and faculty exchange agreements, affiliation agreements, internship agreements, clinical practicum agreements, study abroad agreements, dual enrollment agreements, transfer agreements, and consortium agreements.

(i) Employment agreements.

(j) Endowment agreements, gift agreements, and the like.

(k) All other contracting by the University, except to the extent expressly set forth in these rules.

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(2) The Vice President for Finance and Administration or designee may promulgate internal management directives and policies necessary or appropriate to implement the rules set forth in chapter 571, division 40.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UO 1-2006, f. 8-15-06, cert.c ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0015

Signature Authority; Execution of Instruments

(1) Except as set forth herein, the Vice President for Finance and Administration has signature authority for all instruments covered by these rules and for those described in OAR 571-040-0010(1)(a)-(h), and (k) and may also delegate such authority pursuant to a written memorandum or policy or as expressly set forth in these rules. Such delegations are limited to specific instrument types and dollar amounts. Except as set forth in these rules or as delegated by the Vice President for Finance and Administration, no one has authority to execute an instrument covered by these rules on behalf of the University. Instruments executed or agreements entered into without authority are voidable at the sole discretion of the University. Failure to follow this rule may result in personal liability and other consequences.

(b) The General Counsel to the Oregon University System or designee has authority to execute all licenses of University-owned or -controlled inventions, software, trade secrets, know-how, or copyrighted materials, material transfer agreements, and related instruments.

(c) The General Counsel to the University or designee has the exclusive authority to execute instruments related to legal services.

(d) Other officers of the University may execute instruments as authorized by law.

(2) Special Rule for "Click-Wrap" Licensing of Computer Software: The University recognizes that much computer software is purchased via Internet download under "click-wrap" or "click-to-agree" licenses, which may include payment and other terms. To the extent that such licenses are not negotiable and are available to the general public on the same terms and conditions, all regular University employees, with the approval of an authorized individual, are authorized to purchase computer software using such licenses. Authority under this provision is limited to \$5000.00 per purchase. The approval of an authorized individual is not required if there is no charge for the software.

(3) Contracts:

(a) Which are entered into by an unauthorized individual; or

(b) Which exceed the authority of an otherwise authorized individual;

or

(c) Which are not authorized under these rules shall be voidable at the sole discretion of the University or they may be ratified by the University in its sole discretion. If work is performed or payment made prior to execution, any contract may be voided or ratified by the University in its sole discretion.

(4) Authorized individuals shall be responsible for ensuring that the proper procedures are followed for all institutional purchases or contracts. The University may take appropriate action in response to unauthorized expenditures or actions including, but not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such expenditures or actions.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UO 1-2006, f. 8-15-06, cert.c ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0020

Code of Ethics

(1) The following Code of Ethics shall apply to University employees in relation to contracting and purchasing. Employees shall:

(a) Give first consideration to the objectives and policies of the Board of Higher Education, OUS and the University;

(b) Strive to obtain the best value for expenditures;

(c) Fairly consider prospective contractors insofar as state or federal statutes and institutional rules and policies require;

(d) Conduct business in an atmosphere of good faith;

(e) Demand honesty in representations made by prospective contractors;

(f) Encourage all segments of society to participate by supporting emerging small, disadvantaged, and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;

(g) Comply with the applicable provisions of ORS Chapter 244 and other applicable rules and policies on conflict of interest that may be more restrictive;

(h) Refrain from having financial interests incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in the Oregon University System's Internal Management Directives and other applicable rules and policies;

(i) Receive the written consent of the originator of proprietary ideas and designs before using them; and

(j) Foster fair, ethical, and legal trade practices.

(2) This code is for the University's internal use only and creates no obligations enforceable by contractors, proposers, bidders, or other parties doing business with the University, nor may it be used by contractors, proposers, bidders, or other parties doing business with the University who are challenging actions taken by the University or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0210, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0030

Applicable Model Public Contract Rules

The University may use any or all of the Attorney General's Model Public Contract Rules as guidelines for interpretation of these rules or may incorporate some or all of them into a Solicitation Document, contract, or other document.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0243, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0040

Definitions

The following definitions shall apply to OAR chapter 571, division 40, unless the context requires otherwise or except as stated:

(1) Days: Calendar days unless otherwise specified.

(2) Disadvantaged Business Enterprise (DBE): As defined in ORS 200.005.

(3) Disqualification or Disqualify: The preclusion of a person or entity from contracting with the University, OUS, State Board of Higher Education, or the State of Oregon for a period of time.

(4) Emergency: an unexpected, serious situation requiring prompt action.

(5) Emerging Small Business (ESB): as defined in ORS 200.005
Entity: any governmental body or agency, association, sole proprietorship, partnership, corporation, limited liability company, or other organization, however described or named and regardless of legal status, other than a Person.

(6) Minority Business Enterprise (MBE): As defined in ORS 200.005.
OUS: Oregon University System. Person: A natural person.

(7) Qualified Rehabilitation Facility (QRF): A nonprofit organization that trains and puts Oregonians with disabilities to work.

(8) Qualified Contractor List: A list of persons or entities identified from a Solicitation Document, or other request that are able to provide specific goods or services. Inclusion on a Qualified Contractor List does not indicate that a Person or Entity has entered into a contract with the University.

(9) Responder: A person or entity submitting a bid, proposal or other response to a Solicitation Document.

(10) Response: A bid, proposal or other response to a Solicitation Document.

(11) Responsive Response: A Response that substantially complies with applicable solicitation procedures and requirements in the Solicitation Document.

(12) Request for Information (RFI): a written document soliciting information regarding goods or services. An RFI is not a Solicitation Document.

(13) Request for Qualifications (RFQ): A written document soliciting information regarding the qualifications of providers of goods or services. An RFQ is not a Solicitation Document.

(14) Single Seller or Sole Source: The only provider of a particular good or service reasonably available.

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(15) Solicitation Document: An invitation to bid (ITB), request for proposal (RFP) or other document seeking a bid, proposal, or other Response where the University intends that a contract will result.

(16) Used Personal Property: personal property used by a previous owner or user and recognized in the relevant trade or industry as "used" at the time of University purchase. It generally does not include property or equipment if the University was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement. This definition does not relate to surplus property disposal. Women Business Enterprise (WBE): As defined in ORS 200.005.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0230, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0050

Basis for Awarding of Contracts

The University shall select contractors and award contracts based on such factors as are identified in the Solicitation Document and such other factors as are reasonable under the circumstances. The Vice President for Finance and Administration or designee may prescribe the terms and conditions of contracts and documents required in support of contracts.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0270, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0060

Contract Amendments and Expired Contracts

A contract amendment that is reasonably related to the scope of work under a contract may be entered into with the contractor without application of OAR chapter 571, division 40. Lapsed contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or designee.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0290, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0070

Pre-Response Conferences

(1) Pre-Response conferences may be scheduled by the University. Each such conference shall be described in the Solicitation Document as voluntary or mandatory. If such a conference is designated as mandatory, a Responder must attend in order to submit a Response.

(2) A Responder may authorize a representative to attend the pre-Response conference.

(3) The University determines the content of any conference held under this rule.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0310, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0080

Acceptance of Responses and Correspondence

The University may choose to accept Responses and correspondence by any means and on any conditions authorized in the Solicitation Document, including by electronic mail or facsimile machine.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0320, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0100

Screening and Selection for Professional Services Contracts

(1) The University periodically requires an individual or firm to perform professional services. OAR 571-040-0100 sets forth the screening and selection processes to be used for all such contracts and, in the case of the University of Oregon, supersedes OAR 580-040-0100.

(2) The University may contract for professional services when it is desirable or prudent and not prohibited by law.

(3) "Professional Services Contract" means a contract for professional services performed by an independent contractor. Compensation under a Professional Services Contract may be on an hourly basis, a flat fee basis, a not-to-exceed amount, or any other compensation arrangement that serves the University's best interests.

(4) Formal Selection Procedure: This procedure will be used whenever the estimated payment to the contractor during the contract term is \$200,000 or more or when the Vice President for Finance and

Administration or designee determines that the formal selection procedure is appropriate. The Vice President for Finance and Administration or designee may grant an exemption from the formal selection procedure for sufficient cause. The amount of a contract may not be manipulated to avoid the formal selection procedure.

(a) Announcement: The University, through the Vice President for Finance and Administration or designee, will give notice of intent to contract for professional services in a trade periodical or newspaper of general circulation or on the University's website. The notice may also be sent to potential contractors and any other interested party. The notice shall include a description of the proposed project, the scope of the services required, project completion dates, if any, a description of special requirements, if any, and any other information deemed appropriate by the University. The notice will invite qualified prospective contractors to request an application. The notice will specify when and where the application may be obtained, to whom it must be returned, and the closing date. The University will provide notices to the Office of Minority, Women and Emerging Small Business.

(b) Application: The application, which is considered a Solicitation Document, will consist of a statement that describes the prospective contractor's credentials, performance data and other information sufficient to establish the contractor's qualification for the project, as well as any other information requested by the University.

(c) Initial Screening: The University will evaluate the qualifications of all Responders and select one or more prospective contractors who will best meet the University's needs.

(d) The Final Selection Procedure:

(A) Interviews: The University may interview, through any appropriate medium, the finalists selected from the initial screening.

(B) Award of Contracts: The University will make the final selection based on such criteria as the University deems appropriate. The University may award more than one contract and may develop a roster of contractors qualified to perform various types of services from which the University may choose without the need to undertake one of the selection procedures set forth in this rule.

(5) Informal Selection Procedure. This procedure may be used when the estimated payment for the proposed services to be performed by the contractor exceeds \$50,000 but is less than \$200,000 or when the Vice President for Finance and Administration or designee determines that use of the informal selection procedure is appropriate. The Vice President for Finance and Administration or designee may grant an exemption from the informal selection procedure for sufficient cause. The amount of a contract may not be manipulated to avoid the informal selection procedure.

(a) Selection: The University will contact a minimum of three prospective contractors believed to be qualified to offer the sought-after services. If the University determines that fewer than three such contractors are reasonably available, the University need not contact three. An estimated fee or the basis for determining the fee will be requested. The University may award any number of contracts and may develop a roster of contractors qualified to perform various types of services from which the University may choose without the need to undertake one of the selection procedures set forth in this rule.

(6) Professional Services Contracts not exceeding \$50,000: The University may enter into Professional Services Contracts not exceeding \$50,000 without following the procedures identified elsewhere in this rule. The amount of the contract is not to be manipulated to avoid the need for informal or formal procedures. The University may award any number of contracts and may develop a roster of contractors qualified to perform various types of services from which the University may choose without the need to undertake one of the selection procedures set forth in this rule.

(7) The University may negotiate with a Single Seller or Sole Source if the services are available only from one contractor, or the prospective contractor has skills or experience not otherwise readily available and which are required for the performance of the services.

(8) Emergency Appointment Procedure: The University may select a contractor without following any of the procedures set forth in this rule when an unexpected, serious situation requires prompt action. In such an instance, the recommended appointment and a description of the conditions requiring the use of this appointment procedure shall be communicated to the Vice President for Finance and Administration or designee, who will determine if an emergency exists and, if so, the Vice President for Finance and Administration may declare an emergency and approve the appointment. The existence of an emergency and the appointment procedure must be documented in writing.

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(9) Alternative Processes. Notwithstanding anything to the contrary in these rules, the University is authorized to develop and use alternative processes for contracting for Professional Services using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, operating efficiency, expansion potential, experience and reliability, commitment to support regional business development, and support for innovation.

(10) The Vice President for Finance and Administration or designee may grant an exemption from compliance with this rule for sufficient cause. Documentation of the decision to grant an exemption and the reason therefor must be maintained.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0201

Purpose; Delegation of Authority; Application

(1) The purpose of the rules set forth in OAR 571-040-0201 through 571-040-0390, is to:

- (a) Establish procurement procedures that are simple and flexible;
- (b) Reduce prior approvals and ensure accountability through auditing;

(c) Generate and retain only necessary documentation;

(d) Allow the University to work cooperatively with other Oregon University System (OUS) institutions and other governmental and non-profit entities; and

(e) Allow the University to do business more easily with local and regional vendors.

(2) These rules have been promulgated pursuant to authority delegated by the State Board of Higher Education (Board) under OAR chapter 580, division 40, and have been approved by the OUS Vice Chancellor for Finance and Administration. With respect to the University, these rules supersede the rules found in OAR 580-040-0200 through 580-040-0295, except that the following rules shall apply to the University: OAR 580-040-0290, 580-040-0292; and 580-040-0295.

(3) Except as expressly indicated, the rules set forth in OAR 571-040-0201 through 571-040-0390 apply only to the procurement (purchase) of goods and services.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0200, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0251

Processes for Procurement of Goods and Services Other than Professional Services

(1) The University has established several processes for the procurement of goods and services: formal; informal; direct negotiation; emergency; Sole Source; intergovernmental/non-profit; exemption; and alternative. In addition, the University has established several methods by which goods and services may be acquired: procurement cards; price agreements; retainer agreements; requirements contracts; purchase orders; custom contracts; and Qualified Contractor Lists. The University may use other methods in its sole discretion.

(2) For each purchase of goods and services, authorized personnel shall retain documentation, either hard copy or electronic, consistent with the requirements of OAR 571-040-0390. Such documentation shall be subject to audit.

(3) Formal Procurement Process (more than \$200,000). The formal procurement process shall be used, except as otherwise set forth herein, for all purchases of goods and services where the estimated cost exceeds \$200,000. The formal procurement process may be used for purchases where the estimated cost is \$200,000 or less upon the approval of the Vice President for Finance and Administration or designee.

(a) Multiple contracts, purchase orders, or purchasing requisitions shall not be issued separately with the intent to circumvent these rules.

(b) The formal process may be accomplished in either of two ways the University selects:

(A) Invitation to bid. The invitation to bid will be advertised as appropriate (which may be exclusively on the University's website), and, unless the invitation to bid provides otherwise, the contract will be awarded to the lowest responsive and responsible bidder.

(B) Request for proposal. The request for proposal will be advertised as appropriate, and the award process and criteria will be described in the request for proposal.

(c) The Vice President for Finance and Administration or designee may grant a release from the formal procurement process.

(5) Informal Procurement Process, Including Direct Negotiation (\$50,000.01 to \$200,000)

(a) The informal procurement process may be used for all purchases of goods or services where the estimated cost exceeds \$50,000 but is not greater than \$200,000, or where the Vice President for Finance and Administration or designee has approved the use of the informal procurement process. The informal procurement process may include the solicitation of quotes or direct negotiation or a combination thereof. Multiple contracts, purchase orders, or purchasing requisitions shall not be issued separately with the intent to circumvent these rules.

(b) Solicitation of quotes will ordinarily be accomplished through the solicitation of quotes from three potential contractors. However, there may be circumstances where fewer than three are reasonably available. Solicitation may be accomplished by advertisement or by the initiation of a request to the relevant number of potential contractors, or both. When procuring goods or services through the solicitation process, information regarding persons or entities contacted, basis for selection, prices, and other information pertinent to the solicitation must be clearly documented.

(c) Direct negotiation. In lieu of or in addition to the solicitation of quotes, the Vice President for Finance and Administration or designee may authorize direct negotiation with a prospective contractor, as long as the Vice President for Finance and Administration or designee determines that direct negotiation will result in the best value under the circumstances.

(6) Purchases of \$50,000 or less. All purchases of goods or services where the estimated cost is \$50,000 or less may be accomplished through direct negotiation or such other process as will result in good value under the circumstances.

(7) Emergency Purchases. Emergency purchases may be made only pursuant to authorization issued by the Vice President for Finance and Administration or designee upon a finding that an Emergency exists. The amount of the purchase is not a relevant consideration in finding the existence of an Emergency. The procurement process to be used is at the discretion of authorized personnel but must be documented.

(8) Sole Source Purchases. When purchasing goods or services from a Sole Source, the University is not required to follow the competitive procedures set forth in these rules. Sole Source purchases must be approved by the Vice President for Finance and Administration or designee, in his or her sole discretion. Sufficient information shall be gathered to justify the determination that the good or service is reasonably available from only one contractor.

(9) Purchases From or Through Other Governmental or Non-profit Entities. Regardless of the dollar value of the purchase, the University and its departments may contract with, and purchase goods and services from or through, other governmental or non-profit entities such as state agencies, political subdivisions, federal agencies, or any other governmental or non-profit entity, without the use of competitive procedures.

(10) Requests for Information (RFI) and Requests for Qualifications (RFQ). The University may issue an RFI or an RFQ when the University determines, that such issuance is appropriate under the circumstances.

(11) Procurement Cards. Procurement cards, or other methods of direct purchasing, may be used as permitted by the Business Affairs Office.

(12) Qualified Contractor List. The University, through the Business Affairs Office, may negotiate directly with a contractor listed on a Qualified Contractor List if only one person or entity meets the University's needs and if the Solicitation Document or other document informed potential contractors that direct negotiation could occur.

(13) Qualification of Prospective Responders. The University may limit the persons or entities authorized to respond to a Solicitation Document by requiring that such persons or entities demonstrate to the University that the person or entity has:

(a) financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, sufficient for the person or entity to meet all contractual responsibilities;

(b) a satisfactory record of performance on projects of similar size and scope; and

(c) a satisfactory record of integrity. When the University requires the qualification of prospective responders, it shall not consider a response from a Person or Entity that has not been qualified. If a Person or Entity fails to qualify the University shall notify the Person or Entity and specify the reasons under for such failure. The Person or Entity may protest the University's determination.

(14) Alternative Procurement Processes. Notwithstanding anything to the contrary in these rules, the University is authorized to develop and use

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alternative procurement processes using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, vendor experience and reliability, commitment to support regional business development, and support for innovation.

(15) Procurement Methods. At the University's discretion and subject to the University's direction, all procurement processes and purchases may be accomplished through the use of paper or electronic documents delivered by mail or courier; transmission via facsimile; transmission via electronic means; or a combination thereof.

(16) Bonds, Guaranties, and Security. The University may require payment or performance bonds or such other guaranties or security as the University deems appropriate, in its sole discretion, under the circumstances.

(17) Information Technology. In some cases, the acquisition of information technology and related services may require the prior approval of the Department of Administrative Services.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0250, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0261

Exemptions

(1) The University is exempt from compliance with OAR 571-040-0251 when seeking to acquire or pay for (as applicable) the following:

(a) Educational services.

(b) Brand name goods and services or product prequalification. The University may specify brand names in the procurement of goods and services if the particular good or service has attributes not found in other goods or services or under such other circumstances as the Business Affairs Office deems appropriate. In addition, when specific design or performance specifications must be met for a good or service to be purchased, the University may specify a list of qualified goods or services by reference to the qualified goods or services of a particular contractor or potential contractor.

(c) Advertising and media services.

(d) Price-regulated goods and services, where the rate or price for the goods or services being purchased is established by a federal, state, or local regulatory authority.

(e) Goods or services under federal contracts. When the price of goods or services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the University may purchase the goods or services in accordance with the federal contract. In addition, the University may purchase specific equipment that is expressly required under the terms of the contract and that is only available from one source.

(f) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.

(g) Investment contracts.

(h) Food and food-related services and products.

(i) Maintenance services directly from the contractor providing the goods.

(j) Used Personal Property.

(k) Goods purchased for resale.

(l) Goods or services related to intercollegiate athletic programs.

(m) Cadaveric organs.

(n) Goods and services related to conferences and workshops.

(o) Dues, registrations, and membership fees.

(p) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, asphalt, and similar commodities and products, and the transportation thereof.

(q) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.

(r) Repair and overhaul of goods or equipment.

(s) Goods or services purchased in foreign countries.

(2) Other exemptions may be granted by the Vice President for Finance and Administration or designee. Documentation of the decision to grant an exemption and the reason therefor must be maintained.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0260, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0380

Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

The University shall purchase goods and services from Qualified Rehabilitation Facilities in accordance with the statutes and regulations governing purchase from such QRFs.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0382

Affirmative Action; General Policy

The following Affirmative Action General Policy shall apply to University purchasing and contracting.

(1) The general policy of the University shall be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses by offering the contracting and subcontracting opportunities available through the University. Notice of all contract and bid request solicitations using the formal procurement process shall be provided to the Advocate for Minority, Women and Emerging Small Business and the Oregon Department of Administrative Services for the Oregon Opportunity Register and Clearinghouse when any other solicitation is sent.

(2) The University shall not knowingly contract with or procure goods or services from any organization, business entity, or individual that discriminates on the basis of age, disability, national origin, race, color, marital status, religion, sex, status as a veteran, sexual orientation, or transgendered status.

(3) Responders shall certify that they will not discriminate and have not discriminated against minority, women, or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0390

Recordkeeping Requirements

(1) Documentation of all purchasing and contracting transactions will be made available for inspection by the OUS Internal Audit Division upon request.

(2) Authorized personnel shall maintain documentation, whether written or electronic, regarding all purchasing and contracting transactions in accordance with the requirements of the Secretary of State and OUS.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0400

Applicability

OAR 571-040-0410 through 571-040-0460 shall apply to all transactions covered under chapter 571, division 40.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0410

Responsibility; Responsibility Investigation

(1) A responsible Responder is a Person or Entity that has the ability in all respects to perform fully the contract, the integrity and reliability that will ensure good faith performance, and who has not been Disqualified by the State of Oregon, the State Board of Higher Education, OUS, or the University.

(2) The University may, prior to awarding any contract, make such investigation as is necessary to determine whether a Responder is responsible.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0350, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0420

Responsiveness; Acceptance and Rejection

(1) A responsive Response is one that complies in all material respects with a Solicitation Document and with all prescribed procedures and requirements. A nonresponsive Response is one that does not meet one or more material aspects of a Solicitation Document or that does not comply

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with one or more prescribed procedures or requirements. The University may waive one or more defects in a Response that provide no material advantage to the Responder or are otherwise immaterial.

(2) Except as set forth in the Solicitation Document or these rules, the University will accept and consider only those Responses that are responsive or Responses with one or more defects that have been waived. Otherwise, nonresponsive Responses will be rejected.

(3) Nothing in this rule limits the ability of the University to monitor contractor performance.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0352, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0430

Rejection of Individual Responses

(1) The University may reject any Response that fails to meet all prescribed procedures or requirements and may reject any Response upon a written finding that it is in the best interest of the University to do so.

(2) Reasons for rejecting a Response include, but are not limited to, finding that:

(a) The Responder has not been qualified as required in a Solicitation Document or these rules, or is disqualified under ORS 200.075, 279A.110, other similar statute, or these rules; or

(b) The Responder, or an entity in which the Responder has a financial interest, has been declared ineligible by the Commissioner of the Bureau of Labor and Industries for failure or refusal to pay or post prevailing wage rates; or

(c) The Response is not responsive; or

(d) The goods or services offered in the Response are unacceptable by reason of their material failure to meet the requirements of the Solicitation Document; or

(e) The Responder is not responsible, i.e., is not likely to be capable of satisfying the terms and conditions of the contract in a timely manner due to financial incapacity, inability to obtain bonding, loss of license, poor performance history, lack of necessary equipment, lack of personnel of sufficient experience, or other objective cause; or

(f) The Responder within the last five years has been found in a civil, criminal, or administrative proceeding to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior; or

(g) The Responder has been determined to be responsible (i.e., adjudicated by a court, or as determined in writing by the State of Oregon, the Board of Higher Education, OUS or the University in the case of a public contract) for more than one breach of a public or private contract or contracts in the last three calendar years before the scheduled date of the closing; or

(h) The bond, guaranty, or other required security has not been submitted or properly executed as required by the Solicitation Document; or

(i) The Responder has not met the emerging small business, disadvantaged business, minority business, and women business enterprise requirements, if any, established by the State of Oregon, the Board of Higher Education, OUS or the University, and has not made a good faith effort in accordance with applicable law to comply with the requirements prior to closing; or

(j) The Responder has failed to provide the certification required by OAR 571-040-0382; or

(k) Other circumstances of the particular Response or Responder indicate that acceptance of the Response would impair the integrity of the selection process or result in an imprudent contract.

(3) For purposes of this rule, the business registry of bidders or proposers shall be subject to scrutiny, i.e., confirmation of ownership or identification of officers and directors, in order to identify previously disqualified bidders or proposers, and thus prevent any subterfuge, change of apparent ownership, or other adjustments in formal appearance, to avoid application of this rule or of the disqualification provisions of relevant statutes or rules.

(4) All Responders whose Response is rejected shall be notified in writing by certified mail of the rejection and the reason therefor.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0360, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0440

Disqualification

(1) As used in this rule:

(a) "Disqualification" means the debarment, exclusion, or suspension of a Person or Entity from the right to submit a Response to a Solicitation Document for a reasonable, specified period of time named in the order of disqualification. A Person or Entity so debarred, excluded, or suspended is disqualified.

(b) Disqualification attaches to and follows the Person, so that a Person who, for example, is a partner in a partnership or an officer or principal in a corporation that is disqualified may not reform the business entity as a way of avoiding the disqualification.

(2) A Responder may be disqualified if the Responder is found to have materially breached a contractual obligation to the State of Oregon, the Board of Higher Education, OUS, the University, or a Person or Entity.

(3) A Responder may be disqualified for the reasons set forth in ORS 200.075 and similar statutes and rules.

(4) The University may make such investigation as is necessary to determine whether there are grounds for disqualification. Failure to supply such information promptly as requested by the University is itself grounds for a disqualification.

(5) Notice of contemplated disqualification will be provided in writing by personal service or certified mail. The disqualified Entity or Person shall then be provided with an opportunity to be heard before the Institution President or designee. A Final Agency Order shall thereafter be issued and shall contain the effective date of the disqualification and the effective period of disqualification; the grounds for disqualification; and a statement of the appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0370, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0450

Protests

(1) The following matters may be protested:

(a) A determination of responsibility or lack thereof;

(b) A determination of responsiveness or lack thereof;

(c) The rejection of a Response;

(d) The content of a Solicitation Document;

(e) The denial of qualification;

(f) The selection of one or more contractors. A protest may be submitted only by a Person or Entity that can demonstrate that it has been or is being adversely affected by a University decision or the content of a Solicitation Document.

(2) Except for 1(d) above, a protest must be submitted in writing to the Director of Business Affairs or designee no later than ten (10) calendar days after the mailing date of the decision. For 1(d) above, a protest must be submitted to the Director of Business Affairs or designee no later than ten (10) calendar days prior to closing. These time periods may be varied in a Solicitation Document or for sufficient cause as determined in the sole discretion of the Director of Business Affairs or designee.

(3) A protest must fully set forth all grounds for the protest and include all evidence that the protestor wishes the Director of Business Affairs or designee to consider. Failure to include any ground for the protest or any evidence in support of it shall constitute a final, knowing and voluntary waiver of the right to assert such ground or evidence. A protest must include in a conspicuous location a marking identifying the type and nature of the protest. The Solicitation Document number must also be included in a conspicuous location.

(4) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including but not limited to specifications or contract terms, violates applicable law. The University will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to all Responders and extend the closing where appropriate. The University may choose, in its sole discretion, to close the procurement process without making an award and begin a new procurement process.

(5) A protest of the denial of qualification must demonstrate that the University's decision was materially in error or that the University committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the denial.

(6) A protest of the selection of one or more contractors requires the Responder to demonstrate, as applicable:

(a) That all higher-ranked Responders were ineligible for selection or that the Responder would have been "next in line" to receive the award and was eligible for selection; and

(b) That the Responder selected was ineligible.

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(7) A protest of the rejection of a Response must demonstrate that the University's decision was materially in error or that the University committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) The Director of Business Affairs or designee shall review protests under sections (4) through (7) above and shall have the authority to make the final determination. The Director of Business Affairs or designee shall also have the authority to settle or resolve a protest. In making a final determination or settling or resolving a protest, the Director or designee shall issue a written Final Agency Order. Contract award may be made prior to issuance of the Final Agency Order if authorized by the Director or designee. Judicial review of the disposition of a written protest submitted in accordance with this rule may be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0271, 571-040-0361 571-040-0371, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-040-0460

Clarification of Solicitation Documents and Requests for Change

A prospective Responder may submit in writing to the Director of Business Affairs, designee, or other Person identified in a Solicitation Document a request for clarification or change of any Solicitation Document. A request for change must include the specific change sought by the prospective Responder. A request under this rule must be submitted within ten (10) calendar days after the Solicitation Document is issued. This time period may be varied in a Solicitation Document or for sufficient cause as determined in the sole discretion of the Director of Business Affairs or designee.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0263, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

Rule Caption: Updates the immunization policy at the recommendations of the Center for Disease Control & Prevention. Identical to rule changes adopted September 1, 2006.

Adm. Order No.: UO 2-2007(Temp)

Filed with Sec. of State: 2-13-2007

Certified to be Effective: 2-14-07 thru 8-1-07

Notice Publication Date:

Rules Amended: 571-004-0016

Subject: 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.

Rules Coordinator: Connie Tapp—(541) 346-3082

571-004-0016

Required Immunization

(1) All individuals born after December 31, 1956 and who enter the University of Oregon after this rule is promulgated, must show proof of two measles and mumps vaccinations:

(a) Students will not be permitted to register for a second term without proof of measles and mumps immunization, consistent with the requirements of this rule, on record at the Student Health Center;

(b) After the beginning of a term, registered students may be vaccinated at the Student Health Center for a charge.

(2) Acceptable evidence of immunity to measles and mumps shall consist of one of the following for each disease:

(a) Documentation of two doses of MMR (Measles/Mumps/Rubella) vaccine with the first dose on or after their first birthday and the second dose no less than 28 days following the first. Documentation of immunization must consist of an official immunization record or be signed by a health care provider to meet this requirement;

(b) Physician-documented measles and mumps infection. A letter or other documentation signed by a health care provider is required to meet this requirement;

(c) Documented laboratory evidence of immunity to measles and mumps; or

(d) Birth prior to January 1, 1957.

(3) Notwithstanding any other provision of this rule, beginning September 1, 2007, for students who are attending the University of Oregon pursuant to a non-immigrant visa, documentation of measles and mumps vaccination must be provided prior to the student attending classes. If the student's first dose of measles and mumps vaccine was received less than 30 days prior to attendance, the student has until the beginning of the second term or semester to provide documentation of the second dose.

(4) Students seeking exemption from this requirement because of age, medical condition, or sincerely held religious belief shall complete and present to the designated Student Health Center official an exemption form. Forms are available at no cost upon request at the Student Health Center main desk. Forms also will be available during registration.

(5) Students without evidence of immunity to measles or mumps may be excluded from classes and other university activities in the event of an outbreak of measles or mumps involving University of Oregon students and/or staff.

Stat. Auth.: ORS 351 & 352
Stats. Implemented: ORS 351.070
Hist.: UOO 2-1991, f. & cert. ef. 1-30-91; UO 2-2006, f. 8-29-06, cert. ef. 9-1-06; UO 2-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

Rule Caption: Update and amend student medical leave rules to represent best practices for responding to students' need for medical leave. Identical to rule changes adopted September 20, 2005.

Adm. Order No.: UO 3-2007(Temp)

Filed with Sec. of State: 2-13-2007

Certified to be Effective: 2-14-07 thru 8-1-07

Notice Publication Date:

Rules Adopted: 571-023-0000, 571-023-0100, 571-023-0105, 571-023-0110, 571-023-0115, 571-023-0120

Rules Amended: 571-023-0005, 571-023-0025

Rules Suspended: 571-023-0010, 571-023-0015, 571-023-0020, 571-023-0030, 571-023-0035, 571-023-0040

Subject: Revise and update outdated student medical policy so rules represent best practices for responding to students' need for medical leave for serious health conditions. Identical to rule changes adopted September 20, 2005.

Rules Coordinator: Connie Tapp—(541) 346-3082

571-023-0000

Definitions

For purposes of OAR 571-023-0000 et seq.

(1) "Dean's Consultation" occurs when the Vice President convenes a group of professionals to recommend actions and strategies to respond to a student's failure to meet the University's Standards of Responsibility and Self Care.

(2) "Medical Leave" means leave during an academic term, resulting from a student's medical or mental health condition that requires the student to interrupt their enrollment. (3) "Professional Assessment" means an assessment of a student's mental capacity, emotional functioning and psychological well-being across all major bio-psycho-social domains performed by one or more mental health professionals trained to perform such an assessment. The objective of a "Professional Assessment" will be to determine a student's current level of dangerousness to self or others by understanding the student's ability to think, reason, care adequately and will not involve treatment interventions such as use of medication or psychotherapy. "Professional Assessment" may also mean gathering information to recommend steps to restore the health and safety of the student or to protect the university community.

(4) "Suicidal" means potentially self-injurious to oneself with the intent to imminently end one's life. "Suicidal" could include suicidal gesturing (mild to moderate attempts to commit suicide) or active suicidal attempts (any deliberate action with potentially life-threatening consequences).

(5) "Suicide Assessment Team" means a group of professional staff members who have expertise in the area of suicide assessment and referral selected under the sole discretion of the Vice President. Suicide Assessment Team members will include the Director of the University Counseling and Testing Center, the Director of the University Health Center, the Director of Student Life, and, if when appropriate, the Director of Residence Life, or the designees or successors.

(6) "Vice President" means Vice President for Student Affairs or successor or designee.

Stat. Auth.: ORS 352.004, 351.010, 351.060

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Stats. Implemented: ORS 352.004
Hist: UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-023-0005

Voluntary Leave

A student who wishes to be placed on medical leave from the University shall present a recommendation to that effect from a physician or psychologist to the Vice President for Student Affairs. The Vice President will request the Director of the University Health Center (if the request for leave is based on a medical condition) or the Director of the University Counseling Center (if the request for leave is based on mental health conditions) or both (if the Vice President believes information from both Directors would be useful) evaluate the information provided. Upon the affirmative written recommendation of the Director conducting the evaluation, the Vice President shall immediately grant the student's request.

Stat. Auth.: ORS 352.004, 351.010, 351.060
Stats. Implemented: ORS 352.004
Hist: UOO 4, f. 8-13-73, ef. 9-1-73; UOO 7(Temp), f. & cert. ef. 2-26-74; UOO 9, f. & cert. ef. 7-15-74; UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-023-0025

University Duties of Refund and Notification

If a student is placed on leave from the University pursuant to the provisions of OAR 571-023-0005 or 571-023-0115, the Vice President shall instruct the Registrar to withdraw the student immediately and to initiate the appropriate tuition and fee refund. If the leave occurs late in the term and incompletes are more appropriate for the student's work, the Vice President, in the Vice President's sole discretion, may seek that action rather than withdrawals from all courses.

Stat. Auth.: ORS 352.004, 351.010, 351.060
Stats. Implemented: ORS 352.004
Hist: UOO 4, f. 8-13-73, ef. 9-1-73; UOO 7(Temp), f. & cert. ef. 2-26-74; UOO 9, f. & cert. ef. 7-15-74; UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-023-0100

Standards of Responsibility and Self Care

(1) Standards of Responsibility and Self Care. A student in the university community who is experiencing a serious medical or mental health condition or emergency that substantially threatens the welfare of self or others, significantly disrupts the functioning of university operations or significantly interferes with a student's ability to complete their educational goals does not meet University standards of responsibility and self care and may be mandated for a professional assessment.

(2) Procedures. The following procedures shall be followed when the Vice President has reason to believe that a student may not meet University standards of responsibility and self care:

(a) The Vice President will consult with the Director of the Health Center (for behavior based on medical conditions or emergencies) or the Director of the Counseling Center (for behavior based on mental health conditions or emergencies) or both (if the Vice President believes information from both Directors would be useful).

(b) Request for a Dean's Consultation. If a student is not meeting the University's standards of responsibility and self care but is not suicidal, the Vice President may convene a dean's consultation to recommend appropriate actions.

(c) Request for evaluation in cases of suicidal ideation or behavior. When a student's behavior suggests it is warranted, the Suicide Assessment Team may conduct a review. Based on its review, the Suicide Assessment Team will recommend appropriate actions, which may include a mandatory professional assessment.

Stat. Auth.: ORS 352.004, 351.010, 351.060
Stats. Implemented: ORS 352.004
Hist: UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-023-0105

Mandatory Professional Assessment Appointment

(1) Mandatory professional assessment. If based on the Suicide Assessment Team's recommendation, the Vice President determines that the student should be required to attend a mandatory professional assessment appointment completed by an individual or individuals identified by the Suicide Assessment Team, the Suicide Assessment Team will attempt to reach the student by phone and will send a letter to the student requiring the student to attend the appointment within 3 days of the date of the letter. A student who is required to attend a mandatory professional assessment appointment may choose, consistent with the provisions of the rule, to have the mandatory assessment completed by an individual or individuals identified

by the Suicide Assessment Team or, instead, by a psychologist, psychiatrist or other qualified, credentialed mental health professional, approved by the Suicide Assessment Team.

(a) A student who chooses to have a mandatory professional assessment performed by a mental health professional other than the individual or individuals selected by the Suicide Assessment Team as provided in this rule, must sign a release to allow information to be shared between the person performing the assessment and the Suicide Assessment Team. The information provided must be adequate to allow the Suicide Assessment Team to report to the Vice President the nature of any substantial threat to the welfare of the individual, other members of the University community, or the educational processes of the University.

(b) The Suicide Assessment Team will report to the Vice President regarding the student's ability to maintain their own safety and well-being, any threat to other members of the University community or the educational processes of the University. The report shall also contain recommendations concerning the necessity for medical leave for the student.

(2) Weekly Professional Assessment Appointments. Any student who is required to attend a mandatory professional assessment appointment must, if recommended as an outcome of the initial assessment, subsequently attend three professional assessment appointments after their initial appointment. Any student who fails to attend a professional assessment appointment, either the initial appointment or a subsequent one, will have failed to meet the University's standards of responsibility and self care.

Stat. Auth.: ORS 352.004, 351.010, 351.060
Stats. Implemented: ORS 352.004
Hist: UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-023-0110

Emergency Interventions

(1) Transfer to Institutional Care. If a physician or psychologist on the staff of the University Health Center or University Counseling and Testing Center, after conferring with the Vice President, determines that a student's medical or mental health condition poses an immediate emergency warranting institutional care, such physician or psychologist shall act as the representative of the University in emergency cases requiring immediate action to transfer a student pursuant to Oregon Laws, to an appropriate community or state health agency. Upon transfer to institutional care, the student shall be placed on medical leave from the University. If, within seven days of taking action to initiate such a transfer, the emergency has abated and the Director of the University Health Center or University Counseling and Testing Center so recommends to the Vice President, the Vice President may cancel the medical leave, require a mandatory medical assessment or, if the student elects and the Vice President concurs, place the student on voluntary medical leave for the remainder of the current term.

(2) Refusal to Participate. If, after requested by the Suicide Assessment Team, a student fails to attend any mandatory professional assessment appointment, the student will not meet the University's standards of responsibility and self care and will be subject to emergency procedures.

(3) Involvement of Family Members. The Vice President may seek the cooperation and involvement of family members of students who are experiencing medical or mental health emergencies. Involvement may include requesting family members to assist in persuading the student to seek appropriate professional assistance, such as an evaluation from a psychologist or other appropriate mental health professional. The decision to notify a student's family members in the case of a medical or mental health emergency will be weighed carefully against the student's privacy rights.

(4) Mandatory Leave. If the Vice President believes the medical or mental health condition of a student substantially threatens the welfare of self or others, significantly disrupts the functioning of university operations or significantly interferes with a student's ability to complete their educational goals or if a student fails to attend a mandatory professional assessment, the Vice President may place a student on mandatory leave after following the procedures identified in OAR 571-023-0115.

Stat. Auth.: ORS 352.004, 351.010, 351.060
Stats. Implemented: ORS 352.004
Hist: UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-023-0115

Mandatory Leave Procedure

(1) If the Director of the University Health Center or the Director of the University Counseling and Testing Center believes a student's medical or mental health condition meets the standard for mandatory leave, the Director will recommend to the Vice President that the Vice President

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initiate mandatory leave. The Director may confer with any individuals the Director believes can assist in making a recommendation.

(2) Prior to placing a student on mandatory leave, the Vice President will request the Director prepare a report containing a summary of the steps already taken to respond to the student's medical or mental health condition, a list of individuals who have relevant information regarding the student's medical or mental condition, and the basis for recommending mandatory leave.

(3) The Director will set a date and time for a meeting with the student prior to making a final recommendation regarding mandatory leave and provide the student written notice. The notice shall include:

(a) The date, time and place of the meeting;

(b) That the purpose of the meeting is to consider if the student should be placed on mandatory leave;

(c) That the standards for making the final decision are whether the student's medical or mental health condition substantially threatens the welfare of self or others, significantly disrupts the functioning of university operations or significantly interferes with a student's ability to complete their educational goals;

(d) That the student has the opportunity to attend, to participate in the meeting, and to be accompanied by a personally-selected representative.

(4) The Director shall conduct the meeting in an informal manner that provides the Director with an opportunity to gather information relevant to the final decision and provides the student with an opportunity, if the student wishes, to provide information the Director believes will be useful in making a final recommendation. The student's opportunity to participate in the meeting shall include the opportunity to provide information from others who may have knowledge regarding whether the student's medical or mental health condition substantially threatens the welfare of self or others, significantly disrupts the functioning of university operations or significantly interferes with a student's ability to complete their educational goals.

(5) If, following the meeting with the student, the Director concludes that the student's medical or mental health condition does not substantially threaten the welfare of self or others, significantly disrupt the functioning of university operations or significantly interfere with the student's ability to complete their educational goals, the Director will so inform the student and the Vice President in writing, and no further action will be taken.

(e) If, following the meeting with the student, the Director concludes that the student's medical or mental health condition substantially threatens the welfare of self or others, significantly disrupts the functioning of university operations or significantly interferes with the student's ability to complete their educational goals, the Director will so inform the student and advise the Vice President in writing, and may recommend the student be placed on mandatory leave.

(f) The Vice President will review the Director's recommendation and will notify the University General Counsel or designee or successor, prior to placing the student on mandatory leave. The Vice President shall notify the student of the Vice President's decision and of the requirements for resumption of student status contained in this rule. The Vice President's decision is final.

Stat. Auth.: ORS 352.004, 351.010, 351.060

Stats. Implemented: ORS 352.004

Hist: UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-023-0120

Resumption of Student Status

(1) Prior to returning to the University or enrolling at the University, a student who has been placed on leave as a result of emergency procedures must produce a plan in writing that delineates how the student will resume their status at the University.

(2) The plan must respond to the condition that gave rise to the need for the student's leave (i.e., need for ongoing psychological or medical care; ability to maintain a standard of responsibility and self care; ability to assume class participation.) If the student will reside in the residence halls, the plan must also state how the student will transition back into this community.

(3) The Suicide Assessment Team will review the student's plan. After the Suicide Assessment Team has reviewed the student's plan, the Director of the Health Center (for behavior based on medical conditions or emergencies) or the Director of the Counseling and Testing Center (for behavior based on mental health conditions or emergencies) or both (if the Vice President believes information from both Directors would be useful) will make a recommendation to the Vice President who will decide if the student's request to re-enroll at that time shall be granted or denied. The Vice President's decision is final.

Stat. Auth.: ORS 352.004, 351.010, 351.060

Stats. Implemented: ORS 352.004

Hist: UO 1-2005, f. & cert. ef. 9-21-05; UO 3-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

Rule Caption: Revise and update the student conduct code to represent best practices for responding to student conduct matters. Identical to rule changes adopted October 18, 2006.

Adm. Order No.: UO 4-2007(Temp)

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

Subject: Revises and updates the student conduct code to represent best practices for responding to student conduct matters. Identical to rule changes adopted October 18, 2006.

Rules Coordinator: Connie Tapp—(541) 346-3082

571-021-0100

Mission

(1) The primary mission of the Student Conduct Code is to set forth the community standards and procedures necessary to maintain and protect an environment conducive to learning and in keeping with the educational objectives of the University of Oregon. Founded upon the principle of freedom of thought and expression, an environment conducive to learning is one that preserves the freedom to learn — where academic standards are strictly upheld and where the rights, safety, dignity and worth of every individual are respected.

(2) Learning is a process defined by the exchange of ideas and the advancement of knowledge. As such, learning entails a community of scholars united by their participation in, and commitment to, intellectual exchange. The University is, first and foremost such a community. Learning also involves reflecting on decisions and improving decision-making in the future. By establishing the standards of this community, the Student Conduct Code serves not just as a disciplinary system, but also as a part of the educational system. Hence, a corollary mission of the Student Conduct Code is to teach students to live and act responsibly in a community setting, with respect for the rights of other students and members of that community, and for the property, common resources, code of conduct, and laws associated with that community, and to encourage the development of good decision-making and personal integrity.

(3) Students are simultaneously members of the University community and the broader community (e.g. city, state, nation, and world). The Student Conduct Code, and the processes of its administration and enforcement, is directed specifically toward maintaining the standards of the University community. Within its jurisdiction the University may impose disciplinary sanctions against students or student organizations when their conduct materially interferes with the educational objectives of the University or university community member.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0105

Definitions

For purposes of the Student Conduct Code, OAR 571-021-0100 et seq.,

(1) "Academic Misconduct" means the violation of university policies involving academic integrity. Examples include, but are not limited to:

(a) Intentional tampering with grades, resubmitting assignments for more than one class without the permission of the professor; and

(b) Intentionally taking part in obtaining or distributing any part of a test that has not been administered;

(c) Cheating, as defined in OAR 571-021-0105(3);

(d) Plagiarism, as defined in OAR 571-021-0105(26);

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- (e) Knowing furnishing false information to a University Official; and
(f) Fabrication, as defined in OAR 571-021-0105(14).
- (2) "Accused Student" means any student accused of violating the Student Conduct Code.
- (3) "Cheating" means any act of deception by which a student misrepresents or misleadingly demonstrates that he or she has mastered information on an academic exercise that he or she has not mastered. Examples include but are not limited to:
- (a) Giving or receiving unauthorized help in an academic exercise;
 - (b) Use of sources or resources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments;
 - (c) Acquisition, without permission, of tests or other academic material belonging to a member of the University faculty or staff; and
 - (d) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.
- (4) "Community Standards Administrator" means the University official, as designated on a case-by-case basis by the Director of Student Conduct and Community Standards, authorized to impose sanctions upon any student found to have violated the Student Conduct Code.
- (5) "Community Standards Committee" means the Committee established pursuant to OAR 571-021-0110, comprised of persons appointed by the President with the responsibility for formulating, approving or recommending changes related to the Student Conduct Program.
- (6) "Community Standards Hearing Board" means the board established pursuant to OAR 571-021-0160, comprised of persons authorized by the Community Standards Committee to determine if a student has violated the Student Conduct Code and to recommend sanctions when a violation has occurred.
- (7) "Complainant" means any person who submits a complaint alleging that a student violated the Student Conduct Code. The Complainant need not be a person who was the target or victim of the alleged violation.
- (8) "Contacting" has its common meaning. It includes, but is not limited to, communicating with or remaining in the physical presence of the other person.
- (9) "Contact of a Sexual Nature" for purposes of Sexual Misconduct in the Student Conduct Code means the touching of the genitalia, anus, buttocks or breasts of a person or causing such person to touch the genitalia, anus, buttocks or breasts of another.
- (10) "Contempt" means disregard of, or disobedience to, the rules or orders of any tribunal under this Code or an interruption of its proceedings by disorderly behavior or insolent language in a way or place that disturbs the proceedings or ignores the authority of the tribunal.
- (11) "Director of Student Conduct and Community Standards" is the person designated by the University Senate and University President or designee to be responsible for the administration of the Student Code.
- (12) "Drug" means a controlled substance or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C.811 to 812 or as defined in ORS 475.005 or modified in ORS 475.035.
- (13) "Explicit Consent" for purposes of Sexual Misconduct in the Student Conduct Code means voluntary, non-coerced and clear communication indicating a willingness to engage in a particular act. "Explicit consent" includes an affirmative verbal response or voluntary acts unmistakable in their meaning.
- (14) "Fabrication" means the intentional use of information that the author has invented when he or she states or implies otherwise, or the falsification of research or other findings with the intent to deceive.
- (15) "Faculty Member" means a person hired by the University to conduct classroom, research or teaching activities or who is otherwise considered by the University to be a member of its faculty, including officers of instruction, officers of research and officers of administration.
- (16) "Gambling" means an activity in which a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. "Gambling" does not include those activities expressly excluded by ORS 167.117.
- (17) "Harassment" means
- (a) Intentionally subjecting a person to offensive physical contact;
 - (b) Unreasonable insults, gestures, or abusive words, in the immediate presence, and directed to, another person that may reasonably cause emotional distress or provoke a violent response (including but not limited to electronic mail, conventional mail and telephone) except to the extent such insults, gestures or abusive words are protected expression; or
 - (c) Other types of prohibited discrimination, discriminatory harassment, and sexual harassment as defined by law.
- (18) "Hazing" means any initiation rites, on or off campus, involving any intentional action or situation that a reasonable person would foresee as causing mental or physical discomfort, embarrassment, or ridicule. Individual acceptance of or acquiescence to any activity that occurs during an initiation rite does not affect a determination of whether the activity constitutes hazing. Activities and situations that may occur as part of hazing include, but are not limited to:
- (a) Sleep deprivation or causing excessive fatigue;
 - (b) Physical or psychological shock;
 - (c) Public stunts or jokes;
 - (d) Compelled ingestion of any substance;
 - (e) Degrading or humiliating games or activities;
 - (f) Activities that have an adverse effect on academic progress;
 - (g) Forced servitude;
 - (h) Activities which are not consistent with the parent organization's rules and regulations; or
 - (i) Other activities which violate Federal, State, or local laws.
- (19) "Institution" means the University of Oregon and all of its undergraduate, graduate and professional schools, divisions, activities and programs and may be used interchangeably with "University."
- (20) "May" is used in the permissive sense.
- (21) "Mental Disorder" for purposes of Sexual Misconduct in the Student Conduct Code means that a person suffers from a mental disease or disorder that renders that person incapable of appraising the nature of the conduct of another person.
- (22) "Mental Incapacitation" for purposes of Sexual Misconduct in the Student Conduct Code means that a person is rendered incapable of appraising or controlling one's own conduct at the time of the alleged offense because of the influence of a controlled or intoxicating substance or because of any act committed upon the person without consent.
- (23) "Member of the University Community" includes any person who is a student, faculty member, University official or any person employed by the University.
- (24) "Penetration" for purposes of Sexual Misconduct in the Student Conduct Code means any degree of insertion, however slight, of the penis or any object into the vagina or anus, or the penis into the mouth.
- (25) "Physical Helplessness" for purposes of Sexual Misconduct in the Student Conduct Code means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to engage in an act.
- (26) "Plagiarism" means using the ideas or writings of another as one's own. It includes, but is not limited to:
- (a) The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; and
 - (b) The unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.
- (27) "Policy" means the written regulations of the University. Examples of where written policies may be found include, but are not limited to:
- (a) The Student Conduct Code;
 - (b) Residence Life Contract;
 - (c) Information posted by the University on its web pages;
 - (d) Computer Acceptable Use Policy;
 - (e) Living Group Alcohol policy;
 - (f) Greek Social Policy;
 - (g) Graduate/Undergraduate Catalog;
 - (h) Student Handbook; and
 - (i) University and Oregon University System Oregon Administrative Rules.
- (28) "President" means the University President.
- (29) "Shall" and "will" are used in the imperative sense.
- (30) "Sexual Misconduct" means:
- (a) Unwanted Penetration is Penetration of another person, or causing the Penetration of another person, when one:
 - (A) Does not first obtain Explicit Consent from that person; or
 - (B) Knows or should have known the person was incapable of consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.
 - (b) Nonconsensual personal contact occurs when a student subjects another person to contact of a sexual nature when a reasonable person would know that such contact would cause emotional distress;

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(A) Without having first obtained Explicit Consent; or

(B) When he or she knows or should have known the person was incapable of consent by reason of Mental Disorder, Mental Incapacitation, or Physical Helplessness.

(c) Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that interferes with work or academic performance because it has created an intimidating, hostile, or degrading environment and would have such an effect on a reasonable person of the alleged complainant's status when the conduct is unwelcome and sufficiently severe or pervasive that it deprives that person of benefits of the University's educational environment.

(31) "Student" means any person who has student status pursuant to OAR 571-021-0115.

(32) "Student Organization" means any group of University of Oregon students meeting criteria for group recognition established by the University.

(33) "University" means the University of Oregon and all of its undergraduate, graduate and professional schools, divisions, activities and programs and may be used interchangeably with "institution."

(34) "University Appeals Board" means the person or persons authorized by this Code pursuant to OAR 571-021-0165 to consider an appeal from a determination by Community Standards Hearings Panel that a student has violated the Student Code.

(35) "University Official" means a person having assigned University responsibilities who is performing their University assignment.

(36) "University Premises" includes all land, buildings or grounds owned, leased, operated, controlled or supervised by the University including adjacent sidewalks and streets.

(37) "University Sponsored Activity" means any activity, including activities sponsored or organized by recognized student organizations, on or off University premises that is directly initiated or supervised by the University.

(38) "Unwanted Contact" means repeated or persistent contact or attempts to contact another person when the contacting person knows or should know that the contact is unwanted by the other person; and

(a) The contact would cause a reasonable person fear of physical harm; or

(b) The contacting person knows or should know that the contact substantially impairs the other person's ability to perform the activities of daily life.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0110

Delegations and Authority

Pursuant to ORS 352.010, the faculty is responsible for student discipline. The faculty of the University delegates authority for administering this Code and the Student Conduct Program as provided below:

(1) The Director of Student Conduct and Community Standards shall develop policies for the administration of the student conduct system and procedural rules for the conduct of Community Standards Hearing Board hearings that are consistent with provisions of the Student Conduct Code.

(a) The Director of Student Conduct and Community Standards and the Community Standards Committee may authorize a Community Standards Administrator to serve simultaneously as a Community Standards Administrator and as a member of the Community Standards Hearing Board. The Director may authorize the same Community Standards Administrator to impose sanctions in all cases.

(b) Consistent with OAR 571-021-0205(1)(d), the Vice President for Student Affairs or designee may serve ad hoc in place of the Director of Student Conduct and Community Standards.

(2) The Community Standards Committee shall be responsible for formulating or approving, prior to implementation, regulations and enforcement procedures pertaining to student conduct matters at the University of Oregon, and recommending to the faculty policy or administrative changes in any aspect of the Student Conduct Program.

(a) The Committee shall be appointed by the President and shall consist of four faculty members to be recommended by the Committee on Committees and four student members to be recommended by the ASUO. Faculty and student members shall serve staggered, two-year terms and may be reappointed, up to three consecutive terms, or a maximum of six consecutive years. The President may appoint temporary members to assure full Committee membership during summer session or at such other times as are necessary.

(b) The Director of Residence Life or designee, the Director of Student Conduct and Community Standards and the Director of the Office of Student Advocacy shall be non-voting, ex-officio members of the Community Standards Committee.

(3) Sub-delegation of Authority to Minor Tribunals and hearing officers.

(a) With the consent of the President of the University, the Community Standards Committee may sub-delegate jurisdiction to handle violations of the Student Conduct Code to University officials, committees or minor tribunals. In all instances such sub-delegation shall be defined by the Committee in terms of specific jurisdiction, enforceable regulations, and maximum disciplinary sanctions that may be imposed.

(b) Subject to approval by the President, the Community Standards Committee sub-delegates to the Interfraternity Council, Panhellenic Council, Club Sports Executive Committee, and Residence Hall Association the authority to formulate:

(A) Regulations governing the conduct of their respective organization members;

(B) Hearing procedures and administrative practices to be followed by their respective tribunals;

(C) Disciplinary sanctions exclusive of expulsion, suspension, eviction or negative notation on transcript appropriate to the enforcement of their respective regulations; and

(D) Procedures for publication and notification to affected students of such regulations, hearing procedures and disciplinary sanctions.

(c) All such regulations, hearing procedures, and disciplinary sanctions shall be reduced to writing and approved by the Community Standards Committee prior to implementation.

(d) The authority granted to minor tribunals and their respective governing bodies is conditional and may be withdrawn at any time by the Community Standards Committee when a minor tribunal is either unable or unwilling to assume its responsibilities as part of the University's Student Conduct Program.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0115

Jurisdiction

(1) Jurisdiction over types of actions and events. The Student Conduct Code applies to actions by Students that materially interfere with:

(a) An educational opportunity of a University community member;

(b) The health and safety of a University community member or campus visitor;

(c) The maintenance or protection of University property or personal property located on campus;

(d) University record keeping;

(e) University living accommodations and other services; or

(f) University sponsorship or supervision of non-classroom activities such as lectures, concerts, athletic events and social functions.

(2) Jurisdictional boundaries.

(a) On-Campus. The Student Conduct Code routinely applies to actions which occur on University Premises or at a University Sponsored Activity.

(b) Off-Campus. The University shall have discretion to extend jurisdiction over conduct that occurs other than on University Premises or at a University Sponsored Activity. In determining whether or not to extend jurisdiction, the University will consider its ability to gather information, including testimony of witnesses. The University may extend jurisdiction if the alleged conduct:

(A) Adversely and significantly affects the learning environment;

(B) Would have violated the Student Conduct Code if the conduct had occurred on campus; and

(C) Involved violence or produced a reasonable fear of physical harm;

or

(D) Involved academic work or any records, documents, or identifications of the University.

(3) Student Status. An individual's status as a "student" is established by:

(a) An application for admission, housing, financial aid, or any other service provided by the University which requires student status;

(b) Registration for one or more credit hours; or

(c) Enrollment in a special non-credit program approved by the University.

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(4) Jurisdiction over non-enrolled students. Jurisdiction is maintained between periods of enrollment unless the accused individual's official record in the Office of the Registrar shows a complete withdrawal prior to the expiration of the published deadline for registration for the succeeding period of enrollment. For students enrolled in the spring term, jurisdiction is maintained until the expiration on the published deadline for registration for the succeeding fall term. Complaints of academic dishonesty or fraudulently obtaining a degree may be filed at any time, whether or not the student is currently enrolled or registered.

(5) In all cases except academic dishonesty or fraudulently obtaining a degree, the University must file disciplinary complaints under the Student Conduct Code within six months of:

(a) The University's discovery of the student's or student organization's involvement in the alleged violation; and no later than

(b) The student's last date of enrollment or registration, or an organization's recognition. (6) Allegations of academic dishonesty or fraudulently obtaining a degree may be considered at any time regardless when the alleged misconduct occurred.

(7) Students may be accountable both to civil and criminal authorities and to the University for behavior that constitute violations of the law and the Student Conduct Code. Since the action of civil and criminal authorities is independent from University action, the University may decide whether to initiate or consider an alleged violation of the Student Conduct Code while criminal charges are pending or before they are filed or after they are resolved.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0120

Violations of Community Standards by Individual Students

The following conduct violates the community standards that are essential to the core educational mission of the University of Oregon and subjects a Student or Student Organization to sanctions under the Student Conduct Code:

(1) Standards Relative to Academic and Personal Integrity. Integrity is a bedrock value of the University community and includes respect for open and honest intellectual exchange as well as respect for University records and for the Student Conduct Code itself. The following conduct violates standards of academic integrity:

- (a) Cheating as defined in OAR 571-021-0105(3);
- (b) Fabrication as defined in OAR 571-021-0105(14);
- (c) Plagiarism as defined in OAR 571-021-0105(26);
- (d) Academic misconduct as defined in OAR 571-021-0105(1);
- (e) Intentionally furnishing false information to a University Official;
- (f) Forgery, alteration or unauthorized use of University documents, records, keys student identification, keycards or services;
- (g) Creation or distribution of false identification;
- (h) Failure to comply with the terms of any sanction imposed in accordance with the Student Conduct Code; or

(i) Contempt of adjudicative proceedings including impairing or interrupting the due course of proceedings in the presence of any tribunal created under this Code. Adjudication of contempt and imposition of sanctions may be imposed summarily consistent with OAR 571-021-0240.

(2) Standards Relative to Respect for Property and for Shared University Resources. The following conduct violates standards of respect for property and shared University resources:

(a) Engaging in behavior that could reasonably be foreseen to cause disruption of, obstruction of, or interference with the process of instruction, research, administration, student discipline, or any other service or activity provided or sponsored by the University;

(b) Damage, destruction, theft, or unauthorized use of property located on the University campus or property owned or controlled by the University;

(c) Unauthorized entry into or use of University property or University-recognized living units, facilities, residence halls, equipment, or resources;

(d) Disorderly conduct (including that resulting from the use of alcohol), unreasonable noise, or conduct that results in unreasonable annoyance;

(e) Failure to comply with the reasonable directions of public officials acting in performance of their duties on University Premises or at a University Sponsored Activity when such conduct poses a danger to personal safety or property or obstructs or impairs educational or other Institutional activities;

(f) Violation of University Policy on the acceptable use of computing resources. Unacceptable uses of computing resources include, but are not limited to:

(A) Use of electronic forums to violate other sections of the Student Conduct Code;

(B) Sharing of accounts or computer lab passes;

(C) Violation of electronic privacy;

(D) Interference with computer use or operations;

(E) Commercial or illegal use of electronic or computer resources;

(F) Violation of copyright law; or

(G) Threats, abuse or Harassment, as defined in OAR 571-021-0105(), conduct made or transmitted via electronic forums or electronic mail.

(3) Standards Relative to the Rights of Individuals and to the Welfare of the University Community. An environment conducive to learning is one where the rights, safety, dignity and worth of every individual are respected. The following conduct endangers such an environment, and threatens the welfare of the University community as a whole:

(a) Physical contact that endangers, threatens, or harms the health or safety of any person or behavior that causes a reasonable person to fear such contact;

(b) Hazing, as defined in OAR 571-021-0105(18);

(c) Possession, use, or threatened use of a weapon, ammunition, or any object or substance used as a weapon on University Premises or at a University Sponsored Activity unless expressly authorized by law or University Policy. A concealed weapons permit does not constitute authorization;

(d) Unauthorized possession, use, or threatened use of dangerous chemical or biological substances or explosives;

(e) Tampering with fire-fighting equipment, turning in a false alarm, or engaging in conduct that constitutes a significant fire hazard;

(f) Harassment, as defined in OAR 571-021-0105(17), because of another person's race, ethnicity, color, gender, gender identification, national origin, age, religion, marital status, disability, veteran status, sexual orientation, or for other reasons, including but not limited to harassment prohibited by University Policy;

(g) Unwanted Contact, as defined in OAR 571-021-0105(38);

(h) Sexual Misconduct. A mission of the Student Conduct Code is to encourage good decision-making, personal integrity, and interpersonal behavior that is cooperative rather than coercive and that respects the rights of others. Sexual misconduct violates these values, and is committed when a student engages in sexual behavior described in OAR 571-021-0105(30).

(A) A complaint alleging Sexual Misconduct may be filed whenever Sexual Misconduct:

(i) Materially interferes with another person's academic performance or participation in a University Sponsored Activity, or performance of University employment;

(ii) Is committed on University Premises or at a University Sponsored Activity; or

(iii) Demonstrates reasonable threat to the health or safety of a Member of the University Community or the alleged student survivor.

(B) Sexual gratification or pleasure of any party involved is not relevant to a determination of whether Sexual Misconduct occurred.

(C) A violation of provisions of the alcohol or drug policy in the Student Conduct Code does not affect a person's ability to file a complaint regarding another person's Sexual Misconduct on the same occasion.

(D) Consent to one form of sexual activity does not automatically operate as consent to any other form sexual activity. A "no" always means that consent is not present, whereas a "yes" to one act at one time does not mean "yes" to other acts or to the same act at other times. Voluntarily making oneself incapacitated does not mean one is giving consent to any form of sexual activity.

(j) Prohibited alcohol use, which includes:

(A) Possession or consumption of alcohol by those under 21 years of age on University Premises or at a University Sponsored Activity;

(B) Furnishing of alcohol to a person under 21 years of age; or

(C) Consumption of an alcoholic beverage by a person at least 21 years of age or furnishing of an alcoholic beverage by or to a person at least 21 years of age, except in such areas and at such times as the University authorizes.

(k) Prohibited drug use, which includes:

(A) Manufacture, processing, distribution, or cultivation of a Drug, including but not limited to marijuana or narcotics, on University Premises or at a University Sponsored Activity, except as expressly permitted by law;

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(B) Sale of a Drug, including but not limited to marijuana or narcotics, on University Premises or at a University Sponsored Activity; or

(C) Possession of a Drug, including but not limited to marijuana or narcotics, on University Premises or at a University Sponsored Activity except as expressly permitted by law.

(I) Lewd or indecent conduct on University Premises or at a University Sponsored Activity. Lewd or indecent conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record that would be an invasion of privacy pursuant to ORS 163.700. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(m) Gambling, as defined and prohibited in ORS 167.108 to 167.164 except as authorized by ORS 464.270 to 464.530.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0125

Violations of Community Standards by Student Organizations

When members of a Student Organization act together in a way that violates University Student Conduct Code, the Student Organization is expected to hold its members responsible for those violations.

(1) When a potential violation of the Student Conduct Code by a Student Organization comes to the University's attention, the Office of Student Conduct and Community Standards may review the incident to determine the appropriate process for resolution. Generally, the University will expect a Student Organization to hold itself accountable for the acts of its members when those acts are related to the Student Organization's activities.

(a) The Student Organization or its governing body will notify the Office of Student Conduct and Community Standards and keep it informed at all stages of the process.

(b) The University, through the Office of Student Conduct and Community Standards, reserves the right to take immediate jurisdiction at its discretion. The student organization or governing body may still hold its members accountable in the situation, but must do so in conjunction with the Office of Student Conduct and Community Standards.

(2) If sufficient action is not taken in a timely manner by the student organization to correct a violation of University standards, individuals may file grievances with the appropriate governing body, or, if none exists, with the Office of Student Conduct and Community Standards.

(3) If, in the judgment of the Vice President of Student Affairs, sufficient action is not taken in a timely manner by the governing body, the case will be referred to the Office of Student Conduct and Community Standards.

(4) In deciding whether the group is responsible for the violation, the University will consider whether the following factors are present:

(a) The violation arises out of a group-sponsored, organized, financed, or endorsed event;

(b) The organization provides the impetus for the violation;

(c) The violation occurs on the premises owned or operated by the group;

(d) A group leader has knowledge of the violation being likely to occur before it occurs and fails to take corrective action; or

(e) A pattern of individual violations is found to have existed without proper and appropriate group control, remedy, or sanction.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0130

Sanctions

The University utilizes an educational sanctioning model; hearing officers or panels will make every attempt to provide an educational sanction that will help a student to make better choices in the future. The educational sanction applied will become progressively more demanding if the student repeats violations, demonstrating that learning has not taken place. An accumulation of a variety of violations may result in severe sanctions such as suspension, expulsion or negative notation on a transcript. Academic dishonesty and violations affecting the health, safety and well being of the community are deemed the most severe and may result, upon the first violation, in a negative notation being placed on a transcript, suspension, or expulsion.

(1) Forms of Sanctions

(a) Expulsion. Student status is severed permanently. A Student who has been expelled from the University shall not be permitted to participate in any University Sponsored Activity or allowed to reside on University Premises.

(b) Suspension.

(A) Individual Suspension. Student status is severed for a specified period. A student who has been suspended from the University shall not be permitted to participate in any University Sponsored Activity or allowed to reside on University Premises during the period the student is suspended.

(B) Group Suspension. A Student Organization loses University recognition and all privileges associated with such recognition for a specified period. Imposition of this sanction against the ASUO or a recognized Student Organization requires approval by the Vice President for Student Affairs.

(c) Negative Notation on Transcript. Entry of the fact of violation on the Student's permanent academic record as the sole or an additional sanction may be imposed at the discretion of the hearing officer or panel. After the expiration of the period of time, if any, set by the hearing officer or panel, the notation shall be removed upon the request of the Student or former Student.

(d) Revocation of Degree. An academic degree previously awarded by the University may be revoked if it was obtained by fraud or a significant part of the work submitted in fulfillment of, and indispensable to, the requirements for such degree constitutes Plagiarism. The Academic Requirements Committee may, upon appeal of a University graduate subjected to degree revocation, stipulate the requirements for obtaining a degree.

(e) Grade Penalty. A Student admitting Academic Misconduct or found responsible for Academic Misconduct is subject to a grade penalty as determined by the instructor in the course in which the violation occurred.

(f) Disciplinary Probation. In lieu of another sanction, a period of probation may be imposed during which any violations of the Student Conduct Code will result in more serious sanctions than might be otherwise imposed. A Student or Student Organization on probation may or may not lose designated privileges during the period of probation. During the time on probation, a Student or Student Organization may, by demonstrating good conduct, avoid additional sanctions. Imposition of this sanction against the ASUO or an ASUO-recognized group requires approval by the Vice President for Student Affairs.

(g) Restitution. The Student or Student Organization is required to replace or restore damaged, stolen, or misappropriated property.

(h) Educational Activity. The Student or Student Organization is required to complete a project or activity designed to help the Student or Student Organization understand why the behavior was inappropriate and encourage future compliance with the Student Conduct Code. The educational activity is designed to correspond to the severity and nature of the violation and to clarify the impact of that behavior on Members of the University Community. Educational activities may include, but are not limited to, assessments of substance abuse and other behaviors, community service, workshops, papers and similar assignments.

(i) Loss of Privileges. The Student or Student Organization is denied specified privileges normally associated with Student Status or recognized Student Organization status, such as participation in or sponsorship of University activities, use of University facilities or services, or living in University-owned or supervised housing. Imposition of this sanction against the ASUO or an ASUO-recognized group requires approval by the Vice President of Student Affairs.

(j) Conduct Reprimand. The Student or Student Organization is given written notice that the conduct engaged in is inconsistent with University standards and expectations and informed that future violations of the Student Conduct Code may result in the imposition of more serious sanctions.

(k) Suspended Sanction. The execution of any sanction authorized under the Student Conduct Code may be suspended. When suspending a sanction, a time limit for the suspension period shall be designated, and subsequent violations of the Student Conduct Code that will terminate the suspension and result in the imposition of the original sanction shall be specified. In the absence of any such violation, the original sanction shall be deemed completed at the end of the suspension period.

(2) Medical Leave. Actions taken pursuant to University policies on medical leave shall not be deemed disciplinary sanctions within the meaning of the Student Conduct Code.

(3) Failure to complete a sanction will be handled pursuant to OAR 571-021-0240(3).

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

ADMINISTRATIVE RULES

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0140 Student Rights

Procedural fairness is basic to the proper enforcement of all University regulations. Accordingly, no disciplinary action shall be initiated or sanction imposed against a Student or Student Organization until they have been notified in writing of the complaints against them and their rights under this Code, and given the opportunity to be heard.

(1) Regulations and disciplinary sanctions affecting the conduct of all Students shall be based on general principles of equal treatment.

(2) The Director of Student Conduct and Community Standards shall insure that the best interests of Students and Student Organizations are served, regardless of whether disciplinary action is taken, by making full use of appropriate medical, counseling and other professional services at the University, or if necessary by making referrals to community resources. For purposes of this Division, the Director may authorize another staff member to carry out any of the Director's responsibilities unless expressly prohibited from doing so.

(3) Students shall have an opportunity to participate in the formulation of all regulations and policies pertaining to the Student Conduct Code at the University of Oregon.

(4) All University regulations and policies pertaining to student discipline shall be published, distributed, or posted in such a manner as to furnish adequate notice of their contents to Students or Student Organizations.

(5) Students accused of violations of the Student Conduct Code can expect the following procedural protections:

(a) To be informed of the complaint and alleged misconduct upon which the complaint is based;

(b) To request that the Director of Community Standards resolve the case in an administrative disciplinary conference or to request a panel hearing.

(c) To be allowed reasonable time to prepare for the hearing or conference.

(d) To be informed of the information upon which a complaint is based and accorded an opportunity to offer a relevant response;

(e) To call and confront relevant witnesses;

(f) To be assured of confidentiality, in accordance with the terms of the federal Family Educational Rights and Privacy Act and Oregon law.

(g) To request that any person conducting a disciplinary conference or serving as a hearing board member or hearing officer be disqualified on the ground of personal bias.

(h) To be considered not responsible for the alleged conduct until proven responsible by a preponderance of the information. If expulsion is a possibility, the standard of proof must be clear and convincing information.

(i) To have an adviser of their choice present at the hearing provided that advisor's schedule does not unreasonably delay the hearing. The hearings panel shall determine what constitutes an "unreasonable" delay.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0150

Administration of the Conduct System

(1) Disciplinary Records and Files. Case referrals will result in the development of a disciplinary file in the name of the accused student. If the Student is found not responsible for the complaints, the disciplinary file will become void.

(a) Voided files will be so marked and shall not result in a disciplinary record. Voided files will normally be destroyed after one year. Where a Student files a conduct complaint against another Student, a file shall be created for both Students.

(b) Disciplinary records may be voided by the Director of Conduct and Community Standards for good cause, upon written petition from the student. Factors to be considered in review of such petitions shall include:

(A) The conduct of the Student subsequent to the violation; and

(B) The nature of the violation and the severity of any damage, injury, or harm resulting from it.

(2) Student Conduct Reports.

(a) The Community Standards Committee shall require from University officials, hearings boards, referees, committees and tribunals periodic written reports of the disposition of all student conduct cases dealt with under their jurisdiction. The Committee shall examine such reports for consistency with existing policies and, when necessary, review the reports with the appropriate officials or tribunals.

(b) At the end of each academic year, the Committee shall submit to the President, University Senate, Deans, Department Heads, the ASUO President, and the Office of Student Advocacy, a written report covering the entire Student Conduct Program, including an evaluation of the existing rules, policies, and enforcement procedures. This report shall also detail all Code revisions approved during the previous year and shall be available to any person upon request.

(3) Director of Student Conduct and Community Standards.

(a) The President of the University shall designate a Director of Student Conduct and Community Standards who shall have primary responsibility for administering the Student Conduct Program and coordinating the activities of all University officials, hearing officers, referees, committees, or tribunals that are concerned with the Community Standards Program.

(b) The Director shall be responsible to the Community Standards Committee for maintaining complete records pertaining to the activities of the Community Standards Program. Those records shall include a summary of the business of the Community Standards Committee and a report of the disposition of each disciplinary case handled by any person or group authorized to impose disciplinary sanctions in the name of the University. For record keeping purposes, the Director may prescribe reporting procedures to be followed, in addition to those in paragraph (2) above by those authorized to impose disciplinary sanctions.

(c) The Director shall serve as non-voting Secretary of the Community Standards Committee and as advisor to all individuals and groups authorized to impose disciplinary sanctions. The Director shall serve as a non-voting, ex-officio member of the Residence Hall Governance Committee and of the residence hall Peer Judicial Board.

(d) The Director shall be responsible for gathering and presenting to the Community Standards Committee the reports required by this code.

(4) Student Conduct Code Adoption, Amendment and Revision.

(a) Code establishment. Upon approval by the University Senate and adoption as an Oregon Administrative Rule, this Student Conduct Code becomes effective and supersedes all previous regulations and policies pertaining to student discipline at the University of Oregon.

(b) Code Amendment. This Code may be amended by the faculty except that the sections on delegation to minor tribunals may also be amended by the Community Standards Committee. Amendments to this Code are effective when adopted as Oregon Administrative Rules.

(c) Code Revision. This Code shall be continuously reviewed in its entirety to make sure it is consistent with best practices.

(d) This Code is adopted as Oregon Administrative Rules. The provisions contained in these rules take precedence over any other versions of the Student Conduct Code regardless of where promulgated.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0160

University Hearings Board; Student Conduct Hearings Panel

(1) University Hearings Board Membership. The University Hearings Board (Hearings Board) shall consist of eighteen members, all of whom must be appointed by the University President. The Hearings Board shall consist of:

(a) Ten registered students at the University of Oregon that have been recommended to the President by the ASUO. Each student member is appointed for a one-year term and may be reappointed for additional terms;

(b) Four University officers of instruction, all of whom the Committee on Committees of the University Senate shall recommend to the President. Two officers of instruction will serve a one-year term, and the other two will serve a two-year term; and

(c) Four University officers of administration all of whom the Committee on Committees of the University Senate shall recommend to the President. Two officers of administration will serve a one-year term, and the other two will serve a two-year term.

(2) Recruitment and selection of student nominees.

(a) The Office of Student Conduct and Community Standards and Office of Student Advocacy will take responsibility during spring term for the recruitment and receipt of applications for new student members to the Hearings Board. The Office of Student Conduct and Community Standards and Office of Student Advocacy will ensure that the nominated students are representative of the diversity of the University of Oregon. Particular efforts will be made to recruit law students.

(b) A review committee consisting of one member of the Office of Student Conduct and Community Standards, one member of the Office of

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Student Advocacy, one student from the Residence Hall Association, and two members of the ASUO, one of which will be the University Affairs Director, will review the applications for the Hearings Board. The review committee will make every attempt to ensure that the nominated students are representative of the diversity of the applicant pool.

(c) Preference will be given to up to 5 recommended students wishing to return to the Hearings Board for reappointment.

(d) Names of nominated students will be forwarded to ASUO for formal nomination to the University President pursuant to (1)(a).

(e) New student members of the Hearings Board, once appointed by the President, will be trained by the Office of Student Conduct and Community Standards and the Office of Student Advocacy before the end of the academic year in which they are appointed.

(f) New student members shall be ready and available to assume responsibilities for the Hearings Panel at the beginning of the next academic year after they are appointed.

(3) Student Conduct Hearings Panel (Hearings Panel). Student Conduct Code panel hearings, pursuant to OAR 571-021-0205, are heard by a panel on which officers of instruction, officers of administration and students are represented, drawn from members of the Hearings Board. A Hearings Panel cannot proceed with fewer than four members present.

(a) A party may challenge a Hearings Panel member or the chair on the ground of personal bias. Any member who is incapable of rendering a fair and objective decision based solely upon the facts, information and arguments presented during the hearing with no influence based on the member's familiarity with people, facts or the situation arising from outside the hearing is disqualified from hearing the case.

(b) If a Hearings Panel member is disqualified, the chair of the Hearings Panel will determine whether to fill the position by appointment of another member of the Board or to proceed with fewer members so long as the Hearings Panel consists of no fewer than four qualified members.

Stat. Auth.: ORS 351, 352
Stats. Implemented: ORS 351.070
Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0165

University Appeals Board

(1) The University Appeals Board (Appeals Board) is the final appeals body within the Student Conduct Program. As set forth in OAR 571-021-0250, the Appeals Board shall be responsible for reviewing substantive or procedural appeals from the decisions of a Hearings Panel.

(2) Membership. The Appeals Board shall consist of three faculty members, recommended by the Committee on Committees of the University Senate, and three student members, recommended by the ASUO. Board members shall be appointed by the President and serve for one-year terms. They may be reappointed, but no member may serve for more than two consecutive terms. Temporary members may be appointed to assure full Appeals Board membership during summer session or at such other times as are necessary. The President shall designate one of the members as pro tem chair of the Appeals Board.

(3) The Appeals Board will elect its permanent chair at its first meeting. A quorum shall consist of two students and two faculty members. The Appeals Board shall establish its own rules of procedure.

Stat. Auth.: ORS 351, 352
Stats. Implemented: ORS 351.070
Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0200

Conduct Procedures

(1) Complaint. Any Member of the University Community may file a complaint against a Student for a violation of the Student Conduct Code. A complaint shall be prepared in writing and directed to the Director of Student Conduct and Community Standards. Any complaint should be submitted as soon as possible after the alleged violation takes place, preferably within one year. Jurisdiction is determined pursuant to OAR 571-021-0115. The longer one waits to file a complaint the less information is likely to be available for the hearing, therefore it is important to file a complaint as soon as possible. Once the Office of Community Standards receives a complaint, the Office has six months to send written notice to the accused Student of the complaint.

(2) Notice. Upon receiving a complaint or notice that a Student may have violated the Student Conduct Code, the Director of Student Conduct and Community Standards shall serve a written notice upon the Student, either by electronic mail or by mailing to the latest address of the Student on file at the Office of the Registrar of the University, or, if necessary, by

registered or certified mail or by personal service. Such notice shall inform the student of:

(a) The alleged Code violation;

(b) The opportunity for the student to meet with the Director for purposes of discussing the options for disposition of the case;

(c) The Student's right to assistance. At an administrative conference with the Director, or a hearing by a Hearings Panel or before the Appeals Board, a Student may, but need not represent his or her own interests, or be assisted by someone including but not limited to one of the following representatives:

(A) The Office of Student Advocacy;

(B) Another Student;

(C) A member of the faculty or administration;

(D) A member of the Oregon Bar.

(d) The requirement to respond within 14 calendar days, excluding breaks between terms or when the student is not registered, to arrange a meeting with the hearing officer. The hearing officer will proceed as provided in (3)(b) if the Student does not arrange to meet or fails to meet with the hearing officer as arranged.

(3) Response.

(a) After proper service of written notice as provided in (2), the Student may arrange to meet with the Director for the purpose of selecting an option for the disposition of the case, either through conference with the Director or staff or through hearing by a Hearings Panel pursuant to OAR 571-021-0210.

(b) If after receiving notice, pursuant to this rule, the Student does not arrange to meet with the Director to select an option for disposition of the case within 14 days, excluding breaks between quarters or when the student is not registered, or if the Student arranges to meet with the Director to select an option to dispose of the case but does not attend such a meeting, the Director of Student Conduct and Community Standards may take any of the actions specified in OAR 571-021-0205 or 571-021-0210 for disposition of the case without consultation with or agreement by the Student.

(c) Immediate Referral to Hearings Panel. If the Director of Student Conduct and Community Standards finds that under the circumstances of the case, an immediate referral to a Hearings Panel would be in the best interest of the University or the best interest of the Student, the Director of Student Conduct and Community Standards may make such referral before service of notice upon the student. In such case, the letter sent to the student shall notify the student of the referral to the Hearings Panel and contain the information required in (2)(c).

(4) Conference and Hearing Board Referrals

(a) The Director of Student Conduct and Community Standards or a designee will conduct a preliminary review to determine whether the alleged misconduct might result in negative notation on transcript, expulsion or suspension from the University. Students not subject to suspension, expulsion or negative notation will be entitled to an administrative disciplinary conference with the Director of Student Conduct and Community Standards pursuant to OAR 571-021-0205 or a hearing with a Hearings Panel pursuant to OAR 571-021-0210. Students who are subject to suspension, expulsion or negative notation will be entitled to a hearing before a Hearings Panel pursuant to OAR 571-021-0210.

(b) Students referred for a hearing by the Director of Student Conduct and Community Standards may elect to have their cases resolved in accordance with OAR 571-021-0210. Such an election must be in writing, affirming that the Student has had an opportunity to consult with an adviser of their choosing, is aware a hearing is being waived and that the full range of sanctions may be imposed, including negative notation on transcript, suspension or expulsion or from the University.

(5) With the consent of an Accused Student, the Director of Student Conduct and Community Standards may defer proceedings for alleged minor violations of this Code for a period not to exceed ninety days. Pending complaints may be withdrawn thereafter at the discretion of the Director of Student Conduct and Community Standards or designee.

Stat. Auth.: ORS 351, 352
Stats. Implemented: ORS 351.070
Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0205

Administrative Conferences

(1) Students accused of violations that may result in penalties less severe than suspension, expulsion or negative notation may choose an administrative conference with the Director of Student Conduct and Community Standards, or designee. The following procedural protections are provided to accused students in disciplinary conferences:

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(a) Reasonable access to the case file prior to and during the conference, except to the extent access to such material is prohibited by law. The case file may contain materials that are considered "education records" pursuant to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended and personal notes of University staff members and complainants. Access to these materials may be prohibited by law. Otherwise, to the extent allowed by law, copies of the case file will be provided upon request.

(b) An opportunity to respond to all information provided and to ask the Director or designee hearing the case to contact relevant and necessary witnesses.

(c) The right to be accompanied and assisted by an advisor

(d) The right to have the case referred outside the Office of Community Standards if the Student can articulate a reasonable basis from which to conclude that the Office of Community Standards is biased for some reason that would prevent the student from receiving a fair hearing by the office. Such cases are referred to the Vice President for Student Affairs or his or her designee.

(2) In cases where the Director of Student Conduct and Community Standards concludes that a Student accused of any offense under the Student Conduct Code lacks the mental capacity to respond to the complaint, the Director shall stay the proceeding until such time that the Director concludes that the Student may adequately respond. A stay granted pursuant to this section shall not in any manner preclude a proceeding for medical leave under OAR chapter 571, division 23. If the student has been accused of Academic Misconduct, no academic sanction may be imposed during a stay granted pursuant to this section, but the faculty member for the coursework out of which the complaint of Academic Misconduct arose shall request the Registrar to assign a grade of "I" until the disciplinary proceeding has been completed.

(3) No sanctions shall be imposed against a Student who acknowledges engaging in the specific conduct alleged and who submits a written statement from a Student Health Center psychiatrist or a Counseling Center psychologist stating that, as a result of mental disorder at the time of the offense, the Student did not appreciate the wrongfulness of the conduct or could not conform his or her behavior to the requirements of the Code. The Student may submit any other supplemental information pertinent to his or her mental condition to the Director of Student Conduct and Community Standards. If, based upon all information received, the Director decides that the conduct of the Student resulted from mental disorder, the Director shall seek professional assistance and advice, and, if appropriate and legally authorized, consult with the Student's parent or guardian or take other measures to assure a fair disposition of the case. If the Student has been accused of Academic Misconduct, the faculty member for the coursework in which the Academic Misconduct took place shall assign an appropriate grade.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0210

University Hearings Panel Hearings

If a matter cannot be resolved by an administrative conference, if selected or required pursuant to OAR 571-021-0200, resolution will be sought through a hearing before a Hearings Panel. As with all other aspects of the Student Conduct Code, the hearing is primarily for educational purposes. The hearing is an information-gathering process not a criminal proceeding, trial, or litigation.

(1) All complaints shall be presented to the Accused Student in written form. Because the University community values prompt disposition of student conduct matters, a time shall be set for a hearing not less than twenty nor more than thirty calendar days after the Student has been notified. Maximum time limits for scheduling of hearings may be extended at the discretion of the Director of Student Conduct and Community Standards or the Hearings Panel.

(2) The Hearings Panel will select a chair from among the returning members of the hearings board. The chair shall preside at the hearing. The chair may participate in Hearings Panel deliberations and discussions but shall not vote.

(3) The University community values personal responsibility and accountability as an important part of its core educational process. In accord with this value, in a hearing the Accused Student and any Complainant are responsible for responding to inquiries from the Hearings Panel. However, an Accused Student and a Complainant, if any, may each

be assisted by one advisor as identified in OAR 571-021-0200. The following rules and standards pertain to any such advisor:

(a) The advisor may, but need not, be an attorney;

(b) A Student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor;

(c) A Student planning to invite an advisor to a hearing must inform both the Director of Student Conduct and Community Standards and the Hearings Panel of this intention at least seven calendar days prior to the hearing. If a matter includes both an Accused Student and a Complainant, the Director shall promptly notify the other Student of the first Student's intent to invite an advisor. The other Student shall be afforded an equal right to invite an advisor even if doing so results in the Director and the Hearings Panel receiving less than seven days prior notice.

(d) Advice provided by an advisor may include advising the student how to answer any question posed by the Hearings Panel;

(e) In order to preserve the educational tone of the hearing and to avoid an adversarial environment, advisors are generally not permitted to speak or participate directly in any hearing, except in one or more of the following specific ways:

(A) An advisor may provide a written opening summary or statement.

(B) An advisor may provide an oral closing summary or statement.

(C) An advisor may be allotted a limited time-period to ask one or more questions of the Student the advisor is advising and to allow the Student to respond. Questions asked by an advisor are in addition to questions asked by the Hearings Panel.

(D) An advisor may submit to the Hearings Panel in writing any suggested questions for the Hearings Panel to ask of any other participant who is giving information at the hearing.

(E) The Hearings Panel may permit advisors to question a person providing information at the hearing, if both Complainant and Accused Student independently so request at the beginning of the hearing.

(f) The Hearings Panel will automatically add the name of any person filling the advisor function at a hearing to a list of Hearings Panel Advisors who may be available for other students who wish to consult with an advisor.

(g) An advisor should act in accordance with the standards and values of the University community. If an advisor's conduct in a hearing is judged to merit disqualification, the Hearings Panel has the authority to remove a person's name from the Hearings Panel Advisors list and to disqualify that person from serving as an advisor in future hearings.

(4) A Student whose ability to present their own information is hindered either by a language barrier, a documented disability or other serious difficulty with public, oral presentation shall have the right to petition the Hearings Panel to permit someone to speak on the Student's behalf at the formal hearing. Such a spokesperson may be a friend or family member, a professionally-trained translator or interpreter or a member of the University community but may not be an attorney or any other professional receiving a fee for representing or advising the student.

(5) The Hearings Panel, in its sole discretion, has responsibility and authority for deciding the length of time a party is allowed for closing statement or for questioning, if any, by advisors and at what point in the hearing these should occur.

(6) The Director of Student Conduct and Community Standards or designee shall give an Accused Student notice of the hearing date and the specific complaints against them at least 14 calendar days in advance of the hearing date. Notice shall be by personal delivery or by certified mail to the last address provided by the Accused Student to the university.

(7) An Accused Student shall be accorded reasonable access to the case file, but shall not have access to material the disclosure of which is prohibited by law. Upon request to the Director of Student Conduct and Community Standards, an Accused Student will be provided copies of the case file, except to the extent prohibited by law. The original case file will be retained in the Office of the Director of Community Standards.

(8) The chair of the Hearings Panel may require attendance of relevant witnesses after consultation with the Director of Student Conduct and Community Standards. Notice of required attendance must be personally delivered or sent by certified mail. University Students and employees are expected to comply with these requests, unless compliance would result in significant and unavoidable personal hardship, or substantial interference with normal University activities, as determined by the chair of the Hearings Panel, in consultation with the Director of Student Conduct and Community Standards. In addition, in any formal hearing, either the

ADMINISTRATIVE RULES

University or the Student may request the University General Counsel to issue a subpoena pursuant to ORS 183.445.

(9) The Hearings Panel will consider an Accused Student who fails to appear after proper notice to have pleaded “not responsible” to the complaints pending against them. A hearing may be conducted without the Accused Student present, if necessary.

(10) All hearings conducted under the authority of the Student Conduct Code are to be closed unless a student has waived in a signed, written and dated document any restrictions on disclosure of documents, exhibits, written statements, interview notes, photographs, or other materials in the Student Conduct case file or in other education records which could be offered, admitted, identified, described, referred to, or generated in the course of the hearing.

(a) A waiver of access to education records shall apply to the entire hearing, unless otherwise agreed to by the University and a student Complainant, if there is one, and the Accused Student.

(b) The chair of the Hearings Panel shall close the hearing unless a waiver is provided to the Director of Student Conduct and Community Standards prior to the beginning of the hearing. Only participants in the hearing shall be allowed to attend a closed hearing. Participants include but are not limited to, the Hearings Panel, the Director of Student Conduct and Community Standards, the Accused Student and the Accused Student’s advisor, interpreter or translator, and appropriate University officials.

(c) With regards to sexual assault as used in 20 U.S.C. § 1092(f)(8)(B)(iv)(I) (2000), a Complainant and an Accused Student are entitled to the same opportunities to have others present during a campus disciplinary proceeding. A Complainant who alleges sexual assault may have an equivalent number of advisors present during the hearing as the Accused Student. If an Accused Student does not have an advisor, a Complainant alleging sexual assault may still have an advisor present during the hearing. A Complainant who alleges sexual assault also has the right to be present during the portion of hearing when information is being presented.

(d) Except as otherwise required, the chair of the Hearings Panel may exclude persons from the hearing as necessary to maintain order.

(e) The Hearings Panel may, on its own initiative, or at the request of a participant, exclude from an otherwise open hearing a prospective witness or witnesses, other than the Complainant and the Accused Student, during the statements of other witnesses.

(11) The chair shall exercise control over the proceedings to avoid needless consumption of time and to achieve completion of the hearing in a timely manner. Any person, including an Accused Student or a Complainant, who disrupts a hearing may be excluded by the Chair.

(12) Procedural questions are subject to final determination by the chair of the Hearings Panel.

(13) Witnesses.

(a) Witnesses shall be required to affirm that their testimony is truthful. Witnesses may be subject to disciplinary sanctions or perjury for knowingly providing a false statement.

(b) Questioning witnesses.

(A) Accused Students (not their advisors) and Complainants, may ask relevant questions of witnesses.

(B) Hearings Panel members may ask questions of the parties and witnesses.

(14) Information and evidence.

(a) The Oregon Evidence Code does not apply except that rules of privilege recognized by Oregon law shall apply.

(b) Irrelevant, immaterial or unduly repetitious material shall be excluded. All other information of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(c) Information may be received in written or oral form.

(d) The Hearings Panel may also take judicial notice of matters which would be within the general experience of University students and faculty members.

(e) Information in hearing alleging Sexual Misconduct. Information about the sexual behavior of a student prior to or subsequent to an alleged Sexual Misconduct incident is not admissible in a hearing unless the following conditions apply:

(A) A description of the information regarding specific instances of sexual behavior, whether of the Complainant or of the Accused Student, is submitted to the Hearings Panel chair no fewer than seven days prior to the hearing (unless the information is otherwise deemed essential by the Hearings Panel chair)

(B) The Student whose sexual behavior is at issue has had an opportunity to provide a written response; and

(C) The Hearings Panel chair finds that the probative value of the information outweighs the danger of undue prejudice to the student.

(15) Hearings shall be tape recorded or transcribed.

(16) Allegations of violations of the Student Conduct Code must be established by a preponderance of evidence except a student may be expelled only based on clear and convincing evidence.

(a) The Director shall be responsible for investigating and presenting the case to the Hearings Panel and ensuring that all relevant information is presented on both sides.

(b) For all violations of the Student Conduct Code, it is the complaining party’s burden to prove the case by a preponderance of information except as stated above.

(17) A Complainant, an Accused Student, or a witness may identify concerns about personal safety, well-being or fear of confrontation with another hearing participant to the Director of Student Conduct and Community Standards. The Director will determine what, if any, accommodations are appropriate. Examples of accommodations include, but are not limited to, separate facilities, visual screens, telephone or remote video participation or written submissions.

(a) If another participant objects to the accommodation, the participant shall submit written objections to the chair of the Hearings Panel. Written objections should include information describing how the accommodations proposed will affect the fairness of the hearing.

(b) The Hearings Panel will decide whether to provide the proposed accommodation.

(c) The Hearings Panel will not consider a request for accommodation or the granting or denial of an accommodation in concluding if an Accused Student violated the Student Conduct Code.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0215

Academic Misconduct Procedures

(1) Notice. Upon the discovery of suspected Academic Misconduct, as defined in OAR 571-021-0100(1), the University Official with responsibility for the academic matter or the faculty member in whose course the incident occurred shall promptly notify the Student of the incident. This notice shall include a discussion of the option of having the case referred directly to the Director of Student Conduct and Community Standards.

(2) If a Student admits to Academic Misconduct in a course, the faculty member shall impose an appropriate academic sanction up to and including a grade of “N” or “F” and report the incident to the Office of Student Conduct and Community Standards. Written notice of the sanction or resolution without sanction shall be given the Student. If, in the judgment of the faculty member, further disciplinary action is warranted, the report to the Director of Student Conduct and Community Standards shall so indicate. The Student may appeal the academic sanction to the faculty member’s department head and, ultimately, to the dean of the college or school in which the incident originated.

(3) If a Student admits to Academic Misconduct in a situation other than a course, the responsible University Official may determine and implement an appropriate response and report the incident to the Office of Student Conduct and Community Standards. Written notice of the sanction or resolution without sanction shall be given the Student. If, in the judgment of the University Official, further disciplinary action is warranted, the report to the Director of Student Conduct and Community Standards shall so indicate. The Student may appeal the academic sanction to the University Official’s department head or director.

(4) If a faculty member or University Official and a Student cannot agree as to whether Academic Misconduct has occurred, the University Official or faculty member will, not later than fourteen calendar days during which the University is in session after the date the faculty member or University Official notifies the Student, make a written referral of the case to the Office of Student Conduct and Community Standards for resolution. The case will then be conducted in accordance with the procedures established in this Code.

(a) If there is a finding that the Student engaged in Academic Misconduct in a class, in addition to sanctions imposed through the regular student conduct procedures, the faculty member will assign an appropriate grade.

(b) If there is a finding that the Student did not engage in Academic Misconduct, no academic sanction may be imposed.

ADMINISTRATIVE RULES

(5) Reporting Academic Misconduct. Regardless of the method of resolution, University Officials, including faculty members are required to file a written report of any Academic Misconduct with the Director of Student Conduct and Community Standards. These reports shall be treated as confidential and maintained consistent with the Student Records Policy, OAR 571-020-0100 et seq.

(6) Withdrawing from a Course.

(a) If a Student's Academic Misconduct in a course results in an academic sanction, the student will not be permitted to drop or withdraw from the course, or to change the course's grading option, and shall be reinstated in the course in if they have dropped or withdrawn.

(b) If a Student's Academic Misconduct does not result in an academic sanction, the Student may withdraw from the course or change the course's grading option at the later of:

(A) Expiration of the withdrawal deadline for the course;

(B) Expiration of the deadline for changing grade options; or

(C) Five business days after the student receives notification of the decision or termination of Student Conduct Code proceedings without sanction.

(c) In the event the Student is found not responsible for Academic Misconduct and the Student no longer feels comfortable returning to the class, the Office of Student Conduct and Community Standards will assist the student to attempt to remove the "w" from the transcript.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0220

Alternative Dispute Resolution

Consistent with the primary mission of the Code to establish community standards and procedures that promote an environment conducive to learning by upholding academic standards and by respecting community members, alternative dispute resolution provides an opportunity for individuals affected by violations or alleged violations of this Code to resolve disciplinary matters among themselves, with or without findings of responsibility. Students who participate in a method of alternative dispute resolution and successfully fulfill their obligations may, upon completion of their obligations, have their student conduct record regarding the matter expunged.

(1) Mediation. Mediation is encouraged as an alternative means to resolve allegations of Student Conduct Code violations. The Director of Student Conduct and Community Standards will inform Complainants and Accused Students about the availability of mediation resources. The Director, in the exercise of the Director's sole discretion, may, except in cases of alleged Academic Misconduct, decline to process a complaint until the parties make a reasonable attempt to achieve a mediated resolution.

(a) To be binding under this Code, any mediated resolution must be approved by the Director of Student Conduct and Community Standards. Any agreement will be enforced by the Office of Student Conduct and Community Standards.

(b) Procedures for Alternative Dispute Resolution. Students wishing to pursue mediation shall notify the Director of Student Conduct and Community Standards within fourteen calendar days of receiving written notice of the violation pursuant to OAR 571-021-0200.

(c) The Director of Student Conduct and Community Standards may determine if an Accused Student must acknowledge responsibility as a condition of the Director's approval of a mediation option. If the Director requires an Accused Student to acknowledge responsibility as a condition to approving the mediation, the Director will not proceed until the Accused Student has provided the Director with that acknowledgement.

(d) The Director of Student Conduct will determine whether others affected by the alleged violation are willing to participate in mediation. Parties agreeing to mediation must sign a waiver allowing the Director to receive information from the mediator regarding the progress of the mediation.

(e) Once the necessary parties agree, the Director of Student Conduct and Community Standards will approve a mediator and set a date for a report from the mediator regarding progress. If the Director, in the Director's sole discretion, determines that mediation is unlikely to be successful, the Director may inform the necessary parties and initiate other procedures.

(2) Restorative Justice. Restorative Justice serves primarily as a diversion program for Accused Students who have acknowledged responsibility for a Code violation and who wish to remedy the effects of the violation.

(a) The Director of Student Conduct and Community Standards will consider approving Restorative Justice in the following circumstances:

(A) The Accused Student acknowledges responsibility for a the Code violation;

(B) There are clearly identifiable negative impacts on either individuals or the community resulting from the violation; and

(C) The Accused Student and those impacted by the incident agree to participate in Restorative Justice.

(b) A Restorative Justice outcome shall not be binding unless approved by the Director of Student Conduct and Community Standards. An agreement reached through Restorative Justice will be enforced by the Office of Student Conduct and Community Standards.

(3) The Director of Student Conduct and Community Standards may initiate procedures to make a determination of responsibility or, in the Director's discretion, to proceed pursuant to OAR 571-021- 0240 if an Accused Student who participates in alternative dispute resolution fails to fulfill an obligation or otherwise fails to comply with the approved resolution.

(4) Upon timely completion of a student's obligation arising from alternative dispute resolution, a student may provide to the Director of Student Conduct and Community Standards documentation of completion. If the Director of Student Conduct and Community Standards concludes the student fulfilled the student's obligation in a timely fashion, Director of Student Conduct and Community Standards will remove information regarding the violation from the student's record.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0230

Emergency Action

(1) The Director of Student Conduct and Community Standards or his or her designee may take emergency action regarding a Student when immediately necessary to secure the health or safety of any persons and there is an alleged violation of the Student Conduct Code.

(2) Emergency Action includes, but is not limited to:

(a) Immediate withdrawal of the Student from the University;

(b) Restrictions on the Student's presence on University Premises or at University Sponsored Activities.

(3) The Director of Student Conduct and Community Standards may request that the Student secure a medical and psychological evaluation through the Student Health Center or at another facility at the Student's own expense. The evaluation may be used to determine the appropriateness of withdrawing the emergency action.

(4) When the emergency action takes place, the Director of Student Conduct and Community Standards or designee will:

(a) Inform the Student of the reason for the emergency action;

(b) Give the Student the opportunity to explain why emergency action need not be taken;

(c) Inform the Student that a preliminary hearing will take place according to Paragraph (5) and that the Student will be informed of its time, place, and date; and

(d) Inform the Student of the possible restrictions that may be imposed prior to a panel hearing.

(5) The preliminary hearing shall take place within two business days of the emergency action. At this hearing the Student shall have a full opportunity to demonstrate to the Director of Conduct and Community Standards that emergency action is not necessary pursuant to Paragraph (1). The Student may be represented by a student advocate or other counsel.

(a) Based on the reasonable evaluation of the information presented at the preliminary hearing, the Director of Student Conduct and Community Standards shall notify the Student within 24 hours of the decision to:

(A) Dissolve the emergency action and take no further action;

(B) Dissolve the emergency action but proceed to a full hearing regarding the Student's conduct pursuant to OAR 571-021-0210 of the Student Conduct Code; or

(C) Sustain or modify the emergency action until such time as a Hearings Panel may hold a hearing regarding the Student's conduct.

(6) An emergency action shall be reviewed by Vice President for Student Affairs or his or her designee at the request of the Student no sooner than the next working day after the preliminary hearing. The review shall provide an opportunity for the Student to explain why an emergency action need no longer be imposed. Subsequent review of the same emergency action may be requested no more frequently than every ten days.

ADMINISTRATIVE RULES

(7) A Hearings Panel hearing subsequent to an emergency action shall occur no sooner than fourteen days after the emergency action is imposed, and shall be administered pursuant to 571-021-0210 of this Code. If the Director for Student Conduct and Community Standards agrees, the Student may waive the fourteen-day notice requirement in order to expedite the hearings process.

(8) If emergency restrictions on a Student's housing or enrollment are removed, the Student will not be assessed any fees for reinstatement.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0240

Imposition of Sanctions, Adjudication of Contempt and Failure to Complete Assigned Sanctions

(1) A University Official, Hearings Panel or Student Organization that determines that an Accused Student violated the Student Conduct Code may impose sanctions authorized by this Code unless otherwise expressly limited. Sanctions are subject to appeal pursuant to OAR 571-021-0250.

(2) A chair of a Hearings Panel or a University Official responsible for making a determination if a student has violated this Code may declare a Student participant in contempt of adjudicative proceedings pursuant to OAR 571-021-0120(1)(i) and impose sanctions without complying with the procedures otherwise required in this Code. Adjudication of contempt and sanctions imposed are subject to appeal pursuant to OAR 571-021-0250. Imposition of sanction and the circumstances that gave rise to it shall be reported to the Director of Conduct and Community Standards.

(3) Failure to complete assigned sanctions. The University will use the procedures established by this section to enforce the timely completion of disciplinary sanctions issued under the Student Conduct Code.

(a) A Student who is found responsible for a Student Conduct Code violation and who receives a sanction will be informed orally by the Office of Student Conduct and Community Standards of the consequences of failing to complete the sanction. The Office of Student Conduct and Community Standards will also inform the student in writing of the consequences of failing to complete the sanction as part of the decision letter sent to the Student.

(b) If a Student fails to complete the disciplinary sanction by the assigned deadline, the Office of Student Conduct and Community Standards will send the Student a letter that states:

(A) The Student has five class days after the assigned deadline to provide verification to the Office of Student Conduct and Community Standards that the assigned sanction has been completed or the Student's record ability to register for classes, drop classes, or change grade options will be placed on hold;

(B) Once the Student's record is on hold, the hold will not be removed until the Office of Student Conduct and Community Standards has received verification that the Student has completed the sanction; and

(C) The Student is responsible for ensuring that the Office of Student Conduct and Community Standards receives verification of completion of the sanction.

(c) When a hold is placed on a Student's record, the Office of Student Conduct and Community Standards will inform the Student in a letter that the hold has been placed, the consequences of the hold, and the actions required to have the hold removed.

(d) The hold will be removed immediately once the Student provides verification of completion of the sanction.

(e) A Student who is unable to register because the student has not completed a sanction may seek a waiver from the Office of Student Conduct and Community Standards. The Office of Student Conduct and Community Standards will grant a waiver, allowing the student to register, provided the Student agrees the Student's registration may be cancelled immediately and the hold reinstated if the Student has not completed the sanction by a deadline set by the Office of Student Conduct and Community Standards, in its sole discretion.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

571-021-0250

Appeals

The University Appeals Board (Appeals Board) is the final appeals body within the Student Conduct Program. As set forth in OAR 571-021-0165 this Appeals Board shall be responsible for reviewing substantive or procedural appeals from the decisions of a Hearings Panel.

(1) A decision reached by the Hearings Panel may be appealed by the Accused Student or Complainant(s) to the Appeals Board within fourteen calendar days of the decision. Such appeals shall be in writing, state the basis for the appeal and be delivered to the Office of Student Conduct and Community Standards.

(a) An Accused Student who does not attend the hearing of the Hearings Panel may appeal only to show with direct information that the Accused Student did not receive notice of the hearing.

(b) A Complainant(s) who fails to attend the hearing of the Hearings Panel or fails to present information in a format approved by the Hearings Panel may appeal only to show with direct information that the Complainant did not receive notice of the hearing.

(2) Except as the Appeals Board determines necessary to explain the basis of new information, an appeal is limited to a review of the verbatim record of the Hearings Panel and supporting documents:

(a) To determine if the Hearings Panel hearing was conducted fairly in light of the complaint made and information presented and in conformity with procedures required in this Code, giving the Complainant a reasonable opportunity to present information, and giving the Accused Student reasonable notice and an opportunity to prepare and to respond to the allegations. A deviation from procedures required by this Code will not be a basis for sustaining an appeal unless significant prejudice results;

(b) To determine whether the decision reached regarding the Accused Student was based on substantial information, that is, whether there were facts that, if believed by the Hearings Panel were sufficient to establish that a violation of the Code occurred;

(c) To determine whether the sanction(s) imposed were commensurate with violation;

(d) To consider new information sufficient to alter a decision or other relevant facts not brought out in the original hearing only if such information or facts were not known to the person appealing at the time of the hearing.

(3) No decision of a Hearings Panel may be overruled except through an affirmative vote of a majority of the Appeals Board members present. If the Appeals Board overrules a decision in whole or in part, it may:

(a) Modify the decision or sanction; or

(b) Remand for further proceeding.

(4) No appeal shall be allowed unless the party appealing cites specifically to the hearing record and states with specificity the grounds under which the appeal shall be allowed.

(5) The University Appeals Board decision may be appealed to the extent provided in ORS Chapter 183.

Stat. Auth.: ORS 351, 352

Stats. Implemented: ORS 351.070

Hist.: UO 3-2006, f. & cert. ef. 10-18-06; UO 4-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07

Oregon Watershed Enhancement Board Chapter 695

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

Adm. Order No.: OWEB 1-2007

Filed with Sec. of State: 2-1-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 695-007-0010, 695-007-0020, 695-007-0030, 695-007-0040

Subject: The new rules in OAR 695-007 establish grant application and award criteria for restoration, inventory and data collection, outreach, and project development grants that support priority fish habitat enhancement and that are able to create work opportunities for fishers displaced by the 2006 reduction in Klamath River Chinook salmon stocks. These rules are in response to the Governor's Executive Orders (No. 06-06 and 06-07) declaring a salmon season state of emergency. The rules will allow OWEB to exercise a grant preference for restoration and related projects that hire displaced fishers during the declared salmon season state of emergency.

Rules Coordinator: Melissa Leoni—(503) 986-0181

695-007-0010

Purpose

(1) The following administrative rules apply to the state of emergency established by Executive Order No. 06-06 and No. 06-07, dated April 24, 2006, relating to limitations on commercial salmon fishing.

ADMINISTRATIVE RULES

(2) These rules provide for action available to the Board and Director. These rules are operative until the Governor declares that the state of emergency established by Executive Order No. 06-06 and No. 06-07 is concluded. Action within these rules is intended to mitigate the economic and social impacts facing coastal communities during restricted commercial salmon fishing seasons and to advance and accelerate salmon habitat restoration and recovery efforts.

Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351-541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07

695-007-0020

Definitions

- (1) "Board" means Oregon Watershed Enhancement Board.
- (2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board.
- (3) "Displaced Worker" or "displaced fisher" means an individual who meets the criteria adopted by the Oregon Salmon Commission to be considered displaced with respect to commercial fishing employment.

Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351-541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07

695-007-0030

OWEB Actions

During the pendency of Executive Order No. 06-06 and No. 06-07 declaring a salmon season state of emergency, the Board may:

- (1) Provide grant funding to support fish habitat enhancement and related projects within salmon-bearing watersheds in Oregon, for the purpose of accelerating the rebuilding of fish populations and creating employment opportunities for displaced workers, including projects that:
 - (a) Support fish habitat enhancement;
 - (b) Gather information that can be directly used for salmon habitat restoration
 - (c) Conduct outreach to the public concerning salmon habitat restoration; or
 - (d) Support research that assists in the evaluation of salmon stocks at sea.
- (2) Provide grant funding to develop projects that would enhance salmon habitat in the future.

Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351-541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07

695-007-0040

Application Criteria

(1) For grant applicants to receive funding, the following award preferences are applicable, in addition to the evaluation criteria set forth in any other applicable rule. Projects must employ displaced fishers in all project labor opportunities to the greatest extent possible over a period of several months, and also must:

- (a) Provide benefit to high priority fish habitat along the Oregon coast and the Oregon portion of the Klamath River Basin;
- (b) Directly address limiting factors for the recovery of coho in watersheds that drain directly to the ocean, including the Umpqua and Rogue basins;
- (c) Directly address the recovery of Klamath River salmon stocks in the Klamath River Basin;
- (d) Be identified in an existing watershed-scale assessment and action plan; or
- (e) Address a specific limiting factor identified in the **2003-2005 Oregon Plan Biennial Report, Volume 2** published by the Oregon Watershed Enhancement Board in 2005.

(2) In addition to the preference criteria described in section 1, the following award preferences are applicable to specific types of grant applications:

- (a) For Inventory and Data Collection grants, preference will be given to projects that focus on surveys and inventories that document conditions affecting aquatic resources or ground-truth mapping of high priority salmon habitat.
- (b) For Restoration grants, preference will be given to projects that focus on restoration in high priority salmon habitat, or have received from OWEB a relevant technical assistance award in an earlier grant cycle.
- (c) For Project Development grants, preference will be given to projects that have a high likelihood of being implemented within one year following completion of the project development grant, focus on high priority salmon habitat, or address a specific limiting factor identified in the

2003-2005 Oregon Plan Biennial Report, Volume 2 published by the Oregon Watershed Enhancement Board in 2005.

(3) The preferences identified in section 1 of this rule may also be applied to other OWEB grants, including Restoration Projects described in Division 10, Education and Outreach Grants described in Division 15, Monitoring Grants described in Division 25, and Assessment and Action Plan Grants described in Division 30, in addition to the evaluation criteria set forth in rules contained in those divisions.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 541.396, Gov. Exc order 06-06 & 06-07
Stats. Implemented: ORS 541.351-541.401
Hist.: OWEB 1-2007, f. & cert. ef. 2-1-07

Oregon Youth Authority
Chapter 416

Rule Caption: Adoption of new rules for administration of the Interstate Compact on Juveniles.

Adm. Order No.: OYA 1-2007

Filed with Sec. of State: 2-13-2007

Certified to be Effective: 2-13-07

Notice Publication Date: 5-1-06

Rules Adopted: 416-115-0000, 416-115-0010, 416-115-0020, 416-115-0030, 416-115-0040, 416-115-0050, 416-115-0060, 416-115-0070, 416-115-0080, 416-115-0090, 416-115-0100, 416-115-0110, 416-115-0120, 416-115-0130, 416-115-0140, 416-115-0150, 416-115-0160, 416-115-0170, 416-115-0180, 416-115-0190, 416-115-0200, 416-115-0210, 416-115-0220, 416-115-0230, 416-115-0240, 416-115-0250, 416-115-0260, 416-115-0270, 416-115-0280

Subject: The 2003 Oregon Legislature transferred the authority for administration of the Interstate Compact on Juveniles to the Oregon Youth Authority. These rules are necessary to implement that Compact.

Rules Coordinator: Mike Riggan—(503) 378-3864

416-115-0000

Purpose

Runaways, youth offenders adjudicated delinquent and placed on probation, and committed youth offenders who are paroled or on aftercare, are eligible for supervision and services under the Interstate Compact on Juveniles (ICJ). An individual's status as a runaway or youth offender depends on the law in the sending state, and will be provided supervision by the appropriate juvenile authority in the receiving state.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 417.010 - 417.080
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0010

Definitions

(1) Absconder: A youth offender on probation or parole who hides, conceals, or absents him/herself with the intent to avoid legal process or authorized control.

(2) Adjudicated Delinquent: A minor or youth offender who has been adjudicated delinquent through court proceedings in a properly constituted court of law.

(3) Compact Administrator: A person designated by statute or appointed by the Governor who is responsible for coordinating his/her state's ICJ operations.

(4) Delinquent Juvenile: Any juvenile or youth offender, who has been adjudged delinquent and who, at the time the provisions of the ICJ are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court.

(5) Demanding State: For purposes of returning a youth offender via the ICJ, the state having jurisdiction over a youth offender that seeks his/her return or the return of a youth offender with pending delinquent charges.

(6) Deputy Compact Administrator: The Assistant Director, Field Operations, appointed by the Director to serve as the general coordinator of activities and rules and policies development to carry out the terms and provisions of the compact.

(7) Extradition: The surrender by one state or country of a person charged with a crime in another state or country.

(8) Holding State: For purposes of returning a youth offender via the ICJ, the state having physical possession of a youth offender.

(9) Home State: For purposes of returning a youth offender via ICJ, the state of residence or origin.

ADMINISTRATIVE RULES

(10) Juvenile: Any person within the juvenile jurisdictional age limit of any court in the home/sending state, or any individual adjudicated delinquent within the home/sending state and who remains under custodial care or community supervision of the juvenile authority.

(11) Receiving State: A state to which a youth offender is sent for supervision under provision of the ICJ.

(12) Rendition: The surrender, handing over of persons or property, particularly from one jurisdiction to another, after a request for extradition has taken place.

(13) Runaway: A child under the juvenile jurisdictional age limit established by the state, who has run away from his/her home within home state or out of state, without the consent of the parent, guardian, person, or agency entitled to his/her legal custody or supervision.

(14) Sending State: A state which has sent a youth offender to another state for supervision under the provisions of the ICJ.

(15) Warrant of Arrest: A process of a court, directing a peace officer to arrest a defendant, and to bring the defendant offender before the court for the purpose of arraignment upon an accusatory instrument filed therewith by which a criminal action against the defendant has commenced.

(16) Youth Offender: A person who has been found to be within the jurisdiction of a court for an act committed that is a violation, or if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county, or city when the person was under 18 years of age.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0020

Eligibility for Interstate Compact Supervision

(1) All youth offenders and status offenders who have been adjudicated, who are under juvenile jurisdiction as defined by the sending state, and who are under court-ordered supervision, are eligible for services pursuant to the provisions of the ICJ.

(2) Emancipated youth offenders are not eligible for services pursuant to the provisions of the ICJ. However, if an emancipated youth offender leaves the state of emancipation, goes to another state, is placed on juvenile probation/parole, and the parent lives in the state of emancipation and chooses to accept the youth offender back into the home, the home state of emancipation then must accept supervision.

(3) All youth offenders who are under juvenile court jurisdiction as defined by the sending state, and who have been assigned terms of supervision are eligible for services pursuant to the provisions of the ICJ.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0030

Administration of the Compact

The Oregon Youth Authority (OYA) Deputy Compact Administrator will provide interpretation of the Compact and coordination of all referrals or requests to:

(1) Permit out-of-state supervision of a youth offender who should be sent to some other state when eligible for parole or probation;

(2) Provide for the return of absconders and escapees to the states they left;

(3) Provide for return of runaways to their home states who have not as yet been adjudged delinquent;

(4) Extradite a youth offender who has committed a serious criminal offense and fled to another state before the court took jurisdiction; (Oregon has adopted this provision but it is only binding between the other states which adopted it also);

(5) Return youth offenders to Oregon when Compact placement fails.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0040

Processing Referrals

The OYA ICJ office will process all referrals involving youth offenders for whom services have been requested provided those youth offenders are under juvenile jurisdiction in the sending state.

(1) Based on staff availability, the ICJ office will forward all its cases within five (5) working days of receipt.

(2) The ICJ office will adhere to the following screening process when sending and receiving referrals:

(a) The ICJ office will ensure all referrals and correspondence between states originate from the ICJ office in the sending state.

(b) The ICJ office in the sending state will ensure that the following referral documents are complete and forwarded to the receiving state in duplicate:

(A) CF 29 Form IA, Application for Compact Services

(B) CF 42 Form VI, Memorandum of Understanding and Waiver (Parolee or Probationer)

(C) CF 39 Form IV, Parole or Probation Investigation Request

(D) Order of Adjudication and Disposition

(E) Conditions of Probation, Legal and Social History (if available)

(F) Petition and/or Arrest Report, and any other pertinent information deemed to be of benefit to the receiving state

(G) Parole conditions will be forwarded to the receiving state upon the youth offender's release from a youth correctional facility.

(3) The sending state will be responsive in forwarding additional documentation at the request of the receiving state.

(4) The ICJ office will request the local Parole/Probation office to complete a home evaluation within twenty (20) working days after the local office has received the request.

(5) The ICJ office will, within thirty (30) working days of receipt of the referral, make every effort to forward to the sending state the home study report along with the final approval or disapproval of the request for cooperative supervision.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0050

Authority to Accept/Deny Supervision

(1) Only the OYA Deputy Compact Administrator or designee authorizes or rejects (denies) supervision of a youth offender.

(2) The OYA Deputy Compact Administrator or designee's signature is required on or with the home evaluation form that approved or denied supervision of a youth offender:

(a) Supervision cannot be denied or disapproved based solely on the youth offender's age or the offense.

(b) Supervision cannot be denied or disapproved when the youth offender will reside in the state where the parent, guardian, or person entitled to legal custody resides.

(c) Supervision may be denied when the home evaluation of a non-custodial person reveals that the proposed placement is unsuitable and the youth offender will reside with a non-custodial person, and the parent, guardian, or person entitled to legal custody does not reside in that state.

(d) If the receiving state requires the proposed non-custodial placement to obtain guardianship or licensure and the proposed placement refuses to comply with said requirements, then supervision may be denied.

(3) Upon receipt of an acceptance from the receiving state, and within five (5) working days prior to the youth offender's departure, the sending state will provide reporting instructions to the youth offender, and provide written notification of the youth offender's departure to the receiving state.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0060

Transfer of Supervision Procedures

(1) Supervision will not transfer from another state without verbal or written approval from the ICJ office. All verbal approvals will be followed-up with written approval within ten (10) working days after the date the verbal approval was granted.

(2) When it appears necessary to request an emergency transfer of supervision, the sending state's ICJ office will be responsible for verifying that an emergency actually exists. If so, referral information should be provided to the receiving state's ICJ office as expeditiously as possible, along with an explanation of the nature of the emergency.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0070

Cooperative Supervision/Services Requirements

(1) The duties of supervision over any youth offender who has been accepted for cooperative supervision in accordance with the ICJ will be governed by the same standards of supervision that prevail for youth offenders in OYA supervision and juvenile department supervision:

(a) Youth offender's placed on probation will be supervised by the county juvenile department under ICJ supervision.

ADMINISTRATIVE RULES

(b) Youth offender's paroled from a correctional institution by a sending state and referred to Oregon for cooperative supervision will be supervised by OYA.

(2) The OYA and other governmental entity party to the ICJ, when it is determined to be in the best interest of the public and the youth offender under supervision, may enter into an agreement with adult probation/parole or a private provider in its respective jurisdiction in order to provide the level of supervision and services that is intended by the sending state.

(3) The receiving state will furnish written progress reports on a quarterly basis.

(4) Neither sending states nor receiving states will impose a supervision fee on any youth offender who is supervised under the provisions of the ICJ.

(5) The sending state will be financially responsible for the treatment services required by the sending state. The initial referral will clearly state who will be responsible for purchasing treatment services for the juvenile sex offender.

(6) The receiving state determines the type and quality of supervision.

(7) The age of majority and duration of supervision are determined by the sending state.

(8) Restitution payments or court fines are to be paid directly from the youth offender/family to the sending court or agency. Supervising officers will encourage the youth offender to make regular payments in accordance with the court order of the sending state. The sending state will provide the specific payment schedule and payee information to the receiving state.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0080

Travel Permits

The purpose of this section is for the protection of the public. Travel permits will be mandatory in the following instances:

(1) Travel Permits and Agreement to Return will be issued for the purpose of testing a proposed placement. The permit will not exceed forty-five (45) days, with a referral packet to be received by the receiving state's ICJ office prior to thirty (30) days of the effective date of the Travel Permit.

(2) Travel Permits and Agreement to Return will be issued to youth offenders subject to the terms of the ICJ for visits/vacations whose adjudicating offense include, but are not limited to the following:

(a) Sex-related offenses.

(b) Violent offenses that have resulted in personal injury or death.

(c) Offenses committed with a weapon.

(3) Travel Permits will be issued for the purpose of visit/vacation only if a visit will exceed forty-eight (48) hours. Travel Permits will contain instructions requiring the youth offender subject to the terms of the ICJ to return to the sending state.

(a) The maximum length of stay under these conditions will not exceed ninety (90) days.

(b) When a Travel Permit exceeds thirty (30) days, the sending state will provide specific reporting instructions for the youth offender to maintain contact with his/her supervising agency.

(4) Authorization for out-of-state travel will be approved by the Parole/Probation Officer (PPO) or court designee supervising the youth offender in the sending state. The authorized Travel Permit will be provided through the normal ICJ channels prior to the youth offender's movement.

(5) The receiving state's Interstate Compact Office will forward the Travel Permit to the jurisdiction of residency/visit/vacation.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0090

Supplemental Agreements

(1) Compact Administrators in both the sending and receiving states must approve all ICJ placements in public institutions.

(2) Supervision of youth offenders placed in private facilities will not be administered through the ICJ.

(3) The OYA and/or governmental entities party to the ICJ will formulate written agreements with another state when placing youth offenders in public institutions in that state.

(4) This rule applies to the placement of youth offenders in public institutions. When a state wishes to enter into care, treatment and rehabilitation with another state for the purpose of an institutional placement of a youth offender, there will be an individual agreement between said states. Written details must be provided as specified through a supplementary

agreement. In order to invoke the provisions, the youth offender must be in the home state/state of jurisdiction.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0100

Communication Requirements between States

(1) All communications between states, whether verbal or written, on ICJ issues will be transmitted between the respective ICJ offices.

(2) Communication may occur between local jurisdictions with the approval of the ICJ offices in both states.

(3) Communication regarding ICJ business will respect the confidentiality rules of the receiving state unless otherwise requested by the sending state.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0110

Closure of Cases

(1) The sending state has sole authority to discharge/terminate its youth offenders.

(2) After the receiving state has accepted a probation or parole case for supervision, the sending state will complete placement within 90 calendar days. If the placement is not made in the receiving state within this time frame, the receiving state may close the case with written notice to the sending state. The sending state may request an extension beyond the 90 calendar day time frame, providing an appropriate explanation, or may resubmit the referral at a later date.

(3) Cases which terminate due to expiration of a court order or upon expiration of the period of parole may be closed by the receiving state without further action by the sending state. In such cases, the receiving state will forward a summary report to the sending state, and notify the sending state in writing that, unless otherwise notified, the case will be closed due to the expiration of the court order.

(4) The receiving state may submit to the sending state a request for release from probation or parole. In such cases, the sending state will be provided the opportunity to consider the matter, to advise the court of jurisdiction or state agency of the request, and to make known any objection or concern before the case is closed. The sending state will forward a copy of the discharge report or notification to close the case based on the receiving state's recommendation.

(5) If the request to close the case has been denied by the sending state, the sending state will provide an explanation why the youth offender cannot be released from probation/parole.

(6) Supervision for the sole purpose of collecting restitution is not a justifiable reason to continue to maintain an open ICJ case when all other terms and conditions of probation/parole have been completed.

(7) Files of closed cases will be maintained in the ICJ office for one (1) year after closure before they can be destroyed.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0120

Victim Notification

Victim notification requirements are the responsibility of the sending state in accordance with the laws and policies of that state. The sending state will request information as necessary to fulfill victim notification requirements. The receiving state will respond to the requests from the sending state within five (5) working days.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0130

Sex Offender Notification

(1) When a youth offender is under the jurisdiction of a court for a sex-related offense and an interstate referral is made, the sending state will include a copy of the youth offender's current risk assessment and other pertinent information, if available.

(2) If the sending state has statutorily-mandated progress reporting requirements for juvenile sex offenders that exceed AJCA Rule 4-105(3), the receiving state will comply with the more stringent rule to the extent possible.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

ADMINISTRATIVE RULES

416-115-0140

Return of Runaways, Escapees and Absconders

(1) The ICJ provides for a requisition procedure for the return of non-delinquent runaways who are found in states other than their home state. The home state's ICJ office will contact the appropriate authorities in the home state to qualify their runaways for return.

(2) Non-delinquent runaways who are endangering themselves or others will be held in detention facilities until returned by the home states.

(3) The holding state's ICJ office will ensure the accurate preparation and timely delivery of requisitions to return of all its absconders and escapees who refuse to voluntarily return.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0150

Voluntary Return Procedure

(1) The holding state's ICJ office will return all of its runaways, absconders, and escapees who have legally consented to voluntarily return to the home state.

(2) The home state will be responsive to the holding state's court orders in effecting the return of its runaways and youth offenders. Each ICJ office will have policies in place involving the return of runaways or youth offenders that will ensure the safety of the public, runaways, and youth offenders.

(3) Runaways or youth offenders are to be returned to the home/demanding state in a safe and expedient manner.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0160

Cooperative Supervision of Probationers and Parolees

(1) The ICJ provides the procedure for return to the sending states of youth offenders who are on cooperative supervision in other states. ICJ Form IA/VI provides due process requirements for this return.

(2) Sending states' ICJ offices will ensure that their youth offender's probation/parole agreement provisions are enforced for individual accountability and public protection.

(3) Youth Offenders and Legal Custodian(s) Who Have Left the Sending State: In the event new charges occur in the receiving state, receiving states will endeavor to assume jurisdiction over youth offenders whose legal custodian(s) move to those states.

(4) Youth Offenders Who Have Legal Custodian(s) Remaining in the Sending State: When placement of youth offenders in receiving states is not successful, sending states' ICJ offices will make transportation arrangements for the return of their youth offenders within five (5) working days in accordance with this Article.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0170

Runaway Amendment

(1) The Runaway Amendment will be binding only between those states which have executed the same. All provisions of OAR 416-115-0140 and 416-115-0160 will apply.

(2) The home state's ICJ office will immediately initiate proceedings to determine a runaway's residency and jurisdictional facts in that state. Home states will return runaways when it is determined that said runaways are residents of that state.

(3) Due process will be afforded to runaways who are returned pursuant to this amendment/article. The home states' ICJ office will initiate the requisition process when runaways refuse to voluntarily return, and parents refuse to initiate the requisition process.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0180

Rendition Amendment

The Rendition Amendment will be binding only between and among those states which have executed the same. All provisions and procedures of OAR 416-115-0140 and 416-115-0150 will apply.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0190

Out-of-State Confinement Amendment

(1) The Out-of-State Confinement Amendment is operative only between those states which have executed the same.

(2) This amendment applies to youth offenders who are on probation or parole or who have absconded or escaped and are located in the receiving or holding states. The sending/receiving or home/holding states must contractually agree to confine youth offenders in a designated institution in receiving or holding states.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0200

Financial Responsibility

(1) The home/demanding states' ICJ office will be responsible for the costs of transportation, for making transportation arrangements and for the return of runaways and youth offenders within five (5) working days of being notified by the holding state's ICJ office that the runaway and youth offender's due process rights have been met (signed Consent to Return Voluntarily, signed Memorandum of Understanding and Waiver, or requisition honored.)

(2) This rule applies to OAR 416-115-0130 through 0160 and the Runaway and Rendition rules.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0210

Public Safety

(1) The home/demanding state's ICJ office will determine appropriate measures and arrangements to ensure the safety of the public and of youth offenders being transported based on the holding and home/demanding states' assessments of youth offenders

(2) Youth offenders who are requisitioned and the Rendition Amendment or who are considered a risk to harm themselves and/or others will be accompanied on the return to the home/demanding state.

(3) This rule applies to OAR 416-115-0130 through 0160 and the Runaway and Rendition rules.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0220

Charges Pending in Holding/Receiving States

(1) Youth Offenders will be returned only with the consent of the holding/receiving states or after charges are resolved when pending charges exist in the holding/receiving states.

(2) This rule applies to OAR 416-115-0130 through 0160 and the Runaway and Rendition rules.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0230

Warrants

(1) The demanding state's ICJ office will, within two (2) working days, determine if warrants will be honored, and notify the holding states' ICJ office accordingly.

(2) When the demanding state enters a warrant into NCIC as a "no bond/bail warrant" but the holding state's statutes allow for bond/bail on juvenile court warrants, the holding state will not release the youth offender on bond/bail.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 417.010 - 417.080

Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0240

Detention

(1) The home/demanding state's ICJ office will affect the return of its runaways or youth offenders within five (5) working days after confirmed notification from the holding state's ICJ office that due process rights have been met.

(2) Holding states will not be reimbursed for detaining runaways or youth offenders under the provisions of the ICJ unless the home/demanding state's ICJ office does not demonstrate a good faith effort to affect the return of its runaways or youth offenders within five (5) working days.

(3) Runaways or youth offenders held in detention, pending receipt of a requisition, may be held for a maximum of ninety (90) days.

ADMINISTRATIVE RULES

Home/demanding state's ICJ office will maintain regular contact with the authorities preparing the requisition to ensure accurate preparation and timely delivery of said documents to minimize detention time.

(4) Holding states are responsible for transporting runaways or youth offenders to local airports or other means of public transportation as arranged by the home/demanding state.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 417.010 - 417.080
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0250

Air Transportation

(1) Holding states are responsible for transporting runaways or youth offenders to local airports as arranged by the home/demanding state and maintaining security of the runaways or youth offenders until departure.

(2) Holding states will not return to runaways or youth offenders any personal belongings, which could jeopardize the health, safety, or security of the youth offenders or aircraft (examples: weapon, cigarettes, lighters, or cell phone).

(3) Holding states will confiscate all questionable personal belongings and return those belongings to the runaways or youth offenders by approved carrier (e.g., USPS, UPS, or Federal Express).

(4) In cases where a runaway or youth offender subject to the ICJ is being transported by a commercial airline carrier, the holding state will ensure the runaway or youth offender has a picture identification card and/or a copy of the applicable ICJ paperwork or appropriate due process documentation in his/her possession before entering the airport.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 417.010 - 417.080
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0260

Airport Supervision

(1) Staff will provide supervision and assistance to unescorted runaways or youth offenders at intermediate airports, en route to the home state.

(2) Staff will supervise runaways or youth offenders from arrival until departure.

(3) Home states will give the states providing airport supervision a minimum of 24 hours advance notice.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 417.010 - 417.080
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0270

Provision of Emergency Services

In the event of an emergency situation that interrupts or changes established travel plans during a return transport, the ICJ member states will, if possible, provide necessary services and assistance, including temporary detention or housing for the runaway or youth offender until the transport is rearranged and/or completed.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 417.010 - 417.080
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

416-115-0280

Communications

(1) ICJ offices will be equipped with fax machines and computers to facilitate communication.

(2) Further, ICJ offices will be equipped with the capability to conduct Interstate Compact business through use of the ICJ/AJCA web site.

(3) All communications concerning the ICJ are to be sent through: ICJ; Oregon Youth Authority, 530 Center Street NE, Salem, Oregon 97301; Telephone (503) 373-7569.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 417.010 - 417.080
Hist.: OYA 1-2007, f. & cert. ef. 2-13-07

Parks and Recreation Department
Chapter 736

Rule Caption: Proposed rules to carry out procurement authority granted in ORS 279.050(6)(c) to procure "all goods, services, public improvements and personal services relating to state parks."

Adm. Order No.: PRD 1-2007

Filed with Sec. of State: 2-7-2007

Certified to be Effective: 2-7-07

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Rules Adopted: 736-146-0010, 736-146-0012, 736-146-0015, 736-146-0020, 736-146-0025, 736-146-0030, 736-146-0040, 736-146-0050, 736-146-0060, 736-146-0070, 736-146-0080, 736-146-0090, 736-146-0100, 736-146-0110, 736-146-0120, 736-146-0130, 736-146-0140, 736-147-0010, 736-147-0020, 736-147-0030, 736-147-0050, 736-147-0060, 736-148-0010, 736-148-0020, 736-149-0010

Subject: These rules clarify the requirements that are not written in ORS 279A, ORS 279B, ORS 279C and DOJ-OAR 137-046 through DOJ-OAR 137-049. They will document the process for procurement not already documented by DOJ and provide reminders of additional OPRD approvals.

Rules Coordinator: Pamela Berger—(503) 986-0719

736-146-0010

Application

The Oregon Parks and Recreation Department adopts OAR 137-046-0100 through 137-046-0480 (effective January 1, 2006), the Department of Justice Model Rules, General Provisions Related to Public Contracting including the additional provision provided in these rules.

Stat. Auth.: ORS 279A.070
Stats. Implemented: ORS 279A.070, 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0012

Definitions

"Designated Procurement Officer" (DPO) means the individual designated and authorized by the Director of the Oregon Parks and Recreation Department to perform certain Procurement functions described in these rules.

Stat. Auth.: ORS 279A.070
Stats. Implemented: ORS 279A.070, 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0015

Special Approvals for Public Contracts When Required

(1) When Attorney General legal sufficiency approval is required under ORS 291.047, the Oregon Parks and Recreation Department (OPRD) must seek legal approval.

(2) When OPRD contracts for services normally provided by another Contracting Agency or for services for which another Contracting Agency has statutory responsibilities, OPRD is required to seek the other Contracting Agency's approvals. Examples of these special approvals include, but are not limited to:

(a) Oregon Department of Administrative Services (DAS), Risk Management Division for providing tort liability coverage.

(b) DAS, Information Resource Management Division (IRMD), Publishing and Distribution for printing services.

(c) DAS, State Controller's Division for accounting services.

(d) Office of the Treasurer, Debt Management Division for financial and bond counsel services (bond counsel services also require the approval of the Attorney General)

(e) Attorney or Financial Auditing Services; and

(f) DAS, Information Resources Management Division (IRMD) for information-system related and telecommunications services. OPRD may also use the DAS IRMD's Enterprise Planning and Policy Section as a resource in carrying out information system-related projects. This may include:

(A) Assistance to OPRD in developing Statements of Work related to information system projects;

(B) Reviews to assure consistency with State standards and direction; and

(C) A listing of vendors that provide information system-related services.

(3) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in Writing on a case-by-case basis only by the Attorney General.

(4) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in Writing on a case-by-case basis only by the Secretary of State Audits Division.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

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736-146-0020

Reporting Requirements for Personal Services Contracts

(1) Application. For the purposes of this division only, "Personal Services" includes Architectural, Engineering and Land Surveying Services and Related Services.

(2) The Department of Administrative Services (DAS) State Procurement Office maintains an electronic reporting system called the Oregon Procurement Information Network (ORPIN) and a report form for reporting Personal Services Contracts. OPRD must submit this report form to the DAS State Procurement Office for each Contract and subsequent Contract Amendment. The report form must include OPRD's name, not-to-exceed amount of the Contract, the name of the Contractor, the duration of the Contract, and its basic purpose. Whenever OPRD pays in a calendar year under a Personal Services Contract for services historically performed by its employees more than OPRD would have paid to its employees performing the same Work, OPRD must so report to DAS and include in the report a statement of justification for the greater costs, pursuant to ORS 279A.140(2)(h)(A)(i).

(3) OPRD must keep in the Procurement File all Personal Services Contracts, justification statements, when applicable, documentation of the selection process for each Contract, and the report forms as follows:

(a) For 10 years beyond each Contract's expiration date for Architectural, Engineering and Land Surveying Services and Related Services.

(b) For six years beyond each Contract's expiration date for all other Personal Services Contracts.

(c) All such files may be destroyed after 10 years or six years, respectively, or in accordance with another provision of law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.140(h)(A)
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0025

Independent Contractor Status For Personal Services Contracts

(1) OPRD must develop a Statement of Work for services that will not result in an employee relationship with the potential contractor.

(2) An independent contractor certification by Contractors must be included as a contract provision in each Contract.

(3) If the nature of the services or project is such that an employee/employer relationship will exist, OPRD must hire the individual through normal personnel procedures.

(4) The Contract must include the Contractor's legal name, address, and Social Security or federal tax identification number.

(5) The Contract must provide that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the contract payment.

Stat. Auth.: ORS 279A.140(2)(h)(A)(i)
Stats. Implemented: ORS 279A.140 & 279A.070
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0030

Procurement Files

(1) This Rule applies only to Procurements exceeding the Intermediate Procurement threshold for Goods or Services; the Informal Selection threshold for Architectural, Engineering, and Land Surveying Services; and the Intermediate Procurement threshold for Public Improvements pursuant to OAR 137-047-0270, 137-048-0210, and 137-049-0160, respectively.

(2) Each Procurement File must contain:

- (a) An executed Contract, if awarded;
- (b) The record of the actions used to develop the Contract;
- (c) A copy of the Solicitation, if any;
- (d) Any required findings or statement of justification for the selection of the Contractor and sourcing method pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Goods or Services); 279C.100 through 279C.125 (Architectural, Engineering and Land Surveying and Related Services); or 279C.300 through 279C.450 (Public Improvements); and

(e) Documentation of Contract Administration pursuant to this rule.

(3) Each Procurement File may also contain, if required by ORS or this division:

- (a) A list of prospective Contractors notified of any Solicitation.
- (b) The method used to advertise or notify prospective Contractors.
- (c) A copy of each Offer that resulted in the Award of a Contract.
- (d) The method of evaluating Offers, the results of the evaluation, and basis of selection.

(e) The record of any negotiation of the Statement of Work and results.

(f) A record of all material communications regarding the Solicitation by interested Contractors.

(g) All information describing how the Contractor was selected, including the basis for awarding the Contract.

(h) A copy of the Request for Special Procurement, if any.

(4) OPRD must maintain Procurement Files, including all documentation, for a period not less than six years, except for 10 years beyond each Contract's expiration date for Architectural, Engineering and Land Surveying Services and Related Services or for another period in accordance with another provision of law.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0040

Contract Administration; General Definitions

(1) "Contract Administration" means all functions related to a given Contract between OPRD and a Contractor from the time the Contract is awarded until the Work is completed and accepted or the Contract is terminated, payment has been made, and disputes have been resolved.

(2) "Contract terms and conditions" means the entire Contract document including but not limited to:

- (a) The Contract;
 - (b) A Solicitation Document incorporated by reference in the Contract; and
 - (c) All attachments, exhibits or other requirements specifically referenced in the Contract.
- Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0050

Contract Administration; General Provisions

(1) Authority. OPRD must conduct all Procurements, including Contract Administration, for Goods or Services, including Architectural, Engineering and Land Surveying Services and Related Services, and Public Improvements, pursuant to ORS 279A.050 and ORS 279A.075.

(2) Contract Administrator. OPRD must appoint, in Writing, a Contract Administrator as an OPRD representative for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract.

(3) Documentation of Contract Administration. This section applies only to the following Procurements pursuant to OAR 137-047-0270, 137-048-0210, and 137-049-0160, respectively:

(a) Procurements exceeding the Intermediate Procurement threshold for Goods or Services.

(b) Procurements exceeding the Informal Selection threshold for Architectural, Engineering, and Land Surveying Services and Related Services.

(c) Procurements exceeding the Intermediate Procurement threshold for Public Improvements.

(4) Requirements. Documentation of Contract Administration is a part of the Procurement File in accordance with OAR 736-146-0030, and this documentation must include:

- (a) An executed Contract;
 - (b) The record of the actions used to administer the Contract; and
 - (c) The name and contact information for the Contract Administrator and any technical representative delegates, together with a description of their delegated duties.
- (d) Documentation of Contract Administration may also include, if any:

- (A) Amendments;
- (B) Claims related to the Contract;
- (C) Release of claims documents;
- (D) Contract close-out documents; and
- (E) Other documents related to Contract Administration.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0060

Payment Authorization of Cost Overruns for Goods or Services including Architectural, Engineering and Land Surveying Services and Related Services Contracts

(1) Payments on Contracts that exceed the maximum contract consideration require approval from OPRD's Designated Procurement Officer and may require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq. Approval may be provided if there is compliance with all of the following:

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(a) The Original Contract was duly executed and, if required, approved by the Attorney General.

(b) The Original Contract has not expired or been terminated as of the date Written approval to increase the Contract amount is granted.

(c) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract.

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to cost overruns that:

(A) Address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed.

(B) Comply with official or judicial commands or directives issued during contract performance.

(C) Ensure that the purpose of the Contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered.

(f) Except for the cost overrun, the Contract and its objective are within the statutory authority of OPRD and OPRD currently has funds available for payment under the Contract.

(g) An officer or employee of OPRD has presented a Written report to OPRD's Designated Procurement Officer within 60 days of the discovery of the overrun that states the reasons for the cost overrun and demonstrates to the satisfaction of OPRD's Designated Procurement Officer that the Original Contract and the circumstances of the overrun satisfy the conditions stated above.

(h) OPRD's Designated Procurement Officer approves in Writing the payment of the overrun, or such portion of the overrun amount as OPRD's Designated Procurement Officer determines may be paid consistent with the conditions of this rule. If OPRD's Designated Procurement Officer has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(2) OPRD must obtain an Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any overrun payment.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0070

Ethics in Public Contracting – Policy

Oregon Public Contracting is a public trust. OPRD and Contractors involved in Public Contracting must safeguard this public trust.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0080

Ethics in Selection and Award of Public Contracts

(1) OPRD officers, employees or agents involved in the process of the selection and award of Public Contracts must carefully review the provisions of ORS 244.040.

(2) OPRD officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) OPRD officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) OPRD officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0090

Ethics in Appointments to Advisory Committees

OPRD's Designated Procurement Officer or a delegate may appoint procurement advisory committees to assist with Specifications, procure-

ment decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0100

Non-retaliation

Retaliation against anyone who complies with the Public Contracting Code and Rules in this division related to Ethics is prohibited. Any officer, employee or agent of OPRD or Contractor who engages in retaliation action will be subject to Penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any Contractor who engages in a retaliation action may be debarred.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0110

Ethics in Specification Development

(1) OPRD and Contractors must not develop Specifications that primarily benefit a Contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

(2) OPRD must not develop Specifications that inhibit or tend to discourage Public Contracting with Qualified Rehabilitation Facilities (QRF) under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those Specifications inhibit or tend to discourage the acquisition of QRF-produced Goods or Services without reasonably promoting the satisfaction of bona fide, practical procurement needs of OPRD.

(3) OPRD and Contractors must not develop Specifications that inhibit or tend to discourage Public Contracting under other public procurement laws or policies of OPRD.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0120

Ethics in Sole Source

OPRD may not select a Sole-Source Procurement pursuant to ORS 279B.075 and avoid a competitive Procurement if the purpose of the selection is to primarily benefit the Contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.075, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0130

Fragmentation

A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065, or an Intermediate Procurement, pursuant to ORS 279B.070.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-146-0140

Ethics in OPRD and Contractor Communications

(1) Research Phase. OPRD is encouraged to conduct research with Contractors who can meet the state's needs. This research includes but is not limited to:

- Meetings;
- Industry presentations; and
- Demonstrations with Contractors that, in OPRD's discretion, may be able to meet OPRD's needs.

(2) OPRD must document the items discussed during the research phase of Solicitation development. The research phase ends the day of a Solicitation release or request for a Quote pursuant to an Intermediate Procurement, unless the Solicitation or Intermediate Procurement provides for a different process that permits on-going research.

(3) Solicitation and Contracting Phase. Any communication between OPRD and Contractors regarding a Solicitation, that occurs after the Solicitation release or request for a Quote and before the Award of a Contract, must only be made within the context of the Solicitation Document or Intermediate Procurement requirements.

(4) Communication may allow for Discussions, Negotiations, Addenda, Contractor questions, and OPRD's answers to Contractor questions about terms and conditions, Specifications, Amendments, or related matters. During this phase, telephone conversations and meetings must be

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documented in the Procurement File. Written inquiries regarding the Solicitation should be responded to by OPRD in Writing.

(5) A record of all material Communications regarding the Solicitation by interested Contractors must be made a part of the Procurement File pursuant to OAR 736-146-0030.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-147-0010

Application

The Oregon Parks and Recreation Department adopts OAR 137-047-0000 through 137-047-0800 (effective January 1, 2006) with the exception of OAR 137-047-0270(4), the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.015
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-147-0020

Life Cycle Costing

(1) Policy. Life Cycle Costing provides an acquisition method that is consistent with the concept of sustainability and also drives the concept of lowest cost of ownership and best value of the equipment purchased. When planning the award method of an Invitation to Bid (ITB) or Request for Proposal (RFP) for products or equipment, OPRD may consider using Life Cycle Costing whenever the costs of system operation, support, and disposal, and other quantifiable costs are significant in comparison with the cost of acquisition.

(2) For the purpose of this division, the following definitions apply:

(a) "Life-Cycle Cost" means the total cost to OPRD of acquiring, operating, supporting and (if applicable) disposing of the Goods being acquired.

(b) "Life Cycle Costing" means the various quantifiable cost factors, in addition to the acquisition cost of Goods or Services (also referred to in this division as "product, equipment, and service, separately or in any combination thereof").

(3) Concept. Insofar as this division is concerned, the concept of Life Cycle Costing will be limited to begin with the acquisition of the product or service, include all the associated cost(s) of ownership, such as purchase price, shipping, maintenance and repair, longevity, and include disposition cost(s) at the end of life. The initial acquisition price is adjusted with additional cost streams expected to occur over the anticipated life of the product or equipment. These additional cost streams must be clearly thought out costs or adjustments, and must be based upon reasonable assumptions. Cost streams are discrete elements of costs that relate to the particular purchase considered for Life Cycle Costing. In some cases cost streams may include negative costs or savings that are expected to result in a particular cost stream.

(a) Acquisition costs are costs associated with acquiring an item for OPRD's use. For complex items, several Contracts may be required and costs may involve research and development as well as production, delivery, and installation of the item.

(b) Typical cost streams may include:

(A) Switching cost are costs associated with changing from current equipment or products to another model or brand of equipment or products. Typically such costs may include: removal, shipping, training, and replacement of supporting supplies. They may also consider increased project management or additional transition time.

(B) Operating and support costs are all costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(C) Disposal costs are costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life-Cycle Cost should also consider any significant salvage or resale value at the time of disposal. The DAS Oregon Property Services may help with estimating values, and with adherence to current rules regarding disposition of State property.

(4) Solicitation Requirements. Life Cycle Cost methodology is permitted under this rule for use in either an ITB or an RFP. When conducting a Life Cycle Costing-based award, the Solicitation must:

(a) Advise prospective offerors how Life Cycle Costing will be considered in an award decision:

(A) Awards may be made based on lowest evaluated cost resulting from Life Cycle Costing. Under this approach, the evaluation includes Life Cycle Costs in the Solicitation issued by OPRD;

(B) Awards of Invitations to Bid to the lowest Bidder include the total Life Cycle Costs as a part of the bid evaluation methodology and award. The lowest total Life Cycle Cost is considered the low Bid; or

(C) Awards of RFPs may include a Life Cycle Costing award factor in two ways:

(i) The RFP may include Life Cycle Costs as a part of the total points awarded for costs. In this method, all Life Cycle Costs are calculated and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the RFP; or

(ii) The RFP may include a separate Life Cycle Cost Factor that is assessed as weight or points and is considered in addition to other factors in the proposal evaluation methodology. As a separate evaluation factor, it may be used in addition to costs, when the cost factor does not consider Life Cycle Costing elements.

(b) Provide for adjustments to the cost stream when Life Cycle Costs continue over a period of years, for one or more of the following:

(A) Time value of money;

(B) Cost uncertainty; or

(C) Inflation factors.

(5) Factors in the Solicitation. To the extent OPRD considers practical, the Solicitation must provide relevant information (e.g., projected item usage, operating environment, the operating period, and other information that will be considered in the evaluation of the offer). OPRD may include projections and estimates of life and cycle times from independent third party sources. The Solicitation must describe how Life Cycle Cost will be applied in the award process. Factors not described in the Solicitation may not be used in the evaluation.

(6) Elements that may be used in Awards. Solicitations must describe what relevant costs, along with appropriate information to support life costs, the Offer must provide. Typical elements used in Life Cycle Costing Awards may include:

(a) Average unit price, including (when appropriate) recurring and nonrecurring production costs;

(b) Delivery, shipping and transportation costs;

(c) Switching costs prepared by OPRD that include a reasonable estimate of what it will cost to switch from a current product or brand to another;

(d) Unit operating and support costs (e.g., manpower, energy, parts requirements, scheduled maintenance, and training);

(e) Unit disposal costs (e.g., the cost of removing equipment from the Contracting Agency facility);

(f) Unit salvage or residual value; and

(g) Related information as requested to support costs such as testing and operational data.

(7) Award Decision. Award of an Invitation to Bid using Life Cycle Cost methods must be made to the responsible firm whose responsive offer provides the lowest overall cost of ownership in accordance with the Life Cycle Cost evaluation factors listed in the solicitation document. In the case of a Life Cycle Cost Request for Proposal, award must be made to the responsible firm whose responsive offer, after consideration of Life Cycle Cost factors as a part of price evaluation, and other factors listed in the Solicitation Document are determined to be the most Advantageous or best Proposal for OPRD.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.025, 279B.270, 279B.280
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-147-0030

Emergency Procurements Process

(1) OPRD may award a Public Contract as an Emergency Procurement pursuant to the requirements of OAR 137-047-0280 and 137-049-0150. When an Emergency Procurement is authorized, the Procurement must be made with competition that is practicable under the circumstances.

(2) Pursuant to the requirements of this rule, OPRD may, in its discretion, enter into a Public Contract without competitive Solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, when entering into an Emergency Contract, OPRD must:

(a) Make a Written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis;

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(b) Encourage competition that is practicable under the circumstances; and

(c) Record the measures taken under subsection (b) of this section to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(4) Pursuant to ORS 279B.080, the head of the Contracting Agency, or person designated under ORS 279A.075, must declare the existence of the emergency, as required by subsection (3)(a), which must authorize OPRD to enter into an Emergency Contract.

(5) Any Contract awarded under this division must be awarded within 60 days following the declaration of the emergency unless an extension has been granted by the head of OPRD, or Person designated.

(6) For Contracts greater than \$5,000, OPRD must report a summary of the Contract on the Oregon Procurement Information Network (ORPIN) maintained by the DAS State Procurement Office and provide the Department of Justice, Attorney General with a copy of the Written documentation required in section (3) of this rule within a reasonable period of time or 30 Days, whichever is less, following the declaration of an emergency. OPRD must maintain a copy of the report in its Emergency Procurement File.

(7) Emergency Public Contracts are exempted from Department of Justice legal sufficiency review pursuant to OAR 137-045-0070.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.080
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-147-0050

Mandatory Use Contracts and Price Agreements

(1) Mandatory Use Contracts, for the purposes of this rule and including DAS and OPRD Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining requirements for volume discounts, standardization among Agencies, and reducing lead-time for ordering. A Mandatory Use Contract requires OPRD to purchase Goods or Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process pursuant to the requirements of ORS chapters 279A, 279B, and 279C.

(2) OPRD may purchase the Goods or Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) OPRD must use Mandatory Use Contracts established by DAS or OPRD unless otherwise specified in the Contract, allowed by law or these rules.

(4) Notwithstanding section (3) of this rule, OPRD is exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Goods or Services from another Government Public Agency, provided that a formal, Written agreement is entered into between the parties;

(b) Goods or Services from the federal government, pursuant to ORS 279A.180;

(c) Personal property for resale through student stores operated by public educational Contracting Agencies; and

(d) Emergency purchases declared by a Contracting Agency pursuant to ORS 279B.080.

(5) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a); ORS 279A.070
Stats. Implemented: ORS 279B.090
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-147-0060

Amendments for Intermediate Goods or Services Procurements

OPRD may amend a Public Contract awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than 25 percent of the original Contract price, except:

(1) OPRD may amend a Public Contract awarded as an intermediate Procurement in accordance with OAR 137-047-0800 over the 25 percent cumulative amount but not exceeding the \$150,000 threshold with written approval from the OPRD Designated Procurement Officer based upon a determination of the best interests of the State.

(2) OPRD may amend a Public Contract awarded as an intermediate Procurement in accordance with OAR 137-047-0800 over the 25 percent cumulative amount exceeding the \$150,000 threshold with written approval from the OPRD Designated Procurement Officer and Department of Justice based upon a determination of the best interests of the state.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-148-0010

Application

The Oregon Parks and Recreation Department adopts OAR 137-048-0100 through 137-048-0320 (effective January 1, 2006), the Department of Justice Model Rules, Consultant Selection: Architectural, Engineering, Land Surveying, and Related Services Contracts including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-148-0020

Price Agreement Selection Process

(1) Consultants for Price Agreements must be selected, and the Oregon Parks and Recreation Department (OPRD) must obtain Architectural, Engineering and Land Surveying and Related Services by selecting a Consultant or Consultants in the following manner. When OPRD selects more than one Consultant under the Price Agreement Solicitation process under OAR 137-048-0130(1), OPRD must identify objective criteria in the Solicitation Document and the Price Agreement to be used in assigning particular Architectural, Engineering and Land Surveying and or Related Services to the most qualified consultant.

(2) Design-Build Contracts involve the provision of both design and construction services for Public Improvements under one Contract. Under most circumstances, Design-Build Contracts are Mixed Contracts with the predominate purpose of the Contract involving construction of the Public Improvement. If the predominate purpose of the Contract is to obtain Architectural, Engineering and Land Surveying and Related Services, selection may proceed under this division and shall not be considered a Design-Build project.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279C.110, 279C.115
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

736-149-0010

Application

The Oregon Parks and Recreation Department adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2006), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07

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Rule Caption: Revise the language on the required historic plaque. Old language does not accurately reflect intent of program.

Adm. Order No.: PRD 2-2007

Filed with Sec. of State: 2-8-2007

Certified to be Effective: 2-8-07

Notice Publication Date: 1-1-07

Rules Amended: 736-050-0120

Subject: Revise the existing language in OAR 736-050-0120(3) to read as follows: "An owner of specially assessed property certified after July 1, 1996 shall install a SHPO-approved plaque on the property in a location that is readable from the public right-of-way. The plaque shall include language that identifies it as a National Register-listed property, and as a participant in the Special Assessment Program."

Rules Coordinator: Pamela Berger—(503) 986-0719

736-050-0120

Owner and SHPO Responsibilities

(1) An owner of specially assessed property is responsible for maintaining the property in good condition. Noticeable deterioration of a property, or a failure to complete rehabilitation required in a Preservation and/or Renovation Plan during the time period designated, unless otherwise amended, may be sufficient cause for the SHPO to seek mandatory remedial action and/or to initiate removal of the property's special assessment pursuant to OAR 736-050-0135.

(2) Pursuant to subsections (a) through (h) of this section, an owner must provide a reasonable opportunity for members of the public to visit the property at least one day a year, except national holidays. Failure to comply with these requirements may be sufficient cause for the SHPO to

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seek mandatory remedial action and/or to initiate removal of property's special assessment pursuant to OAR 736-050-0135.

(a) On forms provided by the SHPO, or the equivalent, an owner shall notify the SHPO in writing of the open house visitation date no later than the tenth day of the month prior to the month in which the chosen date occurs. The property must be open to the public for four consecutive hours between 9 a.m. and 9 p.m.

(b) Within 14 calendar days after an open house is held, an owner shall return the completed and signed open house affidavit/guest list form provided by the SHPO, or an equivalent substitute, confirming that the open house was held on the date and time specified. The affidavit/guest or a substitute form must be made available to be signed by those attending the open house.

(c) The SHPO may approve a request for waiver of the open house requirement under the following circumstances:

(A) A waiver may be granted if significant interior or exterior rehabilitation is underway and will not be completed by December 31 of the calendar year, or if the SHPO believes that requiring the property to be open would endanger the public. If the rehabilitation is completed and the premises certified occupiable by the applicable local building official during the calendar year, the owner must hold an open house, and must notify the SHPO as outlined in subsection (a) of this section. A waiver form will be provided by the SHPO upon request of the property owner;

(B) A waiver may be requested and granted in the case of hardship or unexpected circumstances that make it impossible for the owner to hold an open house within a calendar year. Request for a waiver must be in writing and must explain the extenuating circumstances.

(d) During a waiver period granted under subsection (c) of this section, the SHPO may require an interpretive display to be placed on the property or its grounds by the owner, in an area visible to the public, but which will not present a danger to the public or interfere with construction activity. The display shall contain at a minimum: historic name of property as indicated on National Register nomination form (if known); date of construction; and other interpretive information regarding the property's historic or architectural significance;

(e) An owner of a property, parts of which are routinely open to the public without charge, must nonetheless make provision for the public to view all significant parts of the building, including those areas not normally available for public viewing. Owners of properties that are routinely open to the public for a fee, such as theaters or privately-operated house museums, must make provision for free public visitation one day a year;

(f) Open houses that are held as a part of community-sponsored events, or as fund raising events for nonprofit organizations will satisfy the mandatory open house requirement provided that:

(A) The event is open to the public; and

(B) The property owner receives no fee that is charged to enter the specially assessed property.

(g) Owners of apartment buildings, condominiums, or other multi-family unit buildings that are under special assessment must make provision for viewing by the public of public areas and at least one representative unit of the apartment, condominium, or multi-family dwelling;

(h) Owners of residential property may restrict interior areas open to the public to spaces or rooms such as living rooms, parlors, dining rooms, hallways, stair halls, or other areas not normally deemed as "private." "Private" means rooms such as bedrooms, closets, bathrooms, or dressing rooms, unless the owner wishes to open these areas for public viewing. The public must have physical access throughout the areas that are open for public viewing.

(3) An owner of specially assessed property certified after July 1, 1996 shall install a SHPO approved plaque on the property in a location that is readable from the public right-of-way. The plaque shall include the historic name of the property as indicated in the National Register nomination, the date of construction, and language that identifies it as a National Register-listed property, and as a participant in the Special Assessment Program.

(4) An owner of specially assessed property is responsible for providing the SHPO with a current mailing address and other contact information.

(5) The SHPO shall monitor owner compliance with program requirements by one or more of the following:

(a) Requesting access to inspect a property and determine its condition. An owner shall allow SHPO staff access with reasonable notice and at reasonable times. If an owner does not allow access, the SHPO may seek mandatory remedial action and/or initiate removal of the property's special assessment pursuant to OAR 736-050-0135;

(b) Requesting such information from owners as is directly related to matters set forth in ORS 358.475 to 358.545 or in these rules. If an owner does not respond to the request by providing the required information within the specified time, the SHPO may seek mandatory remedial action and/or initiate removal of the property's special assessment pursuant to OAR 736-050-0135;

(c) Attending random open house events. If an open house is not held at the time specified, the SHPO may seek mandatory remedial action and/or initiate removal of the property's special assessment pursuant to OAR 736-050-0135.

(6) Once a month the SHPO shall issue a general press release announcing the dates, times, and locations of those specially-assessed properties which will be open to the public in the following month, and including other particulars about the special assessment program.

Stat. Auth.: ORS 358.545

Stats. Implemented: ORS 358.575, 358.480, 358.535 & 358.545(1)

Hist.: PR 7-1984, f. & ef. 12-6-84; PR 2-1992, f. & cert. ef. 5-1-92; PR 11-1995, f. & cert. ef. 12-21-95; PRD 4-2002, f. & cert. ef. 4-10-02; PRD 3-2006, f. & cert. ef. 5-8-06; PRD 2-2007, f. & cert. ef. 2-8-07

Public Utility Commission Chapter 860

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

Adm. Order No.: PUC 1-2007

Filed with Sec. of State: 1-23-2007

Certified to be Effective: 1-23-07

Notice Publication Date: 12-1-06

Rules Amended: 860-022-0070

Subject: This rule amendment extends the sunset of the rule by two years. Each natural gas utility will continue to be required to file results of Operations by May 1 of each year. The Results of Operations will be subject to an earnings review, and if the natural gas utility earned over a certain level, it will be required to share the earnings with its customers.

Rules Coordinator: Diane Davis—(503) 378-4372

860-022-0070

Procedures and Standards for Reviewing Gas Utility Rates in the Context of the Purchased Gas Adjustment Mechanism

(1) The purpose of sections (1) through (7) of this rule is to ensure that earnings of a natural gas utility local distribution company ("gas utility" or "LDC") with a purchased gas adjustment ("PGA") mechanism are not excessive prior to passing through prudently incurred base gas cost changes in rates through a mechanism which is fair to all parties and efficient to administer. For purposes of this rule, earnings are excessive only if a gas utility does not share with its customers past revenues related to earnings that exceed an earnings threshold determined by the Commission.

(2) Prudently incurred base gas cost changes will be included in rates through tracking filings, subject to the Commission's review of gas cost purchasing practices at the time of those filings.

(3) A separate, simplified earnings review will be conducted on an annual basis independent of and in advance of the PGA filings. The purpose of such an earnings review is to determine whether the gas utility's earnings are above an earnings threshold so as to require some sharing of revenue with customers before passing through base gas cost changes. The purpose is not to make a forward-looking, permanent change in rates.

(4) In an earnings review conducted under this rule, it is reasonable for PGA base gas cost changes to be passed through into rates if, in circumstances when the gas utility's earnings in the prior year were above an earnings threshold determined in section (5) of this rule, revenue representing a percentage of earnings in that year above that earnings threshold is shared with customers.

(5) The standards to be applied in an earnings review under this rule for each LDC are as follows:

(a) Test year: The test year for the earnings review will be the calendar year immediately prior to the year in which the PGA filing is made, unless otherwise specified by the Commission.

(b) Normalization and adjustments: The test year results will be adjusted with a predetermined list of rate-making adjustments equivalent to those applied in the gas utility's most recent general rate proceeding.

(c) Earnings threshold: There will be no revenue sharing required for years when a gas utility's return on equity from utility operations in Oregon is lower than the earnings threshold determined by the Commission for

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each LDC. Neither this value nor any of the components implied in establishing it will be precedential in a general rate case involving any Oregon public utility. The Commission will update the value for the earnings threshold annually for each LDC, pursuant to a mechanism established by order of the Commission for each LDC, to reflect changes in conditions in the capital markets. Upon a showing of good cause, the Commission may consider other relevant factors in addition to changes in conditions in the capital markets.

(d) Sharing percentage: The amount of revenue in a test year representing a specified percentage of the earnings above the earnings threshold will be shared with customers. The Commission by order will determine the sharing percentage for each LDC.

(e) Deferral and amortization: Any revenue determined for the gas utility for a test year under section 5(d) of this rule will be deferred as of December 31 of the test year. The balance in the deferred account will accrue interest from that date at the LDC's rate of return on rate base determined in its last general rate case. Interest will continue to accrue at this rate during the amortization period, which will begin on the date of the next PGA rate change and extend for twelve months. The Commission by order will determine the method for allocating amounts to be amortized among customer classes.

(6) Each LDC will file test year results of operations by May 1. Any person may request to be placed on a list to receive all such earnings review filings at the time they are submitted to the Commission or may request a copy of individual filings. Any person wishing to participate as a party shall so notify the Commission and other parties via letter. Commission staff will complete its review and distribute summary conclusions by June 10 to all parties. Staff will present the results of the earnings review at the first regular public meeting in July; alternatively, if issues are unresolved among all parties, a settlement conference including all parties will be conducted. By August 1, the parties will file position statements with the Commission on unresolved issues, if needed. The Commission will issue its decision on unresolved issues, if any, by August 15. Unless otherwise directed by the Commission, each LDC will file its annual gas cost tracking filing by August 31, including amortization of credit amounts in the deferred account, if any, resulting from the earnings review.

(7) The earnings review mechanism established under the terms of this rule will be effective for two years, with earnings reviews conducted in 2007 counting as the first year. The mechanism will be reviewed for potential extension after the second year.

(8) Application of earnings reviews conducted under this rule to amortization of deferred gas costs: The results of the earnings review conducted under this rule will be applicable to amortization of deferred gas costs if the LDC has a risk sharing mechanism for variations in commodity gas costs, as defined in the PGA tariff, that allocates less than 33 percent of the risk to the LDC. An earnings review will not be applicable to amortization of deferred gas costs if the LDC assumes at least 33 percent of the responsibility for commodity cost differences in the risk sharing mechanism. The Commission may modify this requirement if it authorizes an alternative incentive mechanism relating to variations in gas costs for an LDC.

Stat. Auth.: ORS 183 & 757

Stats. Implemented: ORS 757.210 & 757.259

Hist.: PUC 1-1999, f. & cert. ef. 4-21-99; PUC 5-2003, f. & cert. ef. 4-14-03; PUC 1-2007, f. & cert. ef. 1-23-07

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

Rule Caption: Date given to notary documents received by mail.

Adm. Order No.: CORP 1-2007

Filed with Sec. of State: 2-15-2007

Certified to be Effective: 3-1-07

Notice Publication Date: 2-1-07

Rules Amended: 160-100-0010

Subject: Changes mailing date from postmark to receipt date to match standard business procedure for submissions to Corporation Division, Notary Public section.

Rules Coordinator: Kristine Hume Bustos—(503) 986-2371

160-100-0010

Date of Mailing

Whenever ORS 194.005 to 194.200, 194.505 to 194.595 and OAR 160-100-0000 to 160-100-0620 require or permit a document or object to be mailed to the Secretary of State, the date of mailing shall be the date the document or object was actually received by the Secretary of State.

Stat. Auth.: ORS 194.335

Stats. Implemented: ORS 194.335

Hist.: SOS-AD 2-1990, f. 5-9-90, cert. ef. 7-1-90; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94, Renumbered from 164-100-0010; CORP 1-2007, f. 2-15-07, cert. ef. 3-1-07

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150-314.415(5)(a)	1-1-07	Amend	2-1-07	250-018-0040	1-9-07	Amend(T)	2-1-07
150-314.665(3)	1-1-07	Adopt	2-1-07	250-018-0050	1-9-07	Amend(T)	2-1-07
150-314.665(4)	1-1-07	Amend	2-1-07	250-018-0060	1-9-07	Amend(T)	2-1-07
150-315.068	1-1-07	Amend	2-1-07	250-018-0080	1-9-07	Amend(T)	2-1-07
150-315.156	1-1-07	Amend	2-1-07	250-018-0090	1-9-07	Amend(T)	2-1-07
150-315.511(6)	1-1-07	Repeal	2-1-07	250-018-0110	1-9-07	Adopt(T)	2-1-07
150-316.007-(B)	1-1-07	Amend	2-1-07	255-032-0022	2-1-07	Adopt(T)	3-1-07
150-316.153	1-1-07	Adopt	2-1-07	255-032-0025	2-1-07	Amend(T)	3-1-07
150-316.162(2)(j)	2-1-07	Amend	3-1-07	255-032-0027	2-1-07	Adopt(T)	3-1-07
150-316.212	1-1-07	Amend	2-1-07	255-032-0029	2-1-07	Adopt(T)	3-1-07
150-317.090	11-21-06	Amend(T)	1-1-07	255-032-0030	2-1-07	Adopt(T)	3-1-07
150-317.090	1-1-07	Amend	2-1-07	255-032-0031	2-1-07	Adopt(T)	3-1-07
150-317.705(3)(a)	1-1-07	Amend	2-1-07	255-032-0032	2-1-07	Adopt(T)	3-1-07
150-318.020(2)	1-1-07	Amend	2-1-07	255-070-0003	2-1-07	Amend	3-1-07
150-318.060	1-1-07	Adopt	2-1-07	257-030-0060	11-22-06	Amend	1-1-07
150-334.400	1-1-07	Repeal	2-1-07	257-030-0060(T)	11-22-06	Repeal	1-1-07
150-401.794	1-1-07	Am. & Ren.	2-1-07	257-030-0070	11-22-06	Amend	1-1-07
150-457.450	1-1-07	Amend	2-1-07	257-030-0070(T)	11-22-06	Repeal	1-1-07
150-670.600	2-1-07	Adopt	3-1-07	257-030-0075	11-22-06	Repeal	1-1-07
160-100-0010	3-1-07	Amend	3-1-07	257-030-0105	11-22-06	Adopt	1-1-07
161-003-0020	2-9-07	Amend	3-1-07	257-030-0105(T)	11-22-06	Repeal	1-1-07
161-010-0020	2-9-07	Amend	3-1-07	257-030-0110	11-22-06	Adopt	1-1-07
161-010-0025	2-9-07	Amend	3-1-07	257-030-0110(T)	11-22-06	Repeal	1-1-07
161-010-0080	2-9-07	Amend	3-1-07	257-030-0120	11-22-06	Adopt	1-1-07
161-010-0085	2-9-07	Amend	3-1-07	257-030-0120(T)	11-22-06	Repeal	1-1-07
161-015-0010	2-9-07	Amend	3-1-07	257-030-0130	11-22-06	Adopt	1-1-07

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257-030-0140	11-22-06	Adopt	1-1-07	325-015-0035	1-1-07	Adopt	2-1-07
257-030-0140(T)	11-22-06	Repeal	1-1-07	325-015-0040	1-1-07	Adopt	2-1-07
257-030-0150	11-22-06	Adopt	1-1-07	325-015-0045	1-1-07	Adopt	2-1-07
257-030-0150(T)	11-22-06	Repeal	1-1-07	325-015-0050	1-1-07	Adopt	2-1-07
257-030-0160	11-22-06	Adopt	1-1-07	325-015-0055	1-1-07	Adopt	2-1-07
257-030-0160(T)	11-22-06	Repeal	1-1-07	325-015-0060	1-1-07	Adopt	2-1-07
257-030-0170	11-22-06	Adopt	1-1-07	330-070-0010	1-1-07	Amend	2-1-07
257-030-0170(T)	11-22-06	Repeal	1-1-07	330-070-0013	1-1-07	Amend	2-1-07
259-008-0005	1-12-07	Amend	2-1-07	330-070-0020	1-1-07	Amend	2-1-07
259-008-0011	1-12-07	Amend	2-1-07	330-070-0026	1-1-07	Amend	2-1-07
259-008-0025	1-12-07	Amend	2-1-07	330-070-0045	1-1-07	Amend	2-1-07
259-008-0064	1-12-07	Amend	2-1-07	330-070-0059	1-1-07	Amend	2-1-07
259-008-0065	1-12-07	Amend	2-1-07	330-070-0060	1-1-07	Amend	2-1-07
259-008-0065(T)	1-12-07	Repeal	2-1-07	330-070-0064	1-1-07	Amend	2-1-07
259-008-0085	1-12-07	Amend	2-1-07	330-070-0070	1-1-07	Amend	2-1-07
259-009-0005	1-12-07	Amend	2-1-07	330-070-0073	1-1-07	Amend	2-1-07
259-009-0062	11-20-06	Amend	1-1-07	330-090-0110	12-1-07	Amend	1-1-07
259-009-0062	1-12-07	Amend	2-1-07	331-105-0020	12-1-06	Amend	1-1-07
259-012-0005	11-20-06	Amend	1-1-07	331-105-0030	12-1-06	Amend	1-1-07
259-012-0005(T)	11-20-06	Repeal	1-1-07	331-110-0005	12-1-06	Amend	1-1-07
259-012-0010	11-20-06	Amend	1-1-07	331-110-0010	12-1-06	Amend	1-1-07
259-012-0010(T)	11-20-06	Repeal	1-1-07	331-110-0055	12-1-06	Amend	1-1-07
259-012-0015	11-20-06	Repeal	1-1-07	331-120-0000	12-1-06	Amend	1-1-07
259-012-0020	11-20-06	Repeal	1-1-07	331-120-0020	12-1-06	Amend	1-1-07
259-012-0025	11-20-06	Repeal	1-1-07	331-125-0010	12-1-06	Amend	1-1-07
259-012-0030	11-20-06	Repeal	1-1-07	331-135-0000	12-1-06	Amend	1-1-07
259-012-0035	11-20-06	Amend	1-1-07	333-002-0010	11-16-06	Amend	1-1-07
259-012-0035	2-15-07	Amend(T)	3-1-07	333-002-0035	11-16-06	Amend	1-1-07
259-012-0035(T)	11-20-06	Repeal	1-1-07	333-002-0040	11-16-06	Amend	1-1-07
259-060-0010	2-15-07	Amend	3-1-07	333-002-0050	11-16-06	Amend	1-1-07
259-060-0060	2-15-07	Amend	3-1-07	333-002-0070	11-16-06	Amend	1-1-07
259-060-0065	2-15-07	Amend	3-1-07	333-002-0080	11-16-06	Amend	1-1-07
259-060-0075	2-15-07	Amend	3-1-07	333-002-0090	11-16-06	Amend	1-1-07
259-060-0080	2-15-07	Amend	3-1-07	333-002-0100	11-16-06	Amend	1-1-07
259-060-0092	2-15-07	Adopt	3-1-07	333-002-0110	11-16-06	Amend	1-1-07
259-060-0120	2-15-07	Amend	3-1-07	333-002-0120	11-16-06	Amend	1-1-07
259-060-0135	2-15-07	Amend	3-1-07	333-002-0130	11-16-06	Amend	1-1-07
259-070-0010	1-12-07	Amend	2-1-07	333-002-0140	11-16-06	Amend	1-1-07
291-017-0005	1-31-07	Repeal	3-1-07	333-002-0150	11-16-06	Amend	1-1-07
291-017-0010	1-31-07	Repeal	3-1-07	333-002-0160	11-16-06	Amend	1-1-07
291-017-0015	1-31-07	Repeal	3-1-07	333-002-0170	11-16-06	Amend	1-1-07
291-017-0017	1-31-07	Repeal	3-1-07	333-002-0210	11-16-06	Amend	1-1-07
291-017-0020	1-31-07	Repeal	3-1-07	333-002-0220	11-16-06	Amend	1-1-07
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291-100-0008	2-1-07	Amend	3-1-07	333-011-0200	12-1-06	Adopt	1-1-07
291-100-0130	2-1-07	Amend	3-1-07	333-012-0270	1-16-07	Amend	3-1-07
291-143-0010	12-18-06	Amend(T)	2-1-07	333-018-0005	1-16-07	Amend	3-1-07
291-143-0130	12-18-06	Amend(T)	2-1-07	333-018-0018	12-18-06	Amend	1-1-07
291-143-0140	12-18-06	Amend(T)	2-1-07	333-018-0030	1-16-07	Amend	3-1-07
325-015-0001	1-1-07	Adopt	2-1-07	333-054-0000	12-27-06	Amend	2-1-07
325-015-0005	1-1-07	Adopt	2-1-07	333-054-0010	12-27-06	Amend	2-1-07
325-015-0010	1-1-07	Adopt	2-1-07	333-054-0020	12-27-06	Amend	2-1-07
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333-054-0040	12-27-06	Amend	2-1-07	335-095-0050	2-1-07	Amend	3-1-07
333-054-0050	12-27-06	Amend	2-1-07	335-095-0060	2-1-07	Amend	3-1-07
333-054-0060	12-27-06	Amend	2-1-07	337-010-0010	1-1-07	Amend	1-1-07
333-054-0070	12-27-06	Amend	2-1-07	337-010-0011	1-1-07	Adopt	1-1-07
333-060-0020	12-13-06	Amend	1-1-07	337-010-0012	1-1-07	Amend	1-1-07
333-250-0000	2-1-07	Amend	3-1-07	337-010-0030	1-1-07	Amend	1-1-07
333-250-0010	2-1-07	Amend	3-1-07	337-010-0031	1-1-07	Amend	1-1-07
333-250-0020	2-1-07	Amend	3-1-07	337-010-0055	1-1-07	Amend	1-1-07
333-250-0030	2-1-07	Amend	3-1-07	339-010-0040	12-28-06	Amend	2-1-07
333-250-0040	2-1-07	Amend	3-1-07	339-010-0055	12-28-06	Amend	2-1-07
333-250-0041	2-1-07	Amend	3-1-07	340-228-0300	12-22-06	Amend	2-1-07
333-250-0042	2-1-07	Amend	3-1-07	340-228-0600	12-22-06	Adopt	2-1-07
333-250-0043	2-1-07	Amend	3-1-07	340-228-0602	12-22-06	Adopt	2-1-07
333-250-0044	2-1-07	Amend	3-1-07	340-228-0603	12-22-06	Adopt	2-1-07
333-250-0045	2-1-07	Amend	3-1-07	340-228-0604	12-22-06	Adopt	2-1-07
333-250-0046	2-1-07	Amend	3-1-07	340-228-0605	12-22-06	Adopt	2-1-07
333-250-0047	2-1-07	Amend	3-1-07	340-228-0606	12-22-06	Adopt	2-1-07
333-250-0048	2-1-07	Amend	3-1-07	340-228-0608	12-22-06	Adopt	2-1-07
333-250-0049	2-1-07	Amend	3-1-07	340-228-0610	12-22-06	Adopt	2-1-07
333-250-0050	2-1-07	Amend	3-1-07	340-228-0612	12-22-06	Adopt	2-1-07
333-250-0060	2-1-07	Amend	3-1-07	340-228-0614	12-22-06	Adopt	2-1-07
333-250-0070	2-1-07	Amend	3-1-07	340-228-0616	12-22-06	Adopt	2-1-07
333-250-0080	2-1-07	Amend	3-1-07	340-228-0618	12-22-06	Adopt	2-1-07
333-250-0090	2-1-07	Repeal	3-1-07	340-228-0620	12-22-06	Adopt	2-1-07
333-250-0100	2-1-07	Amend	3-1-07	340-228-0622	12-22-06	Adopt	2-1-07
333-255-0000	2-1-07	Amend	3-1-07	340-228-0624	12-22-06	Adopt	2-1-07
333-255-0010	2-1-07	Amend	3-1-07	340-228-0626	12-22-06	Adopt	2-1-07
333-255-0020	2-1-07	Amend	3-1-07	340-228-0628	12-22-06	Adopt	2-1-07
333-255-0030	2-1-07	Amend	3-1-07	340-228-0630	12-22-06	Adopt	2-1-07
333-255-0040	2-1-07	Amend	3-1-07	340-228-0632	12-22-06	Adopt	2-1-07
333-255-0050	2-1-07	Amend	3-1-07	340-228-0634	12-22-06	Adopt	2-1-07
333-255-0060	2-1-07	Amend	3-1-07	340-228-0636	12-22-06	Adopt	2-1-07
333-255-0070	2-1-07	Amend	3-1-07	340-228-0638	12-22-06	Adopt	2-1-07
333-255-0071	2-1-07	Amend	3-1-07	340-228-0640	12-22-06	Adopt	2-1-07
333-255-0072	2-1-07	Amend	3-1-07	340-228-0642	12-22-06	Adopt	2-1-07
333-255-0073	2-1-07	Amend	3-1-07	340-228-0644	12-22-06	Adopt	2-1-07
333-255-0079	2-1-07	Amend	3-1-07	340-228-0646	12-22-06	Adopt	2-1-07
333-255-0080	2-1-07	Amend	3-1-07	340-228-0648	12-22-06	Adopt	2-1-07
333-255-0081	2-1-07	Amend	3-1-07	340-228-0650	12-22-06	Adopt	2-1-07
333-255-0082	2-1-07	Amend	3-1-07	340-228-0652	12-22-06	Adopt	2-1-07
333-255-0090	2-1-07	Amend	3-1-07	340-228-0654	12-22-06	Adopt	2-1-07
333-255-0091	2-1-07	Amend	3-1-07	340-228-0656	12-22-06	Adopt	2-1-07
333-255-0092	2-1-07	Amend	3-1-07	340-228-0658	12-22-06	Adopt	2-1-07
333-255-0093	2-1-07	Amend	3-1-07	340-228-0660	12-22-06	Adopt	2-1-07
333-265-0130	2-1-07	Amend	3-1-07	340-228-0662	12-22-06	Adopt	2-1-07
335-001-0000	2-9-07	Amend	3-1-07	340-228-0664	12-22-06	Adopt	2-1-07
335-001-0005	2-9-07	Amend	3-1-07	340-228-0666	12-22-06	Adopt	2-1-07
335-005-0030	2-9-07	Amend	3-1-07	340-228-0668	12-22-06	Adopt	2-1-07
335-010-0060	2-1-07	Amend	3-1-07	340-228-0670	12-22-06	Adopt	2-1-07
335-010-0070	2-1-07	Amend	3-1-07	340-228-0671	12-22-06	Adopt	2-1-07
335-060-0005	2-1-07	Amend	3-1-07	340-228-0672	12-22-06	Adopt	2-1-07
335-070-0020	2-1-07	Amend	3-1-07	340-228-0673	12-22-06	Adopt	2-1-07
335-070-0030	2-1-07	Amend	3-1-07	340-228-0674	12-22-06	Adopt	2-1-07
335-070-0040	2-1-07	Amend	3-1-07	340-228-0676	12-22-06	Adopt	2-1-07
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340-238-0060	12-22-06	Amend	2-1-07	410-122-0210	1-1-07	Amend	1-1-07
340-244-0030	12-22-06	Amend	2-1-07	410-122-0240	1-1-07	Amend	1-1-07
340-244-0040	12-22-06	Amend	2-1-07	410-122-0280	1-1-07	Amend	1-1-07
407-003-0000	2-15-07	Adopt	3-1-07	410-122-0320	1-1-07	Amend	1-1-07
407-003-0010	2-15-07	Adopt	3-1-07	410-122-0325	1-1-07	Amend	1-1-07
407-020-0000	2-1-07	Adopt	3-1-07	410-122-0340	1-1-07	Amend	1-1-07
407-020-0005	2-1-07	Adopt	3-1-07	410-122-0360	1-1-07	Amend	1-1-07
407-020-0010	2-1-07	Adopt	3-1-07	410-122-0365	1-1-07	Amend	1-1-07
407-020-0015	2-1-07	Adopt	3-1-07	410-122-0375	1-1-07	Amend	1-1-07
409-021-0010	2-1-07	Amend	3-1-07	410-122-0380	1-1-07	Amend	1-1-07
409-021-0115	2-1-07	Am. & Ren.	3-1-07	410-122-0400	1-1-07	Amend	1-1-07
409-021-0120	2-1-07	Am. & Ren.	3-1-07	410-122-0420	1-1-07	Amend	1-1-07
409-021-0130	2-1-07	Am. & Ren.	3-1-07	410-122-0500	1-1-07	Amend	1-1-07
409-021-0140	2-1-07	Am. & Ren.	3-1-07	410-122-0510	1-1-07	Amend	1-1-07
409-021-0150	2-1-07	Adopt	3-1-07	410-122-0530	1-1-07	Repeal	1-1-07
409-022-0010	1-1-07	Adopt	1-1-07	410-122-0580	1-1-07	Amend	1-1-07
409-022-0020	1-1-07	Adopt	1-1-07	410-122-0600	1-1-07	Amend	1-1-07
409-022-0030	1-1-07	Adopt	1-1-07	410-122-0620	1-1-07	Amend	1-1-07
409-022-0040	1-1-07	Adopt	1-1-07	410-122-0660	1-1-07	Amend	1-1-07
409-022-0050	1-1-07	Adopt	1-1-07	410-122-0678	1-1-07	Amend	1-1-07
409-022-0060	1-1-07	Adopt	1-1-07	410-122-0700	1-1-07	Amend	1-1-07
409-022-0070	1-1-07	Adopt	1-1-07	410-122-0720	1-1-07	Amend	1-1-07
409-022-0080	1-1-07	Adopt	1-1-07	410-125-0146	1-1-07	Amend	1-1-07
409-030-0000	11-28-06	Amend(T)	1-1-07	410-125-0195	1-1-07	Amend	1-1-07
409-030-0005	11-28-06	Amend(T)	1-1-07	410-127-0000	1-1-07	Repeal	2-1-07
409-030-0020	11-28-06	Amend(T)	1-1-07	410-127-0065	1-1-07	Adopt	1-1-07
409-030-0050	11-28-06	Amend(T)	1-1-07	410-129-0010	1-1-07	Repeal	2-1-07
410-120-0000	1-1-07	Amend	1-1-07	410-129-0080	1-1-07	Amend	1-1-07
410-120-1280	1-1-07	Amend	1-1-07	410-131-0020	1-1-07	Repeal	2-1-07
410-120-1295	1-1-07	Amend(T)	1-1-07	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

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411-026-0020	12-1-06	Amend	1-1-07	411-335-0240	1-1-07	Amend	2-1-07
411-026-0030	12-1-06	Amend	1-1-07	411-335-0270	1-1-07	Amend	2-1-07
411-026-0040	12-1-06	Amend	1-1-07	411-335-0300	1-1-07	Amend	2-1-07
411-026-0050	12-1-06	Amend	1-1-07	411-335-0320	1-1-07	Amend	2-1-07
411-026-0060	12-1-06	Amend	1-1-07	411-335-0330	1-1-07	Amend	2-1-07
411-026-0070	12-1-06	Amend	1-1-07	411-335-0340	1-1-07	Amend	2-1-07
411-026-0080	12-1-06	Amend	1-1-07	411-335-0350	1-1-07	Amend	2-1-07
411-050-0400	1-1-07	Amend	2-1-07	411-335-0360	1-1-07	Amend	2-1-07
411-050-0401	1-1-07	Amend	2-1-07	411-335-0380	1-1-07	Amend	2-1-07
411-050-0405	1-1-07	Amend	2-1-07	411-335-0390	1-1-07	Amend	2-1-07
411-050-0408	1-1-07	Amend	2-1-07	413-100-0020	2-7-07	Amend(T)	3-1-07
411-050-0410	1-1-07	Amend	2-1-07	413-100-0130	2-7-07	Amend(T)	3-1-07
411-050-0412	1-1-07	Amend	2-1-07	413-100-0135	2-7-07	Amend(T)	3-1-07
411-050-0415	1-1-07	Amend	2-1-07	414-350-0050	12-1-06	Amend	1-1-07
411-050-0420	1-1-07	Amend	2-1-07	414-350-0100	12-1-06	Amend	1-1-07
411-050-0430	1-1-07	Amend	2-1-07	414-350-0110	12-1-06	Amend	1-1-07
411-050-0435	1-1-07	Amend	2-1-07	414-350-0120	12-1-06	Amend	1-1-07
411-050-0437	1-1-07	Repeal	2-1-07	416-115-0000	2-13-07	Adopt	3-1-07
411-050-0440	1-1-07	Amend	2-1-07	416-115-0010	2-13-07	Adopt	3-1-07
411-050-0441	1-1-07	Repeal	2-1-07	416-115-0020	2-13-07	Adopt	3-1-07
411-050-0442	1-1-07	Repeal	2-1-07	416-115-0030	2-13-07	Adopt	3-1-07
411-050-0443	1-1-07	Amend	2-1-07	416-115-0040	2-13-07	Adopt	3-1-07
411-050-0444	1-1-07	Adopt	2-1-07	416-115-0050	2-13-07	Adopt	3-1-07
411-050-0445	1-1-07	Amend	2-1-07	416-115-0060	2-13-07	Adopt	3-1-07
411-050-0447	1-1-07	Amend	2-1-07	416-115-0070	2-13-07	Adopt	3-1-07
411-050-0450	1-1-07	Amend	2-1-07	416-115-0080	2-13-07	Adopt	3-1-07
411-050-0455	1-1-07	Amend	2-1-07	416-115-0090	2-13-07	Adopt	3-1-07
411-050-0460	1-1-07	Amend	2-1-07	416-115-0100	2-13-07	Adopt	3-1-07
411-050-0465	1-1-07	Amend	2-1-07	416-115-0110	2-13-07	Adopt	3-1-07
411-050-0480	1-1-07	Amend	2-1-07	416-115-0120	2-13-07	Adopt	3-1-07
411-050-0481	1-1-07	Amend	2-1-07	416-115-0130	2-13-07	Adopt	3-1-07
411-050-0483	1-1-07	Amend	2-1-07	416-115-0140	2-13-07	Adopt	3-1-07
411-050-0485	1-1-07	Amend	2-1-07	416-115-0150	2-13-07	Adopt	3-1-07
411-050-0487	1-1-07	Amend	2-1-07	416-115-0160	2-13-07	Adopt	3-1-07
411-050-0491	1-1-07	Adopt	2-1-07	416-115-0170	2-13-07	Adopt	3-1-07
411-335-0010	1-1-07	Amend	2-1-07	416-115-0180	2-13-07	Adopt	3-1-07
411-335-0020	1-1-07	Amend	2-1-07	416-115-0190	2-13-07	Adopt	3-1-07
411-335-0030	1-1-07	Amend	2-1-07	416-115-0200	2-13-07	Adopt	3-1-07
411-335-0050	1-1-07	Amend	2-1-07	416-115-0210	2-13-07	Adopt	3-1-07
411-335-0060	1-1-07	Amend	2-1-07	416-115-0220	2-13-07	Adopt	3-1-07
411-335-0070	1-1-07	Amend	2-1-07	416-115-0230	2-13-07	Adopt	3-1-07
411-335-0080	1-1-07	Amend	2-1-07	416-115-0240	2-13-07	Adopt	3-1-07
411-335-0090	1-1-07	Amend	2-1-07	416-115-0250	2-13-07	Adopt	3-1-07
411-335-0100	1-1-07	Amend	2-1-07	416-115-0260	2-13-07	Adopt	3-1-07
411-335-0110	1-1-07	Amend	2-1-07	416-115-0270	2-13-07	Adopt	3-1-07
411-335-0120	1-1-07	Amend	2-1-07	416-115-0280	2-13-07	Adopt	3-1-07
411-335-0130	1-1-07	Amend	2-1-07	423-010-0024	2-12-07	Amend	3-1-07
411-335-0140	1-1-07	Amend	2-1-07	423-045-0101	2-12-07	Adopt	3-1-07
411-335-0150	1-1-07	Amend	2-1-07	423-045-0105	2-12-07	Adopt	3-1-07
411-335-0160	1-1-07	Amend	2-1-07	423-045-0110	2-12-07	Adopt	3-1-07
411-335-0170	1-1-07	Amend	2-1-07	423-045-0112	2-12-07	Adopt	3-1-07
411-335-0190	1-1-07	Amend	2-1-07	423-045-0115	2-12-07	Adopt	3-1-07
411-335-0200	1-1-07	Amend	2-1-07	423-045-0120	2-12-07	Adopt	3-1-07
411-335-0210	1-1-07	Amend	2-1-07	423-045-0125	2-12-07	Adopt	3-1-07
411-335-0220	1-1-07	Amend	2-1-07	423-045-0130	2-12-07	Adopt	3-1-07

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423-045-0140	2-12-07	Adopt	3-1-07	461-110-0110	1-1-07	Repeal	2-1-07
423-045-0150	2-12-07	Adopt	3-1-07	461-110-0115	1-1-07	Am. & Ren.	2-1-07
423-045-0155	2-12-07	Adopt	3-1-07	461-110-0370	1-1-07	Amend	2-1-07
423-045-0160	2-12-07	Adopt	3-1-07	461-110-0410	1-1-07	Amend	2-1-07
423-045-0165	2-12-07	Adopt	3-1-07	461-110-0510	1-1-07	Repeal	2-1-07
423-045-0170	2-12-07	Adopt	3-1-07	461-110-0530	1-1-07	Amend	2-1-07
423-045-0175	2-12-07	Adopt	3-1-07	461-110-0610	1-1-07	Repeal	2-1-07
423-045-0185	2-12-07	Adopt	3-1-07	461-110-0630	1-1-07	Amend	2-1-07
436-170-0002	2-1-07	Adopt	3-1-07	461-110-0720	1-1-07	Repeal	2-1-07
436-170-0100	2-1-07	Adopt	3-1-07	461-110-0750	1-1-07	Amend	2-1-07
436-170-0200	2-1-07	Adopt	3-1-07	461-115-0010	1-1-07	Amend	2-1-07
436-170-0300	2-1-07	Adopt	3-1-07	461-115-0050	1-1-07	Amend	2-1-07
437-002-0120	11-30-06	Amend	1-1-07	461-115-0510	1-1-07	Am. & Ren.	2-1-07
437-002-0360	11-30-06	Amend	1-1-07	461-115-0530	1-1-07	Amend	2-1-07
437-003-0001	11-30-06	Amend	1-1-07	461-115-0540	1-1-07	Amend	2-1-07
437-004-1041	11-30-06	Amend	1-1-07	461-115-0651	1-1-07	Amend	2-1-07
437-005-0001	11-30-06	Amend	1-1-07	461-115-0705	1-1-07	Amend	2-1-07
437-005-0001	1-16-07	Amend	2-1-07	461-120-0005	1-1-07	Repeal	2-1-07
438-005-0046	3-1-07	Amend	3-1-07	461-120-0125	1-1-07	Amend	2-1-07
438-022-0005	3-1-07	Amend	3-1-07	461-120-0610	1-1-07	Repeal	2-1-07
441-730-0000	12-21-06	Amend	2-1-07	461-125-0370	1-1-07	Amend	2-1-07
441-730-0010	12-21-06	Amend	2-1-07	461-130-0310	1-1-07	Amend	2-1-07
441-730-0015	12-21-06	Am. & Ren.	2-1-07	461-130-0315	1-1-07	Amend	2-1-07
441-730-0025	12-21-06	Adopt	2-1-07	461-130-0325	1-1-07	Amend	2-1-07
441-730-0050	12-21-06	Amend	2-1-07	461-130-0327	1-1-07	Amend	2-1-07
441-730-0080	12-21-06	Amend	2-1-07	461-130-0335	1-1-07	Amend	2-1-07
441-730-0120	12-21-06	Amend	2-1-07	461-135-0010	1-1-07	Amend	2-1-07
441-730-0255	12-21-06	Adopt	2-1-07	461-135-0070	1-1-07	Amend	2-1-07
441-730-0320	12-21-06	Amend	2-1-07	461-135-0075	1-1-07	Amend	2-1-07
441-860-0010	1-17-07	Amend	3-1-07	461-135-0210	1-1-07	Amend	2-1-07
441-860-0020	1-17-07	Amend	3-1-07	461-135-0400	1-1-07	Amend	2-1-07
441-860-0030	1-17-07	Amend	3-1-07	461-135-0475	1-1-07	Amend	2-1-07
441-860-0040	1-17-07	Amend	3-1-07	461-135-0506	1-1-07	Amend	2-1-07
441-860-0060	1-17-07	Amend	3-1-07	461-135-0510	1-1-07	Amend	2-1-07
441-875-0020	1-17-07	Amend	3-1-07	461-135-0520	1-1-07	Amend	2-1-07
441-880-0020	1-17-07	Amend	3-1-07	461-135-0708	1-1-07	Amend	2-1-07
441-880-0030	1-17-07	Amend	3-1-07	461-135-0725	1-1-07	Amend	2-1-07
442-005-0050	11-27-06	Amend(T)	1-1-07	461-135-0750	1-1-07	Amend	2-1-07
459-007-0025	1-23-07	Amend	3-1-07	461-135-0780	1-1-07	Amend	2-1-07
459-007-0300	1-23-07	Amend	3-1-07	461-135-0950	1-1-07	Amend	2-1-07
459-009-0084	11-24-06	Amend	1-1-07	461-135-0960	1-1-07	Amend	2-1-07
459-009-0085	11-24-06	Amend	1-1-07	461-140-0210	1-1-07	Amend	2-1-07
459-009-0090	11-24-06	Adopt	1-1-07	461-140-0220	1-1-07	Amend	2-1-07
459-011-0050	1-23-07	Amend	3-1-07	461-140-0242	1-1-07	Amend	2-1-07
459-011-0100	11-24-06	Amend	1-1-07	461-140-0242	1-1-07	Amend	2-1-07
459-016-0100	11-24-06	Amend	1-1-07	461-140-0270	1-1-07	Amend	2-1-07
459-050-0025	1-23-07	Amend	3-1-07	461-140-0296	1-1-07	Amend	2-1-07
459-050-0037	5-1-07	Adopt	3-1-07	461-140-0300	1-1-07	Amend	2-1-07
459-050-0070	1-23-07	Amend	3-1-07	461-145-0001	1-1-07	Amend	2-1-07
459-050-0077	5-1-07	Adopt	3-1-07	461-145-0020	1-1-07	Amend	2-1-07
459-050-0150	1-23-07	Amend	3-1-07	461-145-0022	1-1-07	Amend	2-1-07
459-080-0100	11-24-06	Amend	1-1-07	461-145-0025	1-1-07	Amend	2-1-07
461-001-0000	1-1-07	Amend	2-1-07	461-145-0055	1-1-07	Amend	2-1-07
461-001-0015	1-1-07	Adopt	2-1-07	461-145-0108	1-1-07	Amend	2-1-07
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461-145-0175	1-1-07	Amend	2-1-07	461-190-0197	1-1-07	Amend	2-1-07
461-145-0185	1-1-07	Adopt	2-1-07	461-190-0310	1-1-07	Amend	2-1-07
461-145-0220	1-1-07	Amend	2-1-07	461-195-0301	1-1-07	Amend	2-1-07
461-145-0250	1-1-07	Amend	2-1-07	461-195-0305	1-1-07	Amend	2-1-07
461-145-0280	1-1-07	Amend	2-1-07	461-195-0310	1-1-07	Amend	2-1-07
461-145-0310	1-1-07	Amend	2-1-07	461-195-0325	1-1-07	Amend	2-1-07
461-145-0330	1-1-07	Amend	2-1-07	461-195-0511	1-1-07	Amend	2-1-07
461-145-0340	1-1-07	Amend	2-1-07	461-195-0541	1-1-07	Amend	2-1-07
461-145-0343	1-1-07	Adopt	2-1-07	461-195-0611	1-1-07	Amend	2-1-07
461-145-0440	1-1-07	Amend	2-1-07	471-030-0074	12-3-06	Amend(T)	1-1-07
461-145-0470	1-1-07	Amend	2-1-07	471-030-0074	1-29-07	Amend	3-1-07
461-145-0505	1-1-07	Amend	2-1-07	471-030-0075	12-3-06	Amend(T)	1-1-07
461-145-0540	1-1-07	Amend	2-1-07	471-030-0075	1-29-07	Amend	3-1-07
461-145-0540	1-1-07	Amend	2-1-07	471-031-0181	2-1-07	Adopt	3-1-07
461-145-0570	1-1-07	Amend	2-1-07	471-040-0010	12-3-06	Amend	1-1-07
461-145-0580	1-1-07	Amend	2-1-07	471-040-0040	12-3-06	Amend	1-1-07
461-150-0010	1-1-07	Repeal	2-1-07	471-040-0041	12-3-06	Adopt	1-1-07
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461-150-0070	1-1-07	Amend	2-1-07	571-021-0005	2-14-07	Suspend	3-1-07
461-150-0080	1-1-07	Amend	2-1-07	571-021-0009	2-14-07	Suspend	3-1-07
461-155-0180	1-24-07	Amend	3-1-07	571-021-0015	2-14-07	Suspend	3-1-07
461-155-0225	1-1-07	Amend	2-1-07	571-021-0019	2-14-07	Suspend	3-1-07
461-155-0235	1-24-07	Amend	3-1-07	571-021-0024	2-14-07	Suspend	3-1-07
461-155-0250	1-1-07	Amend	2-1-07	571-021-0029	2-14-07	Suspend	3-1-07
461-155-0270	1-1-07	Amend	2-1-07	571-021-0030	2-14-07	Suspend	3-1-07
461-155-0300	1-1-07	Amend	2-1-07	571-021-0035	2-14-07	Suspend	3-1-07
461-155-0660	1-1-07	Amend	2-1-07	571-021-0038	2-14-07	Suspend	3-1-07
461-160-0010	1-1-07	Amend	2-1-07	571-021-0040	2-14-07	Suspend	3-1-07
461-160-0015	1-1-07	Amend	2-1-07	571-021-0045	2-14-07	Suspend	3-1-07
461-160-0020	1-1-07	Repeal	2-1-07	571-021-0050	2-14-07	Suspend	3-1-07
461-160-0055	1-1-07	Amend	2-1-07	571-021-0055	2-14-07	Suspend	3-1-07
461-160-0090	1-1-07	Amend	2-1-07	571-021-0056	2-14-07	Suspend	3-1-07
461-160-0400	1-1-07	Amend	2-1-07	571-021-0057	2-14-07	Suspend	3-1-07
461-160-0415	1-1-07	Amend	2-1-07	571-021-0060	2-14-07	Suspend	3-1-07
461-160-0430	1-1-07	Amend	2-1-07	571-021-0064	2-14-07	Suspend	3-1-07
461-160-0500	1-1-07	Amend	2-1-07	571-021-0068	2-14-07	Suspend	3-1-07
461-160-0560	1-1-07	Am. & Ren.	2-1-07	571-021-0070	2-14-07	Suspend	3-1-07
461-160-0580	1-1-07	Amend	2-1-07	571-021-0072	2-14-07	Suspend	3-1-07
461-160-0610	1-1-07	Amend	2-1-07	571-021-0073	2-14-07	Suspend	3-1-07
461-160-0620	1-1-07	Amend	2-1-07	571-021-0100	2-14-07	Adopt(T)	3-1-07
461-160-0780	1-1-07	Amend	2-1-07	571-021-0105	2-14-07	Adopt(T)	3-1-07
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461-170-0102	1-1-07	Amend	2-1-07	571-021-0125	2-14-07	Adopt(T)	3-1-07
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461-180-0085	1-1-07	Amend	2-1-07	571-021-0205	2-14-07	Adopt(T)	3-1-07
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571-023-0020	2-14-07	Suspend	3-1-07	580-023-0035	11-29-06	Adopt	1-1-07
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571-023-0035	2-14-07	Suspend	3-1-07	580-023-0050	11-29-06	Adopt	1-1-07
571-023-0040	2-14-07	Suspend	3-1-07	580-023-0055	11-29-06	Adopt	1-1-07
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584-048-0006	11-22-06	Amend	1-1-07	603-027-0206	2-2-07	Amend	3-1-07
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584-048-0070	11-22-06	Amend	1-1-07	603-052-0360	1-30-07	Amend	3-1-07
584-048-0085	11-22-06	Amend	1-1-07	603-052-0450	1-30-07	Amend	3-1-07
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635-006-1065	2-14-07	Amend	3-1-07	635-067-0041	12-15-06	Amend(T)	1-1-07
635-006-1075	1-12-07	Amend	2-1-07	635-068-0000	3-1-07	Amend	1-1-07
635-017-0095	1-1-07	Amend(T)	2-1-07	635-069-0000	2-1-07	Amend	1-1-07
635-017-0095	2-1-07	Amend(T)	3-1-07	635-070-0000	4-1-07	Amend	1-1-07
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635-080-0051	11-17-06	Amend(T)	1-1-07	735-022-0040	11-17-06	Amend	1-1-07
635-080-0052	11-17-06	Amend(T)	1-1-07	735-022-0070	11-17-06	Amend	1-1-07
635-090-0140	12-15-06	Amend(T)	1-1-07	735-022-0080	11-17-06	Amend	1-1-07
635-090-0200	1-18-07	Adopt	3-1-07	735-022-0090	11-17-06	Amend	1-1-07
644-010-0010	1-1-07	Amend	1-1-07	735-028-0020	11-17-06	Amend	1-1-07
660-041-0000	12-4-06	Adopt(T)	1-1-07	735-040-0030	11-17-06	Amend	1-1-07
660-041-0000	2-9-07	Adopt	3-1-07	735-062-0080	12-13-06	Amend	1-1-07
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660-041-0010	12-4-06	Adopt(T)	1-1-07	735-062-0140	12-13-06	Amend	1-1-07
660-041-0010	2-9-07	Adopt	3-1-07	735-062-0140(T)	12-13-06	Repeal	1-1-07
660-041-0020	12-4-06	Adopt(T)	1-1-07	735-064-0005	11-17-06	Amend	1-1-07
660-041-0020	2-9-07	Adopt	3-1-07	735-064-0230	12-13-06	Amend	1-1-07
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660-041-0030	2-9-07	Adopt	3-1-07	735-070-0010	12-13-06	Amend	1-1-07
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736-147-0060	2-7-07	Adopt	3-1-07	812-003-0140	1-1-07	Amend	1-1-07
736-148-0010	2-7-07	Adopt	3-1-07	812-003-0150	1-1-07	Amend	1-1-07
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800-010-0041	2-1-07	Amend	2-1-07	812-003-0400	1-1-07	Amend	1-1-07
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800-020-0035	2-1-07	Amend	2-1-07	812-004-0195	1-1-07	Amend	1-1-07
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801-010-0065	1-1-07	Amend	2-1-07	812-004-0420	1-1-07	Amend	1-1-07
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801-010-0110	1-1-07	Amend	2-1-07	812-004-0460	1-1-07	Amend	1-1-07
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812-008-0040	1-1-06	Amend	1-1-07	813-010-0720	1-11-07	Amend	2-1-07
812-008-0072	1-1-06	Amend	1-1-07	813-010-0740	1-11-07	Adopt	2-1-07
812-008-0074	1-1-06	Amend	1-1-07	813-012-0010	1-11-07	Amend	2-1-07
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812-009-0020	1-1-07	Amend	1-1-07	813-012-0030	1-11-07	Amend	2-1-07
812-009-0050	1-1-07	Amend	1-1-07	813-012-0040	1-11-07	Amend	2-1-07
812-009-0070	1-1-07	Amend	1-1-07	813-012-0050	1-11-07	Amend	2-1-07
812-009-0090	1-1-07	Amend	1-1-07	813-012-0060	1-11-07	Amend	2-1-07
812-009-0100	1-1-07	Amend	1-1-07	813-012-0070	1-11-07	Amend	2-1-07
812-009-0120	1-1-07	Amend	1-1-07	813-012-0080	1-11-07	Amend	2-1-07
812-009-0140	1-1-07	Amend	1-1-07	813-012-0090	1-11-07	Amend	2-1-07
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812-009-0220	1-1-07	Amend	1-1-07	813-012-0120	1-11-07	Amend	2-1-07
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812-010-0040	1-1-07	Amend	1-1-07	813-012-0160	1-11-07	Amend	2-1-07
812-010-0085	1-1-07	Amend	1-1-07	813-012-0170	1-11-07	Amend	2-1-07
812-010-0090	1-1-07	Amend	1-1-07	813-012-0180	1-11-07	Adopt	2-1-07
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812-010-0290	1-1-07	Amend	1-1-07	813-030-0034	1-11-07	Amend	2-1-07
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812-010-0320	1-1-07	Amend	1-1-07	813-030-0040	1-11-07	Amend	2-1-07
812-010-0340	1-1-07	Amend	1-1-07	813-030-0044	1-11-07	Amend	2-1-07
812-010-0360	1-1-07	Amend	1-1-07	813-030-0046	1-11-07	Amend	2-1-07
812-010-0380	1-1-07	Amend	1-1-07	813-030-0047	1-11-07	Amend	2-1-07
812-010-0420	1-1-07	Amend	1-1-07	813-030-0060	1-11-07	Amend	2-1-07
812-010-0425	1-1-07	Amend	1-1-07	813-030-0062	1-11-07	Amend	2-1-07
812-010-0430	1-1-07	Amend	1-1-07	813-030-0066	1-11-07	Amend	2-1-07
812-010-0460	1-1-07	Amend	1-1-07	813-030-0067	1-11-07	Amend	2-1-07
812-010-0470	1-1-07	Amend	1-1-07	813-030-0068	1-11-07	Amend	2-1-07
812-010-0480	1-1-07	Amend	1-1-07	813-030-0070	1-11-07	Adopt	2-1-07
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813-035-0720	1-11-07	Repeal	2-1-07	813-110-0030	1-11-07	Amend	2-1-07
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813-042-0000(T)	1-11-07	Repeal	2-1-07	813-110-0033	1-11-07	Amend	2-1-07
813-042-0010	1-11-07	Adopt	2-1-07	813-110-0033(T)	1-11-07	Repeal	2-1-07
813-042-0010(T)	1-11-07	Repeal	2-1-07	813-110-0035	1-11-07	Amend	2-1-07
813-042-0020	1-11-07	Adopt	2-1-07	813-110-0035(T)	1-11-07	Repeal	2-1-07
813-042-0020(T)	1-11-07	Repeal	2-1-07	813-120-0080	1-11-07	Amend	2-1-07
813-042-0030	1-11-07	Adopt	2-1-07	813-120-0080(T)	1-11-07	Repeal	2-1-07
813-042-0030(T)	1-11-07	Repeal	2-1-07	813-120-0100	1-11-07	Amend	2-1-07
813-042-0040	1-11-07	Adopt	2-1-07	813-120-0100(T)	1-11-07	Repeal	2-1-07
813-042-0040(T)	1-11-07	Repeal	2-1-07	813-130-0000	1-11-07	Amend	2-1-07
813-042-0050	1-11-07	Adopt	2-1-07	813-130-0000(T)	1-11-07	Repeal	2-1-07
813-042-0050(T)	1-11-07	Repeal	2-1-07	813-130-0010	1-11-07	Amend	2-1-07
813-042-0060	1-11-07	Adopt	2-1-07	813-130-0010(T)	1-11-07	Repeal	2-1-07
813-042-0060(T)	1-11-07	Repeal	2-1-07	813-130-0020	1-11-07	Amend	2-1-07
813-042-0070	1-11-07	Adopt	2-1-07	813-130-0020(T)	1-11-07	Repeal	2-1-07
813-042-0070(T)	1-11-07	Repeal	2-1-07	813-130-0030	1-11-07	Amend	2-1-07
813-042-0080	1-11-07	Adopt	2-1-07	813-130-0030(T)	1-11-07	Repeal	2-1-07
813-042-0080(T)	1-11-07	Repeal	2-1-07	813-130-0040	1-11-07	Amend	2-1-07
813-042-0090	1-11-07	Adopt	2-1-07	813-130-0040(T)	1-11-07	Repeal	2-1-07
813-042-0090(T)	1-11-07	Repeal	2-1-07	813-130-0050	1-11-07	Amend	2-1-07
813-042-0100	1-11-07	Adopt	2-1-07	813-130-0050(T)	1-11-07	Repeal	2-1-07
813-042-0100(T)	1-11-07	Repeal	2-1-07	813-130-0060	1-11-07	Amend	2-1-07
813-042-0110	1-11-07	Adopt	2-1-07	813-130-0060(T)	1-11-07	Repeal	2-1-07
813-042-0110(T)	1-11-07	Repeal	2-1-07	813-130-0070	1-11-07	Amend	2-1-07
813-060-0005	1-11-07	Amend	2-1-07	813-130-0070(T)	1-11-07	Repeal	2-1-07
813-060-0010	1-11-07	Amend	2-1-07	813-130-0080	1-11-07	Amend	2-1-07
813-060-0020	1-11-07	Amend	2-1-07	813-130-0080(T)	1-11-07	Repeal	2-1-07
813-060-0025	1-11-07	Amend	2-1-07	813-130-0090	1-11-07	Amend	2-1-07
813-060-0030	1-11-07	Amend	2-1-07	813-130-0090(T)	1-11-07	Repeal	2-1-07
813-060-0031	1-11-07	Amend	2-1-07	813-130-0100	1-11-07	Amend	2-1-07
813-060-0032	1-11-07	Amend	2-1-07	813-130-0100(T)	1-11-07	Repeal	2-1-07
813-060-0036	1-11-07	Adopt	2-1-07	813-130-0110	1-11-07	Amend	2-1-07
813-060-0038	1-11-07	Am. & Ren.	2-1-07	813-130-0110(T)	1-11-07	Repeal	2-1-07
813-060-0040	1-11-07	Amend	2-1-07	813-130-0120	1-11-07	Amend	2-1-07
813-060-0044	1-11-07	Amend	2-1-07	813-130-0120(T)	1-11-07	Repeal	2-1-07
813-060-0045	1-11-07	Amend	2-1-07	813-130-0130	1-11-07	Amend	2-1-07
813-060-0047	1-11-07	Amend	2-1-07	813-130-0130(T)	1-11-07	Repeal	2-1-07
813-060-0055	1-11-07	Amend	2-1-07	813-130-0140	1-11-07	Adopt	2-1-07
813-060-0056	1-11-07	Amend	2-1-07	813-130-0140(T)	1-11-07	Repeal	2-1-07
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813-060-0062	1-11-07	Amend	2-1-07	813-205-0000(T)	1-11-07	Repeal	2-1-07
813-060-0065	1-11-07	Amend	2-1-07	813-205-0010	1-11-07	Amend	2-1-07
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813-090-0031(T)	1-11-07	Repeal	2-1-07	813-205-0020(T)	1-11-07	Repeal	2-1-07
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813-205-0060(T)	1-11-07	Repeal	2-1-07	836-043-0110	1-17-07	Amend	3-1-07
813-205-0070	1-11-07	Amend	2-1-07	837-012-0305	1-1-07	Amend	2-1-07
813-205-0070(T)	1-11-07	Repeal	2-1-07	837-012-0310	1-1-07	Amend	2-1-07
813-205-0080	1-11-07	Amend	2-1-07	837-012-0315	1-1-07	Amend	2-1-07
813-205-0080(T)	1-11-07	Repeal	2-1-07	837-012-0320	1-1-07	Amend	2-1-07
813-205-0085	1-11-07	Adopt	2-1-07	837-012-0325	1-1-07	Amend	2-1-07
813-205-0085(T)	1-11-07	Repeal	2-1-07	837-012-0330	1-1-07	Amend	2-1-07
813-205-0100	1-11-07	Adopt	2-1-07	837-012-0340	1-1-07	Amend	2-1-07
813-205-0100(T)	1-11-07	Repeal	2-1-07	837-012-0350	1-1-07	Amend	2-1-07
813-205-0110	1-11-07	Adopt	2-1-07	837-012-0360	1-1-07	Amend	2-1-07
813-205-0110(T)	1-11-07	Repeal	2-1-07	837-012-0370	1-1-07	Amend	2-1-07
813-205-0120	1-11-07	Adopt	2-1-07	837-012-1200	12-1-06	Amend	1-1-07
813-205-0120(T)	1-11-07	Repeal	2-1-07	837-012-1210	12-1-06	Amend	1-1-07
813-205-0130	1-11-07	Adopt	2-1-07	837-012-1220	12-1-06	Amend	1-1-07
813-205-0130(T)	1-11-07	Repeal	2-1-07	837-012-1230	12-1-06	Amend	1-1-07
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820-001-0020	11-21-06	Amend	1-1-07	837-012-1250	12-1-06	Amend	1-1-07
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820-010-0200	11-21-06	Amend	1-1-07	837-012-1270	12-1-06	Amend	1-1-07
820-010-0204	11-21-06	Adopt	1-1-07	837-012-1280	12-1-06	Amend	1-1-07
820-010-0205	11-21-06	Amend	1-1-07	837-012-1290	12-1-06	Amend	1-1-07
820-010-0206	11-21-06	Adopt	1-1-07	837-012-1300	12-1-06	Amend	1-1-07
820-010-0207	11-21-06	Amend	1-1-07	837-012-1310	12-1-06	Amend	1-1-07
820-010-0208	11-21-06	Adopt	1-1-07	837-012-1320	12-1-06	Amend	1-1-07
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820-010-0226	11-21-06	Adopt	1-1-07	837-012-1340	12-1-06	Amend	1-1-07
820-010-0227	11-21-06	Adopt	1-1-07	837-012-1350	12-1-06	Amend	1-1-07
820-010-0228	11-21-06	Adopt	1-1-07	837-012-1360	12-1-06	Amend	1-1-07
820-010-0230	11-21-06	Amend	1-1-07	837-012-1370	12-1-06	Amend	1-1-07
820-010-0231	11-21-06	Adopt	1-1-07	837-012-1380	12-1-06	Amend	1-1-07
820-010-0255	11-21-06	Amend	1-1-07	837-012-1390	12-1-06	Amend	1-1-07
820-010-0300	11-21-06	Amend	1-1-07	837-012-1400	12-1-06	Amend	1-1-07
820-010-0305	11-21-06	Amend	1-1-07	837-012-1410	12-1-06	Amend	1-1-07
820-010-0400	11-21-06	Adopt	1-1-07	837-012-1420	12-1-06	Amend	1-1-07
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847-008-0023	1-24-07	Amend	3-1-07	918-098-1020	1-1-07	Am. & Ren.	2-1-07
847-008-0037	1-24-07	Adopt	3-1-07	918-098-1025	1-1-07	Amend	2-1-07
847-010-0063	1-24-07	Amend	3-1-07	918-098-1030	1-1-07	Amend	2-1-07
847-010-0073	1-24-07	Amend	3-1-07	918-098-1040	1-1-07	Repeal	2-1-07
847-020-0110	1-24-07	Amend	3-1-07	918-098-1042	1-1-07	Repeal	2-1-07
847-020-0140	1-24-07	Amend	3-1-07	918-098-1045	1-1-07	Repeal	2-1-07
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847-028-0030	1-24-07	Amend	3-1-07	918-098-1070	1-1-07	Repeal	2-1-07
847-035-0030	1-24-07	Amend	3-1-07	918-098-1075	1-1-07	Repeal	2-1-07
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850-060-0226	12-11-06	Amend	1-1-07	918-098-1220	1-1-07	Repeal	2-1-07
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